

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF NEVADA COPPER, INC., NEVADA COPPER CORP.,  
0607792 B.C. LTD., LION IRON CORP., NC FARMS LLC AND NC DITCH COMPANY  
LLC**

**APPLICATION OF NEVADA COPPER, INC. UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED**

**FIRST REPORT OF THE INFORMATION OFFICER  
ALVAREZ & MARSAL CANADA INC.**

**July 22, 2024**

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## 1.0 INTRODUCTION

- 1.1 On June 10, 2024 (the “**Petition Date**”), Nevada Copper, Inc. (“**NCI**”) and its affiliates (collectively, the “**Debtors**” or the “**Company**”)<sup>1</sup> commenced cases in the United States Bankruptcy Court for the District of Nevada (the “**U.S. Bankruptcy Court**”) by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Chapter 11 Cases**”).
- 1.2 As a result of the Debtors’ strained liquidity caused by operational issues at their mining project in Nevada, the absence of a sale agreement on a viable timeline, and diminishing financial support from their lenders, the Debtors determined it was necessary to file the Chapter 11 Cases to provide the Debtors with access to debtor-in-possession financing and additional time to continue pursuing a sale process under the protections provided by the Bankruptcy Code.
- 1.3 The primary purpose of the Chapter 11 Cases is to provide the Debtors with the necessary relief to continue the sale process that began prior to the Petition Date and find a long-term solution to their operational and financial challenges in a manner that maximizes value. The Debtors include NCI’s Canadian parent, Nevada Copper Corp., (“**NCU**”) and its Canadian subsidiary, 0607792 B.C. Ltd. (“**0607 BC**”, together with NCU, the “**Canadian Debtors**”). Each Canadian Debtor is also a Chapter 11 Debtor in the Chapter 11 Cases.

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<sup>1</sup> The Debtors are Nevada Copper, Inc., Nevada Copper Corp., 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC.

- 1.4 On the Petition Date, the Debtors filed motions for interim and/or final orders (the “**First Day Motions**”) in the Chapter 11 Cases to permit the Debtors to continue to operate their business in the ordinary course and to continue to advance the sale process. Following a hearing in respect of the First Day Motions, the U.S. Bankruptcy Court granted certain orders (the “**First Day Orders**”), including an order (the “**Foreign Representative Order**”) authorizing NCI to act as foreign representative on behalf of the Debtors’ estates.<sup>2</sup>
- 1.5 On June 19, 2024, NCI, in its capacity as the foreign representative of the Debtors (in such capacity, the “**Foreign Representative**”), served materials in respect of an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for recognition of the Chapter 11 Cases as foreign main proceedings pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and related relief (the “**Recognition Proceedings**”, and together with the Chapter 11 Cases, the “**Restructuring Proceedings**”).
- 1.6 On June 21, 2024, the Court made two orders:
- (a) an order (the “**Initial Recognition Order**”), among other things: (i) recognizing the Chapter 11 Cases as “foreign main proceedings” in respect of the Debtors; and (ii) granting a stay of proceedings in Canada in respect of the Debtors and their property and business, and in respect of their respective directors and officers; and

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<sup>2</sup> Copies of the each of the Chapter 11 Orders and other documents related to the Chapter 11 Cases are available at the website maintained by Epiq Corporate Restructuring, LLC (“**Epiq**”): <https://dm.epiq11.com/case/nevadacopper/dockets>.

(b) an order (the “**Supplemental Order**”), among other things: (i) recognizing and enforcing in Canada certain of the First Day Orders entered in the Chapter 11 Cases, including the Foreign Representative Order; (ii) appointing Alvarez & Marsal Canada Inc. (“**A&M Canada**”) as information officer in respect of the Recognition Proceedings (in such capacity, the “**Information Officer**”); and (iii) granting the Administration Charge and the DIP Lender’s Charge (each as defined in the Supplemental Order).

1.7 A&M Canada, in its capacity as proposed Information Officer, filed a report dated June 20, 2024 (the “**Pre-Filing Report**”) to provide this Court with, among other things, certain background information with respect to the Debtors and the Chapter 11 Cases. A copy of the Pre-Filing Report without appendices is attached hereto as **Appendix “A”** and is available on the Information Officer’s case website at: <https://www.alvarezandmarsal.com/NevadaCopper> (the “**Case Website**”).

## **2.0 TERMS OF REFERENCE AND DISCLAIMER**

2.1 In preparing this report (the “**First Report**”), A&M Canada has relied solely on information and documents provided by the Foreign Representative and other Debtors, their Canadian legal counsel, the Debtors’ financial advisor in the Chapter 11 Cases, and publicly available documents filed with the U.S. Bankruptcy Court (collectively the “**Information**”). Except as otherwise described in this First Report:

(a) the Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Information Officer has not audited or otherwise attempted to verify the accuracy

or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants of Canada Handbook* (the “**Handbook**”) and accordingly, the Information Officer expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and

- (b) some of the information referred to in this First Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Handbook, has not been performed.

2.2 Future-oriented financial information referred to in this First Report was prepared based on estimates and assumptions made by the Debtors’ management and financial advisor. Readers are cautioned that, since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, and the variations could be significant.

2.3 This First Report should be read in conjunction with the Affidavit of Melissa Losco sworn July 18, 2024 (the “**Second Losco Affidavit**”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Second Losco Affidavit or the Pre-Filing Report, as applicable.

2.4 Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars.

### **3.0 PURPOSE OF THIS REPORT**

3.1 The purpose of this First Report is to provide this Court with information regarding the following:

- (a) the Foreign Representative's motion for an order (the "**Recognition of Final Orders and Bidding Procedures Order**") recognizing and giving effect in Canada by this Court pursuant to the CCAA certain orders that have been granted by the U.S. Bankruptcy Court as discussed below;
- (b) an update on the bar date established in the Chapter 11 Cases; and
- (c) a summary of the activities of the Information Officer since the date of its appointment.

### **4.0 FINAL ORDERS FOR WHICH RECOGNITION IS BEING SOUGHT**

4.1 Following a hearing before the U.S. Bankruptcy Court on July 12, 2024, the U.S. Bankruptcy Court entered final versions of certain of the First Day Orders that it previously granted on an interim basis. The Foreign Representative is now seeking Canadian recognition of certain of those final orders (the "**Final Orders**") and the Bidding Procedures Order (described in Section 5 below), and a hearing before this Court has been scheduled for July 24, 2024 for this purpose. This Court previously recognized interim versions of the Final Orders on June 21, 2024, when it granted the Supplemental Order.

4.2 The Information Officer and its legal counsel have reviewed the terms of each of the Final Orders and supports such requested relief. The Information Officer notes that the Final

Orders are, for the most part, common in Chapter 11 proceedings and are substantially consistent with the interim orders previously recognized by this Court pursuant to the Supplemental Order.

4.3 Each of the Final Orders is defined and further described in the Second Losco Affidavit and copies are attached as exhibits thereto.

4.4 This First Report includes pertinent information regarding the following Final Orders: Final DIP Order, Final Cash Management Order, Final Prepetition Wages Order, and the Final Insurance Order.

#### Final DIP Order

4.5 A summary of the DIP Facility and the Interim DIP Order, including the Information Officer's assessment of their reasonableness and the basis on which the Information Officer recommended that this Court recognize the Interim DIP Order, was provided in the Pre-Filing Report.

4.6 Following entry of the Interim DIP Order and prior to the hearing on the Final DIP Order, the Office of the United States Trustee (the "UST") appointed an Official Committee of Unsecured Creditors (the "UCC"). The Information Officer understands that the Final DIP Order was the product of negotiation among the Debtors and their stakeholders, including the UCC.

4.7 The Final DIP Order, which is substantially similar to the Interim DIP Order, was entered by the U.S. Bankruptcy Court on July 15, 2024 and authorizes the Debtors to utilize the DIP Facility on a final basis, including certain additional amounts that could only be drawn



following the granting of the Final DIP Order. The Final DIP Order was entered on a consensual basis, following the resolution of certain stakeholder objections.

- 4.8 As described in the Pre-Filing Report, the DIP Facility provides for up to \$60 million in new money DIP financing, consisting of: (i) an initial new money term loan in the aggregate principal amount of \$20 million; and (ii) a new money delayed draw term loan, subject to entry of a final order approving the DIP Facility, in the aggregate principal amount of \$40 million.
- 4.9 The Information Officer understands that as at July 14, 2024, the outstanding cumulative borrowings under the DIP Facility were \$20 million, with the \$40 million incremental amount forecast to be drawn on the week ending July 28, 2024.
- 4.10 The changes negotiated with the UCC include a modification to the credit bidding provisions to ensure that if the UCC successfully challenges any of the prepetition liens, any credit bid including such challenged liens will be modified accordingly. As noted below, the Information Officer understands that no party has currently committed to making a credit bid pursuant to the Bidding Procedures Order.

#### Final Cash Management Order

- 4.11 The Final Cash Management Order approves the relief previously granted by the U.S. Bankruptcy Court, on a final basis, which, among other things, authorizes the Debtors to continue to operate their Cash Management System, including maintaining existing bank accounts, and to continue to perform intercompany transactions through the Cash Management System. The modifications to the Final Cash Management Order address the

rights of the banks to assert claims for the costs associated with administration of the Cash Management System.

4.12 Given that NCU is a holding company, generally, cash is transferred from NCI to NCU to fund the expenses of NCU. The Cash Management System and the bank accounts in Canada are described in the Pre-Filing Report.<sup>3</sup> Although the UST requested that the bank accounts in Canada be closed and the funds transferred to an account that complies with the provisions of the U.S. Bankruptcy Code and the local requirements, following the Information Officer's discussions with the Debtors' counsel and the Debtors' submissions, Judge Barnes determined that maintaining the current Cash Management System was appropriate in the circumstances.

4.13 Since the filing date, approximately \$135,000 has been transferred to NCU pursuant to the Cash Management System.

#### Final Prepetition Wages Order

4.14 The Final Prepetition Wages Order, among other things, approves the relief previously granted by the U.S. Bankruptcy Court, on a final basis. The relief granted includes authorizing the Debtors to pay all prepetition employee wages, salaries and other accrued compensation, reimburse prepetition business expenses and continue prepetition employee benefits programs. The Final Prepetition Wages Order permits payment of amounts owing

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<sup>3</sup> In addition, although not referenced in the initial list of bank accounts in the First Day Motions, Bank of Montreal holds a deposit of cash collateral in a bank account ending 4097 to secure certain Debtor obligations in connection with a letter of credit that Bank of Montreal issued to secure the Debtors' performance of obligations under a rail car lease. As the Debtors do not have control over or access to such funds, the Debtors have not treated it as part of their Cash Management System.

under the short-term incentive plan (the “**STIP**”) (other than amounts owing to insiders) and the hourly bonus program. However, the Debtors have filed a motion for approval of a key employee incentive plan and a key employee retention plan which, if approved, are intended to replace the hourly bonus program on a go forward basis. The motions in respect of the post-filing employee programs are scheduled to be heard on July 29, 2024.

#### Final Insurance Order

- 4.15 The Final Insurance Order approves the relief previously granted by the U.S. Bankruptcy Court, on a final basis, which, among other things, authorizes the Debtors to continue their existing insurance policies and pay for Insurance Obligations and Surety Premiums (each as defined in the Final Insurance Order).

### **5.0 BIDDING PROCEDURES ORDER**

- 5.1 As described in the Pre-Filing Report, prior to the Petition Date, the Company explored various strategic alternatives, including refinancings, recapitalizations, and asset sales, and launched a marketing process for the sale of substantially all of the Company’s assets (the “**Sale Process**”). The Bidding Procedures Order establishes procedures to allow the Debtors to continue the Sale Process and seek U.S. Bankruptcy Court approval of a Successful Bid.<sup>4</sup>

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<sup>4</sup> Capitalized terms used but not defined in this section have the meanings set forth in the Bidding Procedures Order or the Bidding Procedures, as applicable.

- 5.2 The U.S. Bankruptcy Court conducted a hearing in respect of the Bidding Procedures Order on July 19, 2024.
- 5.3 Although the Bidding Procedures Order was contested, the Debtors narrowed the issues in advance of the hearing and filed a revised proposed order, a copy of which is attached hereto as **Appendix “B”**. At the hearing, the remaining unresolved objections were from Trisura Guarantee Insurance Company and Trisura Insurance Company (collectively “**Trisura**”) and the UST. Trisura’s objection was resolved during the hearing, based on comments from the Debtors’ U.S. counsel, and the U.S. Bankruptcy Court overruled on the UST’s objection.
- 5.4 The Information Officer understands that the Foreign Representative intends to provide the entered Bidding Procedures Order to the Court in a supplemental affidavit prior to the hearing for this motion on July 24, 2024 and that the Bidding Procedures Order is expected to be substantially in the form proposed at the hearing.
- 5.5 The Bidding Procedures Order, among other things: (a) approves the Auction and Bidding Procedures; (b) a establishes certain dates and deadlines and scheduling an auction or auctions, if necessary; (c) approves the manner of notice of the auction and sale hearing; (d) approves procedures for the assumption and assignment of certain Executory Contracts and Unexpired Leases in connection with the sale transaction, if any; and (e) approves a process for entry into a stalking horse purchase agreement including any applicable bid protections not to exceed three percent of the proposed purchase price.
- 5.6 The Bidding Procedures Order permits the Debtors, in consultation with the Consultation Parties and with the consent of the DIP Lenders, to select one or more stalking horse bidders

with respect to some or all of the Debtors' assets and enter into a stalking horse purchase agreement that would provide such stalking horse bidders with bid protections. Where a DIP Lender, or any affiliate of a DIP Lender, expressly indicates to the Debtors that it is considering submitting or has actually submitted a bid for any of the Debtors' assets, it shall not have consent rights with respect to the selection of a stalking horse bidder or stalking horse bid protections. If the Debtors intend to enter into a stalking horse purchase agreement, they must do so by August 17, 2024, and file such agreement and certain related documents with the U.S. Bankruptcy Court within two business days. If there are no objections to the proposed stalking horse purchase agreement, the U.S. Bankruptcy Court may enter an order approving the use of such agreement as a stalking horse in the process.

- 5.7 Although the Bidding Procedures Order permits credit bidding in the sale process, the Information Officer understands that no party has committed to making a credit bid at this time and the Debtors remain in active discussions with a number of parties regarding potential transactions.
- 5.8 The Bidding Procedures Order also approves the Assumption and Assignment Procedures, which provides contract counterparties with an opportunity to raise any objections to the proposed assumption and assignment or to the proposed Cure Amounts by the Assumption and Cure Objection Deadline. The Bidding Procedures Order therefore allows contract counterparties an initial opportunity to raise objections to any cure amounts and the assignability of their contracts, and a second opportunity to raise objections to the ability of the proposed prevailing purchaser to comply with the relevant terms of the contract once the Successful Bidder is identified.

5.9 The timeline and key processes contemplated by the Bidding Procedures are summarized as follows:

Date	Deadline
<u>Monday, July 29, 2024</u> , or as soon as reasonably practicable after entry of the Bidding Procedures Order	Service of Sale Notice; Publication of Sale Notice
<u>Tuesday, July 30, 2024</u> , or as soon as reasonably practicable thereafter	Serve notice of potential assumption and assignment to contract counterparties
<u>Tuesday, August 20, 2024</u> (or 21 days after service of an applicable notice of assumption and assignment)	Deadline to object to proposed cure amounts and assumption and assignment
<u>Friday, September 6, 2024</u> , at 5:00 p.m. (prevailing Pacific Time)	Bid Deadline
<u>Monday, September 9, 2024</u> , at 9:00 a.m. (prevailing Pacific Time)	Qualified Bid Designation Date
<u>Tuesday, September 10, 2024</u> , at 12:00 p.m. (prevailing Eastern Time)	Auction (if necessary) to be held at the New York offices of A&O Shearman, or such other location announced to the bidders and Consultation Parties
<u>Thursday September 12, 2024</u>	Serve Notice of Successful Bidder on Contract Counterparties
<u>Friday, September 19, 2024</u> , at 12:00 p.m. (prevailing Pacific Time)	Deadline to object to the proposed Sale; deadline to object to adequate assurance.
<u>Tuesday, September 24, 2024</u> , at 12:00 p.m. (prevailing Pacific Time)	Deadline for responses to objections.
<u>Wednesday, September 25, 2024</u> , at 10:00 a.m. (prevailing Pacific Time) (subject to the Bankruptcy Court's availability)	Sale Hearing
<u>Thursday, September 26, 2024</u>	Entry of Sale Order
On or before <u>Monday, October 8, 2024</u>	Closing

5.10 The Information Officer considered the following in assessing the reasonableness of the Bidding Procedures Order:

- (a) in the Information Officer's view, the contemplated sale process and the Bidding Procedures are commercially reasonable, consistent with procedures approved by this Court in both Canadian-only and cross-border insolvency proceedings, and have been designed to maximize value through a competitive sale process while also mitigating against downside risk for stakeholders;
- (b) the Bid Deadline should provide sufficient time to ensure potential bidders are able to perform diligence and prepare and submit their bids;
- (c) the Bidding Procedures encompass the assets of the Canadian Debtors and the Information Officer is a Consultation Party with respect to the Canadian assets; and
- (d) the Information Officer does not believe the Canadian creditors of the Debtors would be materially prejudiced by the Bidding Procedures.

5.11 Subject to entry of a Bidding Procedures Order substantially in the form presented to the U.S. Bankruptcy Court on July 19, 2024, the Information Officer recommends that this Court recognize the Bidding Procedures Order.

## **6.0 BAR DATE**

6.1 The Information Officer understands that pursuant to local practice in the U.S. Bankruptcy Court, a deadline for the filing of proofs of claim (the "**Bar Date**") was established for all creditors of the Debtors upon the commencement of the Chapter 11 Cases. The Bar Date

is October 15, 2024 or December 9, 2024, solely with respect to governmental units (as that term is defined in the Bankruptcy Code).

6.2 The Foreign Representative has advised that copy of the notice of commencement of the Chapter 11 Cases (the “**Notice of Commencement**”), indicating the Bar Date and the website to access the proof of claim form, was sent to each creditor listed on the creditor matrix within a few days of the commencement of the Chapter 11 Cases. A copy of the Notice of Commencement for NCU is attached hereto as **Appendix “C”**.

6.3 No order in respect of the Bar Date has been entered in the Chapter 11 Cases. The Information Officer understands that the Foreign Representative is of the view that a stand-alone recognition order is not needed for the Bar Date and that it is effective in Canada.

6.4 In order to assist with notification of the Bar Date in Canada, the Information Officer will post a notice on the Case Website that will direct creditors to the claims section of the Epiq website.

## **7.0 ACTIVITIES OF THE INFORMATION OFFICER**

7.1 The activities of the Information Officer since being appointed have included:

- (a) establishing the Case Website to make available copies of the orders granted in the Recognition Proceedings as well as other relevant motion materials, reports, and information. In addition, there is a link on the Information Officer’s website to the Debtors’ restructuring website maintained by Epiq that includes copies of all U.S. Bankruptcy Court materials and orders, petitions, notices, and other materials;



- (b) assisting the Foreign Representative with drafting and coordinating publication of the notice of the Chapter 11 Cases and Recognition Proceedings in *The Globe & Mail (National Edition)* newspaper, on June 28, 2024 and July 5, 2024 and *Le Devoir* on June 28, 2024 and July 5, 2024;
- (c) monitoring the Epiq website for activity in the Chapter 11 Cases;
- (d) responding to stakeholder inquiries, including in respect of a request from Canada Revenue Agency, regarding the Restructuring Proceedings;
- (e) engaging with Debtors' Canadian legal counsel and advisors, including AlixPartners, regarding matters relevant to the Chapter 11 Cases;
- (f) reviewing and commenting on the Debtors' motions and orders in the Restructuring Proceedings; and
- (g) preparing this First Report and reviewing draft materials of the Foreign Representative in connection with the Recognition Proceedings.

## **8.0 RECOMMENDATIONS**

- 8.1 The Information Officer and its legal counsel have reviewed each of the relevant Final Orders and the Bidding Procedures Order and believe that the recognition of the Final Orders, and the Bidding Procedures Order, if entered by the U.S. Bankruptcy Court substantially in the form presented to the U.S. Bankruptcy Court, is reasonable and appropriate in the circumstances. The Information Officer intends to review the entered

form of the Bidding Procedures Order once it is available and will advise this Court at the hearing of any material changes or any changes to its recommendation.

- 8.2 Based on the foregoing, the Information Officer respectfully recommends that this Court grant the relief requested by the Foreign Representative.

All of which is respectfully submitted to the Court this 22nd day of July, 2024.

**ALVAREZ & MARSAL CANADA INC.,**  
**Information Officer of the Debtors**  
**and not in its personal or corporate capacity**

Per:   
\_\_\_\_\_  
Alan J. Hutchens  
Senior Vice-President

## Appendix “A”

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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**APPLICATION OF NEVADA COPPER, INC. UNDER SECTION 46 OF THE *COMPANIES'*  
*CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**REPORT OF THE PROPOSED INFORMATION OFFICER  
ALVAREZ & MARSAL CANADA INC.**

**June 20, 2024**

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## APPENDICES

**Appendix “A”** – Summary of DIP Facility

**Appendix “B”** – Consent to Act

## 1.0 INTRODUCTION

- 1.1 On June 10, 2024 (the “**Petition Date**”), Nevada Copper, Inc. (“**NCI**”) and its affiliates (collectively, the “**Debtors**” or the “**Company**”) commenced cases in the United States Bankruptcy Court for the District of Nevada (the “**U.S. Bankruptcy Court**”) by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the “**Chapter 11 Cases**”).
- 1.2 The primary purpose of the Chapter 11 Cases is to provide the Debtors with the necessary relief to continue the Sale Process (as defined below) that began prior to the Petition Date and find a long-term solution to their operational and financial challenges in a manner that maximizes value. The Debtors include NCI’s Canadian parent, Nevada Copper Corp., (“**NCU**”) and its Canadian subsidiary, 0607792 B.C. Ltd. (“**0607 BC**”) (collectively, the “**Canadian Debtors**”).
- 1.3 On the Petition Date, the Debtors filed a number of motions for interim and/or final orders (the “**First Day Motions**”) in the Chapter 11 Cases to permit the Debtors to continue to operate their business in the ordinary course and to continue to advance the Sale Process. Following a hearing in respect of the First Day Motions (the “**First Day Hearing**”), the U.S. Bankruptcy Court granted certain orders (the “**First Day Orders**”), including an order (the “**Foreign Representative Order**”) authorizing NCI to act as foreign representative on behalf of the Debtors’ estates.<sup>1</sup>
- 1.4 Alvarez & Marsal Canada Inc. (“**A&M**” or the “**Proposed Information Officer**”) understands that NCI, in its capacity as the foreign representative of the Debtors in respect of the Chapter 11 Cases

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<sup>1</sup> Copies of the each of the Chapter 11 Orders and other documents related to the Chapter 11 Cases are available at the website maintained by Epiq Corporate Restructuring, LLC: <https://dm.epiq11.com/case/nevadacopper/dockets>.

(in such capacity, the “**Foreign Representative**”), has commenced an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for recognition of the Chapter 11 Cases as foreign main proceedings pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (“**CCAA**”) (the “**Recognition Proceedings**”, and together with the Chapter 11 Cases, the “**Restructuring Proceedings**”). Other than the Chapter 11 Cases and the Recognition Proceedings, the Proposed Information Officer understands that there are currently no other foreign proceedings (as defined in section 45 of the CCAA) in respect of the Debtors.

1.5 The purpose of this Report of the Proposed Information Officer (this “**Pre-Filing Report**”) is to provide this Court with background information with respect to the Debtors and the Restructuring Proceedings, and to assist the Court in considering the Foreign Representative’s request for the following relief:

- (a) an order, among other things: (i) recognizing the Chapter 11 Cases as “foreign main proceedings” in respect of the Debtors; and (ii) granting a stay of proceedings in Canada in respect of the Debtors and their property and business, and in respect of their respective directors and officers (the “**Initial Recognition Order**”); and
- (b) an order, among other things: (i) recognizing and enforcing in Canada certain of the First Day Orders entered in the Chapter 11 Cases, including the Foreign Representative Order; (ii) appointing A&M as information officer in respect of the Recognition Proceedings (in such capacity, the “**Information Officer**”); and (iii) granting the Administration Charge and the DIP Lender’s Charge (each as defined below) (the “**Supplemental Order**”).



## 2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this Pre-Filing Report, A&M has relied solely on information and documents provided by the Foreign Representative and other Debtors and their Canadian legal counsel, and publicly available documents filed with the U.S. Bankruptcy Court (collectively the “**Information**”). Except as otherwise described in this Pre-Filing Report:

- (a) the Proposed Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed Information Officer has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants of Canada Handbook* (the “**Handbook**”) and accordingly, the Proposed Information Officer expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- (b) some of the information referred to in this Pre-Filing Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Handbook, has not been performed.

2.2 Future-oriented financial information referred to in this Pre-Filing Report was prepared based on estimates and assumptions made by the Company’s management. Readers are cautioned that, since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, and the variations could be significant.

2.3 This Pre-Filing Report should be read in conjunction with the Affidavit of Gregory J. Martin, sworn on June 19, 2024 (the “**Martin Affidavit**”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Martin Affidavit.

2.4 Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars.

### **3.0 A&M’S QUALIFICATIONS TO ACT AS INFORMATION OFFICER**

3.1 A&M was engaged by the Debtors effective May 10, 2024, for the purpose of preparing for the Recognition Proceedings and to act as the Information Officer. As such, A&M is familiar with the business and operations of NCI and the Debtors, and the key issues and stakeholders in the proposed Recognition Proceedings.

3.2 A&M is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and has significant experience in connection with proceedings under the CCAA, including acting as Information Officer in the recognition proceedings of Coach USA, WeWork Canada, Yellow Corporation, Sungard Availability Services, Knotel Canada, Brooks Brothers Canada, Pier 1 Imports, Jack Cooper Ventures, Payless Shoes, Modular Space Holdings, LightSquared, Durabla Canada and others.

3.3 The senior A&M professional personnel with carriage of this matter include experienced insolvency and restructuring practitioners who are Chartered Professional Accountants, Chartered Insolvency and Restructuring Professionals and Licensed Insolvency Trustees, who have acted in cross-border restructurings and CCAA matters of a similar nature in Canada.

3.4 The Proposed Information Officer has retained Cassels Brock & Blackwell LLP (“**Cassels**”) to act as its independent legal counsel.

3.5 A&M has consented to act as Information Officer should this Court approve the requested Initial Recognition Order and the Supplemental Order.

#### **4.0 BACKGROUND**

##### Company Overview

4.1 The Company, through NCI, is in the business of mining copper and other minerals and operates a processing plant that refines copper ore into copper concentrate. The bulk of the Company’s operations have been focused on the development of the Pumpkin Hollow project (the “**Project**”), which is located near Yerington, Nevada in the United States. The Project, which contains substantial mineral reserves and resources, including not only copper, but gold, silver and iron magnetite, consists of primarily two development projects: (i) an underground mine and processing facility (the “**Underground Mine**”); and (ii) an open-pit project (the “**Open Pit Development**”), that is in pre-feasibility stage of development. The Company generated approximately \$4.5 million in operating revenue for the year ended December 31, 2023. A comprehensive overview of the Debtors’ business is provided in the Martin Affidavit. A summary balance sheet for the Debtors is also provided in the Martin Affidavit.

4.2 As of the Petition Date, the Company employed approximately 197 people, approximately 136 of which are paid on an hourly basis (the “**Hourly Employees**”) and 61 of which are paid an annual salary (the “**Salaried Employees**”). Of the Debtors’ 197 full-time employees, 3 are employed by NCU and are usually based in Canada (the “**Canadian Employees**”), with the remainder employed by NCI and located in the United States.

- 4.3 The Company maintains employee savings plans for eligible employees in both the United States and Canada (the “**Employee Savings Plan**”), which require that employer and employee contributions be made in respect of participating employees.
- 4.4 NCU is the ultimate parent of each of the other Debtors, including the Foreign Representative. NCU is a public company traded on the Toronto Stock Exchange under the symbol “NCU”. As of the Petition Date, NCU’s largest shareholder is Pala Investments Limited (“**Pala**”), which holds approximately 61.66% of NCU’s shares. Mercuria Energy Trading S.A (“**Mercuria**”) is believed to own approximately 17.24% of NCU’s shares, while management and directors own approximately 0.18%. The remainder of NCU’s common shares are held by other investors.
- 4.5 NCU has limited business operations in Canada (through services of three employees), and substantially all its Canadian assets are in the form of its wholly-owned equity interest in, and intercompany loan repayable from, NCI. The other Canadian Debtor, 0607 BC, is a dormant shell company with no material assets or business in Canada or elsewhere. The Canadian Debtors are a small part of the broader integrated corporate group. As of the Petition Date, the Canadian Debtors represented approximately 1.5% of the Company’s workforce and generate no operating revenue on a standalone basis.
- 4.6 The Debtors have no physical office or other place of business in Canada. The Debtors, through NCU, have a Canadian registered office, which is the office of their British Columbia lawyers.
- 4.7 As of the Petition Date, approximately \$115,000 was payable to unsecured trade creditors of NCU, comprised of amounts owing to IT vendors, professional/consultants and investor relation firms. NCI has additional stakeholders located in Canada.

- 4.8 A detailed discussion of the Debtors’ business, including the events leading up to the Restructuring Proceedings, is provided in the Martin Affidavit.

Prepetition Capital Structure and Debt

- 4.9 As of the Petition Date, the Debtors had secured debt of approximately \$279.2 million in aggregate principal amount of outstanding (including capitalized interest) as set out below:

<b>Prepetition Credit Facilities</b>	<b>Approximate Amount Outstanding<sup>2</sup></b>
<b>Second A&amp;R Credit Agreement</b>	\$188.0 million
Stream Agreement Deposits	\$78.2 million
Third A&R Loan Facility	\$10.0 million
Advance Payment Facility	\$3.0 million
<b>Total</b>	<b>\$279.2 million</b>

- 4.10 Each of these credit facilities (the “**Prepetition Credit Facilities**”) is described in detail in the Martin Affidavit. Key terms and components of the Prepetition Credit Facilities include:

<b>Prepetition Credit Facilities</b>	
<b>Second A&amp;R Credit Agreement</b>	
Borrower	• NCI

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<sup>2</sup> The approximate total amount in this chart consists of the aggregate principal amount as of the Petition Date (including capitalized interest, where applicable).

Lender/Agent	<ul style="list-style-type: none"> <li>• KfW IPEX-Bank GmbH (“<b>KfW</b>”), as administrative agent, sole lead arranger</li> <li>• Initial Senior Lenders (as defined in the Martin Affidavit)</li> <li>• Pala Investments Limited, as Tranche A-2 lender</li> <li>• Triple Flag International Ltd. (“<b>Triple Flag</b>”), as Tranche A-2 lender</li> <li>• TF R&amp;S Canada Ltd (“<b>TF Canada</b>”), as Tranche A-2 lender</li> <li>• Mercuria Investments US, Inc (“<b>Mercuria US</b>”), as Tranche A-2 lender</li> </ul>
Principal Amount Outstanding	<ul style="list-style-type: none"> <li>• \$188.0 million</li> </ul>
Security & Guarantors	<ul style="list-style-type: none"> <li>• First-priority liens in substantially all of the property and assets of the Debtors (except for the APA Collateral), and all present and after-acquired property of all the Debtors (the “<b>Project Collateral</b>”)</li> <li>• Second-priority lien in all marketable metal-bearing material that is extracted or otherwise recovered from the Project (“<b>APA Collateral</b>”)</li> <li>• All Debtors are guarantors of and have granted security in respect of the obligations under the Second A&amp;R Credit Agreement</li> <li>• Tranche B Loans are guaranteed by Pala under a separate guarantee agreement</li> </ul>
<b>Stream Agreement</b>	
Obligor	<ul style="list-style-type: none"> <li>• NCI</li> </ul>
Purchaser	<ul style="list-style-type: none"> <li>• Triple Flag</li> </ul>
Principal Amount Outstanding	<ul style="list-style-type: none"> <li>• \$78.2 million</li> </ul>
Security & Guarantors	<ul style="list-style-type: none"> <li>• Second-priority lien in the Project Collateral</li> <li>• Third-priority lien in the APA Collateral</li> <li>• All Debtors are guarantors of and have granted security in respect of the Stream Agreement</li> </ul>
<b>Third A&amp;R Loan Agreement</b>	
Borrowers	<ul style="list-style-type: none"> <li>• NCU</li> </ul>
Lender	<ul style="list-style-type: none"> <li>• Pala Investments Ltd. As lender</li> </ul>
Principal Amount Outstanding	<ul style="list-style-type: none"> <li>• \$10.0 million</li> </ul>

Security & Guarantors	<ul style="list-style-type: none"> <li>• Fourth-priority lien on substantially all of the Debtors' assets</li> <li>• All Debtors are guarantors of and have granted security in respect of the Third A&amp;R Loan Agreement</li> </ul>
<b>Advance Payment Facility</b>	
Obligor	<ul style="list-style-type: none"> <li>• NCI</li> </ul>
Purchaser	<ul style="list-style-type: none"> <li>• Concord Resources Limited</li> </ul>
Principal Amount Outstanding	<ul style="list-style-type: none"> <li>• \$3.0 million</li> </ul>
Security & Guarantors	<ul style="list-style-type: none"> <li>• First-priority lien in the APA Collateral and a third-priority lien in the Project Collateral</li> </ul>

4.11 The Second A&R Credit Agreement provided the Debtors with, among other things: (i) \$115 million funded by KfW (the “**Initial Senior Lenders**”) (the “**Tranche A Loans**”); (ii) an additional \$15 million funded by the Initial Senior Lenders (the “**Tranche B Loans**”); (iii) \$15 million funded by Pala, Triple Flag and Mercuria US; and (iv) additional advances of \$18.8 million funded by Pala, Triple Flag, Mercuria US and TF Canada (the amounts in (iii) and (iv) being the “**Tranche A-2 Loans**”). In total, \$163.8 million in aggregate principal was funded through the Senior Secured Credit Agreement (excluding capitalized interest).

4.12 The relationship between Triple Flag, KfW, Pala Investments Ltd., Concord Resources Limited and the Debtors is governed by each respective intercreditor agreement (collectively, the “**Intercreditor Agreements**”). A summary of the individual intercreditor agreements is provided in the Martin Affidavit.

4.13 Although not funded indebtedness, NCU has granted a lien on its assets to secure potential reimbursement obligations that may arise in favour of Trisura Insurance Company (“**Trisura**”),

with respect to surety bonds securing certain obligations of NCI. The Debtors have two outstanding surety bonds (the “**Surety Bonds**”) which are renewed on an annual basis for a total of \$321,000 in the aggregate.

- 4.14 In addition, the Debtors have approximately \$226.6 million in amounts outstanding in unsecured funded debt obligations consisting of: (i) \$78.3 million owing in Unsecured Loans (as defined in the Martin Affidavit); and (ii) \$148.3 million owing to NCU from NCI under documented intercompany loans from NCU to NCI (the “**Intercompany Loans**”). Further details on the Intercompany Loans are provided in the Martin Affidavit.

#### Security Review

- 4.15 Should this Court grant the Initial Recognition Order and the Supplemental Order, the Proposed Information Officer (in its capacity as Information Officer) intends to arrange for its counsel, Cassels, to complete a customary security review in respect of the pre-petition security delivered by the Canadian Debtors and corresponding lien filings. The Proposed Information Officer did not request Cassels to complete a security review prior to the commencement of the Recognition Proceedings because the relief requested in connection with the DIP Facility (as defined below) does not include a roll up or pay down of any obligations under the Prepetition Credit Facilities.

#### Cash Management Systems

- 4.16 As described in the Martin Affidavit, the Debtors maintain an integrated, centralized cash management system (the “**Cash Management System**”) to collect, transfer and disburse funds generated by their operations to satisfy financial obligations. As described below, the Cash



Management System of the Debtors is highly integrated, with the majority of the assets located in the United States.

- 4.17 The Cash Management System serves numerous functions including, among other things: (i) providing the ability to track and control corporate funds; (ii) ensuring cash availability; (iii) prompting payment of corporate, employee and vendor-related expenses; and (iv) reducing administrative costs by facilitating the efficient movement of funds.
- 4.18 According to the motion material filed in the Chapter 11 Cases, the Cash Management System is comprised of eleven (11) bank accounts that handle the primary collection and disbursement of funds, four (4) of which are located in Canada held at Bank of Montreal (“**BMO**”) (collectively, the “**Canadian Bank Accounts**”). The Canadian Bank Accounts are managed on a day-to-day basis by the Debtors’ financial personnel and are overseen by the Debtors’ financial personnel located in the United States and the limited personnel in Canada.
- 4.19 As at the Petition Date, the Canadian Bank Accounts held approximately CAD\$47,874 and USD\$7,007.
- 4.20 The “Proceeds Account” as defined in the Omnibus Declaration of Gregory J. Martin dated June 10, 2024 (the “**Martin Declaration**”) receives deposits of certain revenues, capital contributions, loan proceeds, and other amounts payable to or received by NCI. Transfers from the Proceeds Account to the NCI Disbursement Account (Operating Account) (as defined in the Martin Declaration) are made in order for the Debtors, among other things, to be able to pay for operating and construction costs. Transfers from the Proceeds Account to the NCU Concentration Account

and Disbursement Accounts (each as defined in the Martin Declaration) are made in order for the Debtors, among other things, to be able to pay for costs disbursed from NCU.

- 4.21 The NCU Concentration Account holds funds for NCU, from which NCU disburses funds directly to vendors or through to NCU's disbursement accounts for operating costs (the "**NCU Disbursement Accounts**"). The two NCU Disbursement Accounts are used for respective payments on account of: (i) Canadian payroll and related flexible spending and health saving accounts; and (ii) operational costs. NCU also has an inactive account at BMO.
- 4.22 In the ordinary course of business, the Debtors enter into intercompany transactions with each other through the operation of their Cash Management System in order to manage their resources in the most efficient manner (the "**Intercompany Transactions**").
- 4.23 NCI partly relies on NCU for raising funds through the issuance of equity capital in the Canadian capital markets or through private raises of capital and loans, including loans and equity raised from NCU's largest shareholder, Pala. These funds, less a small holdback that NCU uses to fund its expenses (such as payroll, taxes, miscellaneous fees, and other operating costs in Canada), typically are transferred in turn to NCI in the form of equity or debt contributions. Currently, NCU relies on NCI for funding of day to day operations. When funds are transferred from NCI to NCU, they are either advanced as new loans or as repayment of the existing intercompany loans.

#### Sale Process

- 4.24 The Proposed Information Officer understands that, prior to the Petition Date, the Company explored various strategic alternatives, including refinancings, recapitalizations, and asset sales.

Among other things, the Company engaged Citigroup Global Markets and launched a marketing process for the sale of substantially all of the Company's assets (the "**Sale Process**").

4.25 As part of the Sale Process, the Debtors contacted over 30 parties, and ultimately received four proposals from potential purchasers interested in acquiring substantially all or a portion of the Debtors' business. After considering the proposals received, the Debtors entered into two separate exclusivity agreements with the Primary Prospective Purchasers (as defined in the Martin Affidavit) regarding a proposal for additional financing and/or a potential sale of the Debtors' business. Ultimately, the Debtors could not agree to terms with either of the Primary Prospective Purchasers that would allow the Debtors to consummate a sale that would close on the timeline required for the Debtors to meet their funding needs.

4.26 In the absence of a sale agreement on a viable timeline, and diminishing financial support from its lenders, the Debtors determined it was necessary to file the Chapter 11 Cases to provide additional time to continue pursuing the Sale Process under the protections provided by the Bankruptcy Code.

## **5.0 CENTRE OF MAIN INTEREST**

5.1 The Debtors, including the Canadian Debtors, are managed as an integrated group from a corporate, strategic and management perspective.

5.2 The Martin Affidavit describes the Debtors' integrated business. The Canadian Debtors are wholly dependent on NCI, located in the United States, for key leadership and managerial, accounting, finance and other critical functions typically performed by a corporate head office.

- 5.3 The Debtors other than NCU have no business operations or material assets in Canada. NCU, the Canadian parent company, has no independent business operations or material assets other than its wholly-owned interest in NCI, a Nevada-based company, and intercompany loans payable by NCI.
- 5.4 The Canadian Debtors have only three employees, and only one member of the Debtors' key management resides in Canada. Other than accounting and finance, the Canadian Debtors do not employ personnel for any key management function that it would require if they were to operate on a standalone basis.
- 5.5 Substantially all of the creditors of the Debtors are located in the United States and interact with the Debtors in connection with the Debtors' U.S. based operations. The Martin Affidavit confirms that substantially all of the Debtors' assets have been pledged to support the obligations under the the Prepetition Credit Facilities.
- 5.6 Based on the foregoing, the Proposed Information Officer is of the view that it would be appropriate to recognize the Chapter 11 Cases as "foreign main proceedings" pursuant to the CCAA.

## **6.0 DIP FACILITY**

- 6.1 As set out in the Martin Affidavit, the Company lacks the funding required to maintain its operations or administer the Chapter 11 Cases and the Recognition Proceedings. Without access to debtor-in-possession financing and the ability to use cash collateral, the Company would be unable to, among other things, meet employee payroll obligations, maintain business relationships with vendors, suppliers, marketing partners and satisfy working capital and operational needs.

- 6.2 In advance of the Petition Date, the Debtors entered into a debtor-in-possession financing agreement (the “**DIP Credit Agreement**”) extended by two affiliates of Elliott Investment Management L.P. (“**Elliott**”) (together, the “**DIP Lenders**”).
- 6.3 The Proposed Information Officer understands that before entering into the DIP Facility, the Debtors’ investment advisor, Moelis & Company LLC (“**Moelis**”) assisted the Debtors with the strategic evaluation of postpetition financing alternatives. The Debtors have been unsuccessful in identifying any party willing to provide debtor-in-possession financing on a junior basis to the prepetition secured lenders.
- 6.4 Further, the Debtors’ capital structure contains significant amounts of multi-tiered secured indebtedness, governed by certain Intercreditor Agreements described in the Martin Affidavit. As such, obtaining any postpetition financing would require consent, or a priming fight at the outset of the case, which would be value destructive to the estate. For this reason, the initial focus on the part of the Debtors, with the assistance of Moelis, was to obtain financing from parties for whom consent has been obtained, primarily from existing lenders or their affiliates.
- 6.5 Ultimately, the Debtors identified Elliott, an affiliate of Triple Flag and TF Canada, as the best source of DIP financing. Following several rounds of negotiations between the Debtors, their advisors and the DIP Lenders, the principal terms and conditions of the DIP Credit Agreement were agreed upon. With Elliott already having the consent of Triple Flag, Concord, and Pala, pursuant to the Intercreditor Agreements, the remaining required consent was provided by KfW, on the condition that KfW receive adequate protection as outlined in the Interim DIP Order, attached as an exhibit to the Martin Affidavit.

- 6.6 The Debtors, with the assistance of Moelis, contacted 13 third parties to explore alternative postpetition financing options on similar or better terms than the DIP Lenders, but have not yet received any actionable proposals to date.
- 6.7 The DIP Lenders agreed on the principle terms and conditions of a senior secured superpriority debtor-in-possession term loan that provides the Company with up to \$60.0 million of new money financing (the “**DIP Facility**”) comprised of: (i) an initial new money term loan in the aggregate principal amount of \$20 million; and (ii) a new money delayed draw term loan, subject to entry of a final order approving the DIP Facility, in the aggregate principal amount of \$40 million.
- 6.8 The DIP Facility is secured by all of the Debtors’ assets except for the APA Collateral, provided that upon the repayment of all obligations under the Advance Payment Agreement, the DIP Facility shall automatically include a first-priority lien on all collateral that currently constitutes APA Collateral.
- 6.9 The DIP Credit Agreement is described in further detail in the Martin Affidavit, and certain key terms and components are summarized and attached hereto in **Appendix “A”**. The DIP Credit Agreement requires that the Foreign Representative obtain an order of this Court recognizing the Interim DIP Order on or before June 28, 2024.
- 6.10 The Proposed Information Officer has compared the pricing and other financial terms of the DIP Facility to other similar DIP facilities (i.e. working capital revolving facilities) approved by the Canadian courts in previous CCAA proceedings. Based on the Proposed Information Officer’s review, the cost of the proposed DIP Facility is consistent with other similar recently approved DIP facilities.

### DIP Lender's Charge

- 6.11 The proposed Supplemental Order contemplates the granting of a court-ordered charge (the “**DIP Lender's Charge**”) in favour of the DIP Lenders on the present and future assets, property and undertakings of the Canadian Debtors, subject to the initial exception regarding the APA Collateral as discussed in paragraph 6.8 above (the “**Canadian Collateral**”) to secure the obligations outstanding from time to time under the DIP Facility.
- 6.12 In connection with Prepetition Credit Facilities, the Canadian Debtors have previously granted security over substantially all of the Canadian Collateral to secure the obligations to the Prepetition Secured Parties (as defined in the Interim DIP Order), who have consented to the DIP Facility on the terms set out in the Interim DIP Order.
- 6.13 Accordingly, the Foreign Representative, requests that the Court grant the DIP Lender's Charge over the Canadian Collateral, which would be subordinate to the proposed Administration Charge, and rank in priority to all other encumbrances, except to the extent the Interim DIP Order provides that any such encumbrance ranks in priority to or *pari passu* with the liens granted in favour of the DIP Lenders pursuant to the Interim DIP Order.
- 6.14 Based on the foregoing, the Proposed Information Officer believes that the Court's recognition of the Interim DIP Order and granting the DIP Lender's Charge is reasonable and appropriate in the circumstances.

## **7.0 ADDITIONAL ORDERS FOR WHICH RECOGNITION IS BEING SOUGHT**

- 7.1 In addition to the Interim DIP Order, the Foreign Representative is seeking recognition of several of the other First Day Orders, each of which are customary in Chapter 11 proceedings.
- 7.2 The Proposed Information Officer, together with its legal counsel, have reviewed the terms of each of the First Day Orders that the Foreign Representative is seeking recognition of, and supports the recognition of such First Day Orders by this Court.
- 7.3 Each of the orders for which recognition is being sought in the Recognition Proceedings is defined and further described in the Martin Affidavit and copies are attached as Exhibits thereto.

## **8.0 COURT ORDERED CHARGES SOUGHT IN THE SUPPLEMENTAL ORDER**

- 8.1 In addition to the DIP Lender's Charge discussed above, pursuant to the proposed Supplemental Order, the Debtors are also seeking to establish the Administration Charge.
- 8.2 The priorities of the Administration Charge and the DIP Lender's Charge, as among them, is proposed to be as follows:
- (a) First – Administration Charge (to the maximum amount of C\$500,000); and
  - (b) Second – DIP Lender's Charge.

### Administration Charge

- 8.3 The proposed Supplemental Order provides for an administration charge on the Canadian Collateral in the maximum amount of C\$500,000 (the “**Administration Charge**”), securing the professional



fees of Debtors' Canadian counsel, the Information Officer and legal counsel to the Information Officer.

- 8.4 The Administration Charge is a customary protection provided to professionals assisting with insolvency proceedings. The Proposed Information Officer has reviewed the quantum of the proposed Administration Charge in this case and believes it is reasonable and appropriate in the circumstances having considered the complexity of the Recognition Proceedings, the work that has been completed to date, the engagement terms and anticipated work levels of the Proposed Information Officer, the Proposed Information Officer's counsel, and the Debtors' Canadian counsel, and the size of court-ordered administration charges approved in comparable insolvency proceedings.

## **9.0 PROPOSED INITIAL ACTIVITIES OF THE INFORMATION OFFICER**

- 9.1 The Supplemental Order proposes that following its appointment, the initial activities of the Information Officer will include:

- (a) establishing a website at <https://www.alvarezandmarsal.com/nevadacopper/> to make available copies of the Orders granted in the Recognition Proceedings, as well as other relevant motion materials, reports and information;
- (b) responding to creditor inquiries regarding the Restructuring Proceedings;
- (c) providing such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;

- (d) providing the Court with periodic reports on the status of the Chapter 11 Cases and the Debtors' Part IV proceedings, which reports may include information relating to the property and the business of the Debtors or such other matters as may be relevant to these proceedings; and
- (e) engaging with Cassels in respect of the exercise of its powers and the performance of its obligations.


## **10.0 RECOMMENDATIONS**

10.1 The Proposed Information Officer has reviewed the terms of the proposed Initial Recognition Order and the Supplemental Order, and believe that the relief sought by the Foreign Representative, as set out in the form of orders submitted to the Court for approval, are fair and reasonable in the circumstances, having regard to the current status of the Debtors. The Proposed Information Officer believes that the terms of the Supplemental Order relating to its role as information officer are fair and reasonable, and consistent with the terms of appointments of information officers in other recognition proceedings under the CCAA.

10.2 Based on the foregoing, the Proposed Information Officer respectfully recommends that this Court grant the relief requested by the Foreign Representative in the Initial Recognition Order and the Supplemental Order.

All of which is respectfully submitted to the Court this \_\_\_\_20<sup>th</sup>\_\_ day of June, 2024.

**ALVAREZ & MARSAL CANADA INC.,  
Proposed Information Officer of the Debtors  
and not in its personal or corporate capacity**

Per:   
Alan J. Hutchens  
Senior Vice-President

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

AND IN THE MATTER OF NEVADA COPPER, INC., NEVADA COPPER CORP., 0607792 B.C. LTD., LION IRON  
CORP., NC FARMS LLC AND NC DITCH COMPANY LLC

APPLICATION OF NEVADA COPPER, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Court File No. CV-24-00722252-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**REPORT OF THE PROPOSED INFORMATION  
OFFICER**

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Lawyers for the Proposed Information Officer

## **Appendix “B”**

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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: 24-50566-hlb  
 Chapter 11

Jointly Administered with:  
 Case No. 24-50567-hlb  
 Case No. 24-50568-hlb  
 Case No. 24-50569-hlb  
 Case No. 24-50570-hlb  
 Case No. 24-50571-hlb

Hearing Date: July 19, 2024  
 Hearing Time: 10:30 a.m.

**NOTICE OF FILING  
 OF SECOND REVISED PROPOSED BIDDING PROCEDURES ORDER**

PLEASE TAKE NOTICE that on June 10, 2024 (the “*Petition Date*”), the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) commenced the above-captioned chapter 11 cases (the “*Chapter 11 Cases*”) by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Nevada.

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

PLEASE TAKE FURTHER NOTICE that, on June 20, 2024, the Debtors filed the Debtors' Motion for Entry of an Order (I) (A) Approving the Auction and Bidding Procedures, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Certain Dates and Deadlines with Respect Thereto and an Auction, (D) Approving the Form and Manner of Notice Thereof, (E) Approving the Form APA, and (II) (A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (B) Authorizing the Assumption and Assignment of Assumed Contracts, (C) Authorizing the Sale of Assets and (III) Granting Related Relief [ECF No. 145] (the "**Bidding Procedures Motion**") with a proposed order attached thereto (the "**Initial Proposed Order**"). The Initial Proposed Order included proposed bidding procedures (the "**Bidding Procedures**") attached thereto as Exhibit A, a proposed form of sale notice (the "**Sale Notice**") attached thereto as Exhibit B, and a proposed form of assumption and assignment notice (the "**Assumption and Assignment Notice**") attached thereto as Exhibit C.

PLEASE TAKE FURTHER NOTICE that, on July 18, 2024, the Debtors filed (i) a revised proposed order granting relief on a final basis under the Bidding Procedures Motion attached thereto as Exhibit 1 (the "**First Revised Proposed Bidding Procedures Order**"), which includes revised proposed Bidding Procedures (the "**First Revised Proposed Bidding Procedures**") attached thereto as Exhibit A, a revised proposed Sale Notice (the "**First Revised Proposed Sale Notice**") attached thereto as Exhibit B, and a revised proposed Assumption and Assignment Notice (the "**First Revised Proposed Assumption and Assignment Notice**") attached thereto as Exhibit C; and (ii) a redline of the First Revised Proposed Bidding Procedures Order against the Initial Proposed Order, including the above-referenced exhibits, attached thereto as Exhibit 2.

PLEASE TAKE FURTHER NOTICE that the Debtors hereby file (i) a revised proposed order granting relief on a final basis under the Bidding Procedures Motion attached hereto as Exhibit 1 (the "**Second Revised Proposed Bidding Procedures Order**"), which includes revised proposed Bidding Procedures (the "**Second Revised Proposed Bidding Procedures**") attached thereto as Exhibit A; (ii) a redline of the Second Revised Proposed Bidding Procedures Order against the First Revised Proposed Bidding Procedures Order, including the above-referenced

exhibits, attached hereto as **Exhibit 2**; and (iii) a redline of the Second Revised Proposed Bidding Procedures Order against the Initial Proposed Order, including the above-referenced exhibits, attached hereto as **Exhibit 3**.

PLEASE TAKE FURTHER NOTICE that a hearing to consider approval of the Revised Proposed Bidding Procedures Order is scheduled telephonically for **July 19, 2024, at 10:30 a.m. (prevailing Pacific Time)** (the “**Hearing**”), before the Honorable United States Bankruptcy Judge Hilary L. Barnes. Parties are permitted to appear by means of remote appearance via Zoom by dialing **(833) 435-1820** and entering Meeting ID **160 532 0260** and entering access code **643758#**. If you intend to participate at the Hearing, please check the Court’s website prior to the Hearing for any updated instructions relating to the court participation number and access code. You may view the Court’s calendar at <https://www.nvb.uscourts.gov/calendars/court-calendars/>. Select the hearing judge and the appropriate calendar date to view the hearing judge’s dial-in number and meeting access code.

PLEASE TAKE FURTHER NOTICE that anyone may obtain copies of the Bidding Procedures Motion, Second Revised Proposed Bidding Procedures Order, Second Revised Proposed Bidding Procedures, First Revised Proposed Sale Notice, First Revised Proposed Assumption and Assignment Notice, and any other document filed with the Court in these Chapter 11 Cases by: (i) accessing the website maintained by Epiq, Inc., the Debtors’ notice, balloting, and claims agent, at <https://dm.epiq11.com/NevadaCopper>; (ii) contacting Epiq directly at: [NevadaCopperInfo@epiqglobal.com](mailto:NevadaCopperInfo@epiqglobal.com); or on their Telephone Hotline: toll free for U.S. parties at (877) 635-8338 or for non-U.S. parties at +1 (971) 306-8096; or (iii) accessing the Case Management/Electronic Case Filing System on the Court’s website at <http://www.nvb.uscourts.gov> through an account obtained from the PACER service center at 1 (800) 676-6856 or <http://pacer.psc.uscourts.gov>. Additionally, paper copies of all pleadings filed in the Chapter 11 Cases are available during posted hours at the Court Clerk’s office located at the United States Bankruptcy Court for the District of Nevada, 300 Booth Street, Fifth Floor, Reno, Nevada 89509.



Dated: July 19, 2024

Respectfully submitted,

/s/ Ryan J. Works

**McDONALD CARANO LLP**

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*Proposed Counsel to the Debtors and Debtors  
in Possession*

**EXHIBIT 1**

**Revised Proposed Bidding Procedures Order**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: 24-50566-hlb  
Chapter 11

Jointly Administered with:  
Case No. 24-50567-hlb  
Case No. 24-50568-hlb  
Case No. 24-50569-hlb  
Case No. 24-50570-hlb  
Case No. 24-50571-hlb

Hearing Date:  
Hearing Time:

**ORDER (I) APPROVING AUCTION AND BIDDING, NOTICING, AND ASSUMPTION  
AND ASSIGNMENT PROCEDURES; (II) SCHEDULING CERTAIN DATES AND  
DEADLINES WITH RESPECT THERETO; (III) APPROVING FORM NOTICE TO BE  
PROVIDED TO INTERESTED PARTIES; AND (IV) GRANTING RELATED RELIEF**

Upon the Debtors' Motion for Entry of an Order (I) (A) Approving the Auction and Bidding Procedures; (B) Approving Stalking Horse Bid Protections; (C) Scheduling Certain Dates and Deadlines with Respect Thereto and an Auction; (D) Approving the Form and Manner of Notice Thereof; (E) Approving the Form APA; and (II) (A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases; (B) Authorizing the Assumption and Assignment of Assumed Contracts; (C) Authorizing the Sale of Assets; and (III) Granting Related Relief (the "**Motion**")<sup>2</sup> of the Debtors for entry of an order (this "**Order**"), (i) approving the proposed marketing, auction, and bidding procedures attached hereto as **Exhibit A** (the "**Bidding**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 **Procedures**”) by which the Debtors will solicit and select the highest or otherwise best offer(s) for  
2 the sale or sales (collectively, the “**Sale**,” and each such sale transaction, a “**Sale Transaction**”) of  
3 all, substantially all, or any portion of the Debtors’ assets (the “**Assets**”); (ii) establishing certain  
4 dates and deadlines related thereto and scheduling an auction or auctions, if any, for the Sale (the  
5 “**Auction**”); (iii) approving the manner of notice of the Auction and sale hearing (the “**Sale**  
6 **Hearing**”) as may be necessary; (iv) approving procedures for the assumption and assignment of  
7 certain Executory Contracts and Unexpired Leases (each as defined in the Bidding Procedures) in  
8 connection with the Sale Transaction, if any; (v) approving the break-up fee and expense  
9 reimbursements relating to potential stalking horse bidders if the Debtors determine to enter into  
10 such an arrangement with a bidder for the Assets (the “**Stalking Horse Bid Protections**”); and  
11 (vi) granting related relief; all as more fully set forth in the Motion; and upon the Sale Declaration,  
12 First Day Declaration, and *Supplemental Declaration of Zul Jamal in Support of Debtors’ Bidding*  
13 *Procedures Motion* [ECF No. 369]; and it appearing that this Court has jurisdiction over this matter  
14 pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to  
15 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a final order consistent with Article III of  
16 the United States Constitution; and venue being proper before the Court pursuant to 28 U.S.C.  
17 §§ 1408 and 1409; and, under the circumstances, proper and adequate notice of the Motion and  
18 the hearing thereon having been given; and it appearing that no other or further notice is necessary;  
19 and this Court having reviewed the Motion and having heard the statements in support of the relief  
20 requested therein at a hearing before this Court; and it appearing that the legal and factual bases  
21 set forth in the Motion establish just cause for the relief granted herein; and this Court having  
22 determined that the relief sought in the Motion is in the best interests of the Debtors, their estates,  
23 their creditors and other parties in interest; and after due deliberation and sufficient cause appearing  
24 therefor;

25 **IT IS HEREBY FOUND AND DETERMINED THAT:**

26 1. Jurisdiction and Venue. Consideration of the Motion and the relief requested  
27 therein is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court  
28

1 pursuant to 28 U.S.C. §§ 1408 and 1409. The Court has jurisdiction to consider the Motion and  
2 the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334.

3 2. Statutory and Legal Predicates. The statutory and legal predicates for the relief  
4 requested in the Motion are sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code,  
5 Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and Local Rules 3017 and 6004.

6 3. Bidding Procedures. The Debtors have articulated good and sufficient business  
7 reasons for the Court to approve the Bidding Procedures. The Bidding Procedures are fair,  
8 reasonable, and appropriate. The Bidding Procedures are reasonably designed to promote a  
9 competitive and robust bidding process to generate the greatest level of interest in the Debtors'  
10 business resulting in the highest or otherwise best offer. The Bidding Procedures comply with the  
11 requirements of Local Rule 6004.

12 4. Sale Notice. The Sale Notice attached hereto as **Exhibit B** and the procedures with  
13 respect to such Sale Notice contain the type of information required under Bankruptcy Rule 2002  
14 and Local Rule 6004 and comply in all respects with applicable provisions of the Bankruptcy  
15 Code, the Bankruptcy Rules, and the Local Rules.

16 5. Assumption and Assignment Procedures. The Debtors have articulated good and  
17 sufficient business reasons for the Court to approve the Assumption and Assignment Procedures.  
18 The Assumption and Assignment Procedures, including the Assumption and Assignment Notice  
19 attached hereto as **Exhibit C**, are fair, reasonable, and appropriate. The Assumption and  
20 Assignment Procedures provide an adequate opportunity for all Counterparties to raise any  
21 objections to the proposed assumption and assignment or to the proposed Cure Amounts. The  
22 Assumption and Assignment Procedures comply with the provisions of section 365 of the  
23 Bankruptcy Code and Bankruptcy Rule 6006.

24 6. Notice. All other notices to be provided pursuant to the procedures set forth in the  
25 Motion are good and sufficient notice to all parties in interest of all matters pertinent hereto. No  
26 further notice is required.

1           7.     Relief is Warranted. The legal and factual bases set forth in the Motion establish  
2 just and sufficient cause to grant the relief requested therein.

3           8.     Other Findings. The findings and conclusions set forth herein constitute the Court's  
4 findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this  
5 proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of  
6 fact constitute conclusions of law, they are adopted as such. To the extent any of the following  
7 conclusions of law constitute findings of fact, they are adopted as such.

8 **NOW, AND THEREFORE, IT IS HEREBY ORDERED THAT:**

9           9.     The Motion is GRANTED as set forth herein.

10 **I.     The Bidding Procedures**

11           10.    The Bidding Procedures, substantially in the form attached to this Order as  
12 Exhibit A, are approved and incorporated into this Order by reference, as though fully set forth  
13 herein. Accordingly, the failure to recite or reference any particular provision of the Bidding  
14 Procedures shall not diminish the effectiveness of such provision, it being the intent of the Court  
15 that the Bidding Procedures be authorized and approved in their entirety. The Debtors are  
16 authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

17           11.    Any deposit (including any Good Faith Deposit) provided by a Qualified Bidder  
18 shall be held in escrow by the Debtors or their agent on terms acceptable to the Debtors (in  
19 consultation with the Consultation Parties), and shall not become property of the Debtors'  
20 bankruptcy estates unless and until released from escrow to the Debtors pursuant to the terms of  
21 the applicable escrow agreement, the Bidding Procedures, or order of this Court after notice and a  
22 hearing, as applicable.

23 **II.    Important Dates and Deadlines**

24           12.    Sale Hearing. The Sale Hearing will commence on **Wednesday, September 25,**  
25 **2024, at 10:00 a.m.** (prevailing Pacific Time). Subject to the terms of the Bidding Procedures,  
26 the Debtors may, in their reasonable business judgment, in consultation with the Consultation  
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Parties and with the consent of the Successful Bidder(s), adjourn or reschedule any Sale Hearing, with notice to the Sale Notice Parties.

13. Sale Objection Deadline. Any objections to the Sale (a “*Sale Objection*”) by a Sale Notice Party must be made by **Friday, September 19, 2024, at 12:00 p.m.** (prevailing Pacific Time) (the “*Sale Objection Deadline*”).<sup>3</sup> The Sale Objection Deadline may be extended by the Debtors with the consent of the Court.

14. Competitive Bidding. The following dates and deadlines regarding competitive bidding are hereby established, in each case subject to extension in accordance with the Bidding Procedures:

- i. Bid Deadline: **Friday, September 6, 2024, at 12:00 p.m.** (prevailing Pacific Time), the deadline by which all Qualified Bids must be actually received in writing by the Bid Notice Parties (the “*Bid Deadline*”); and
- ii. Auction: **Tuesday, September 10, 2024, at 12:00 p.m. (prevailing Eastern Time)**, is the date and time the Auction, if one is needed, will be held at the New York offices of Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, or at such other time and location (including via remote video) as designated by the Debtors, in consultation with the Consultation Parties and providing notice to the Sale Notice Parties, and subject to the terms of the Bidding Procedures.

15. Stalking Horse Bidders and Bid Protections. The Debtors, upon entry of this Order, shall be authorized, but are not obligated or directed, in an exercise of their reasonable business judgment, (i) in consultation with the Consultation Parties and (ii) with the consent of the DIP Lenders, to select one or more Stalking Horse Bidders with respect to some or all of the Debtors’ Assets by no later than **August 17, 2024, at 5:00 p.m., prevailing Pacific Time**, enter into a Stalking Horse Agreement that would provide such Stalking Horse Bidders with Stalking Horse Bid Protections; *provided, however*, that if a DIP Lender, or any affiliate of a DIP Lender, has expressly indicated to the Debtors that it is considering submitting, or has actually submitted, a

<sup>3</sup> In the event that the Debtors, in consultation with the Consultation Parties, reasonably determine in their business judgment to pursue a Sale Transaction pursuant to a chapter 11 plan, a separate deadline to object to such Sale Transaction shall be set by further order of this Court.

1 Bid for any Assets, it shall not have consent rights with respect to the selection of a Stalking Horse  
2 Bidder, if any, or any protections to be afforded to such Stalking Horse Bidder.

3 16. In the event that the Debtors enter into a Stalking Horse Agreement with one or  
4 more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice and  
5 proposed form of order with the Court (the “*Stalking Horse Notice*”) and serve the Stalking Horse  
6 Notice on the Stalking Horse Bidder and the Office of the United States Trustee for Region 17.  
7 The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse Bidder (and if the  
8 Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder’s parent company  
9 or sponsor); (ii) set forth the amount of the Stalking Horse Bid and what portion (if any) is cash;  
10 (iii) state whether the Stalking Horse Bidder has any connection to the Debtors other than those  
11 that arise from the Stalking Horse Bid; (iv) specify any proposed Bid Protections (including the  
12 amount and calculation thereof); (v) specify the Assets included in the Stalking Horse Bid;  
13 (vi) attach the Stalking Horse Agreement, including all exhibits, schedules and attachments  
14 thereto; and (vii) set forth the deadline to object to the Stalking Horse Bidder designation and any  
15 Bid Protections. If there are no objections to the Stalking Horse Notice within five business days  
16 of filing with the Court, (the “*Notice Period*”), the Debtors may submit a revised proposed form  
17 of order to the Court that incorporates any comments received during the Notice Period that  
18 authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse  
19 Agreement, which may be entered by the Court without the need for further hearing. If a party  
20 timely files an objection to the Stalking Horse Notice in accordance with the Bidding Procedures,  
21 the Court shall hold a hearing after the expiration of the Notice Period and as soon thereafter as  
22 the Court is available. Upon entry of the order that authorizes the Debtors to designate a Stalking  
23 Horse Bidder and to enter into a Stalking Horse Agreement, as applicable, the Debtors are  
24 authorized, but not directed, to incur and pay the Stalking Horse Bid Protections to each Stalking  
25 Horse Bidder as set forth in the Stalking Horse Agreement, in an aggregate amount not to exceed  
26 three percent of the proposed Purchase Price.



1           17. Except as otherwise set forth in the Bidding Procedures, no person or entity, other  
2 than a Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fees,  
3 “topping,” termination, or other similar fee or payment, and by submitting a bid, such person or  
4 entity is deemed to have waived their right to request or to file with this Court any request for  
5 expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section  
6 503(b) or otherwise.

7 **III. Sale Notice Procedures**

8           18. The Sale Notice procedures, substantially in the form set forth in the Sale Notice  
9 attached to this Order as **Exhibit B**, are approved. The Debtors are authorized to implement the  
10 Sale Notice procedures as set forth in the Bidding Procedures Motion, the Bidding Procedures,  
11 and the Sale Notice.

12 **IV. Assumption and Assignment Procedures**

13           19. The (i) Assumption and Assignment Procedures, as set forth in the Bidding  
14 Procedures, and (ii) the Assumption and Assignment Notice in the form attached to this Order as  
15 **Exhibit C**, are approved.

16           20. The Assumption and Assignment Procedures shall govern the assumption or  
17 assumption and assignment of all of the Debtors’ Executory Contracts and Unexpired Leases to  
18 be assumed or assumed and assigned in connection with the Sale, subject to the payment of any  
19 amounts necessary to cure any defaults arising under any such Executory Contract or Unexpired  
20 Lease.

21           21. Cigna Health and Life Insurance Company (“**Cigna**”) and the Debtors are parties  
22 to three Agreements (collectively, the “**Cigna Contracts**”) that facilitate the Debtors’ self-insured  
23 employee healthcare benefits plan. Notwithstanding anything in this Order to the contrary, unless  
24 Cigna and the Debtors agree otherwise, the Debtors shall, not later than 12:00 noon (prevailing  
25 Pacific Time) on the date that is two business days prior to any Sale Hearing, provide to Cigna,  
26 through its counsel, written notice of the Debtors’ irrevocable (subject to closing of the applicable  
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1 Sale Transaction(s)) decision as to whether or not they propose to assume and assign any or all of  
2 the Cigna Contracts to the Successful Bidder as part of the proposed Sale Transaction(s).

3 **V. Related Relief**

4 22. The Debtors shall file the a form of asset purchase agreement on the docket of these  
5 Chapter 11 Cases by no later than July 25, 2024.

6 23. The Debtors are authorized to make non-substantive changes to the Bidding  
7 Procedures, the Assumption and Assignment Procedures, the Assumption and Assignment Notice,  
8 the Sale Notice, and any related documents without further order of the Court, including, without  
9 limitation, changes to correct typographical and grammatical errors.

10 24. All persons and entities (whether or not selected as a Qualified Bidder) that submit  
11 a bid for any of the Debtors' Assets during the Sale Process, including at any Auctions, shall be  
12 deemed to have knowingly and voluntarily: (i) submitted to the exclusive jurisdiction of this Court  
13 with respect to all matters related to the terms and conditions of the transfer of Assets, the Auctions  
14 (if any), and any Sale Transaction; (ii) consented to the entry of a final order by the Court in  
15 connection with the Motion or this Order (including any disputes relating to the Bidding  
16 Procedures, the Debtors' conduct in evaluating bids and conducting any Auction(s), the Sale  
17 Process, and/or any Sale Transactions) to the extent that it is later determined that the Court, absent  
18 consent of the parties, cannot enter final orders or judgments in connection herewith consistent  
19 with Article III of the United States Constitution; and (iii) waived any right to jury trial in  
20 connection with any disputes relating to any of the foregoing matters.

21 25. To the extent the Debtors are seeking to sell any assets in which other persons or  
22 entities have an interest or assume and assign any Executory Contracts with counterparties, such  
23 persons, entities, and counterparties' rights to object to such sale or such assumption and  
24 assignment are reserved until the applicable deadline set forth in the Bidding Procedures.

25 26. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d),  
26 7062, or 9014, or any applicable provisions of the Bankruptcy Rules or the Local Rules or  
27 otherwise stating the contrary, the terms and conditions of this Order shall be immediately effective  
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1 and enforceable upon its entry, and any applicable stay of the effectiveness and enforceability of  
2 this Order is hereby waived.

3 27. Prior to mailing and publishing the Sale Notice and the Assumption and  
4 Assignment Notice, as applicable, the Debtors may fill in any missing dates and other information,  
5 conform the provisions thereof to the provisions of this Order, and make such other non-material  
6 changes as the Debtors deem necessary or appropriate.

7 28. To the extent the provisions of this Order are inconsistent with the provisions of  
8 any exhibits referenced herein or with the Motion, the provisions of this Order shall control.

9 29. The Debtors are authorized to take all actions reasonably necessary or appropriate  
10 to effectuate the relief granted in this Order.

11 30. The Court shall retain exclusive jurisdiction with respect to all matters arising from  
12 or related to the implementation, interpretation, or enforcement of this Order.

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14 **IT IS SO ORDERED**  
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**L.R. 9021 CERTIFICATION**

In accordance with L.R. 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

- ☐ The court has waived the requirement of approval under L.R. 9021(b)(1).  
☐ No party appeared at the hearing or filed an objection to the motion.  
☐ I have delivered a copy of this proposed order to all counsel who appeared at the

hearing, and each has approved or disapproved the order, or failed to respond, as indicated below.

Approve

Disapprove

US Trustee

☐ I certify that this is a case under chapter 7 or 13, that I have served a copy of this order with the motion pursuant to L.R. 9014(g), and that no party has objected to the form or content of the order.

###

Prepared and submitted by:

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599 Lexington Avenue  
New York, New York 10022

*Proposed Counsel to the Debtors and  
Debtors in Possession*

APPROVED/DISAPPROVED

**EXHIBIT A**

**Bidding Procedures**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: 24-50566-hlb  
Chapter 11

Jointly Administered with:  
Case No. 24-50567-hlb  
Case No. 24-50568-hlb  
Case No. 24-50569-hlb  
Case No. 24-50570-hlb  
Case No. 24-50571-hlb

**BIDDING PROCEDURES**

On June 10, 2024, Nevada Copper, Inc., and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

On [ ], 2024, the United States Bankruptcy Court for the District of Nevada (the “**Court**”) entered an order (ECF No. [ ]) (the “**Bidding Procedures Order**”).<sup>2</sup> In the Bidding Procedures Order, the Court approved the following procedures (the “**Bidding Procedures**”) setting forth the process by which the Debtors are authorized to solicit bids for and conduct auction(s) (each, an “**Auction**”) for sale(s) or disposition(s) of all or substantially all of the Debtors’ Assets (as defined herein) or any portion thereof, either as a going concern or as a liquidation (collectively, the “**Sale**,” and each such sale transaction, a “**Sale Transaction**”). On [July ], 2024, the Debtors filed a proposed form of asset purchase agreement (the “**Form APA**”) on the docket of the Chapter 11 Cases.

**Copies of the Bidding Procedures Motion, Bidding Procedures Order, Bidding Procedures, the Form APA, and any other documents filed in the Debtors’ chapter 11 cases are available upon request, by calling the Debtors’ claims and noticing agent, Epiq Corporate Restructuring, LLC (i) for U.S. parties, toll-free at (877) 635-8338, or (ii) for non-U.S. parties, at +1 (971) 306-8096, or by visiting the Debtors’ restructuring website at <https://dm.epiq11.com/case/nevadacopper>.**

**Description of the Assets to Be Auctioned**

The Debtors are seeking to sell all of their assets as a going concern (or as a liquidation) pursuant to the terms of the Form APA. These assets include, but are not limited to, the Debtors’ going-concern business, real property, unexpired leases, executory contracts, equipment, inventory, supplies, intellectual property, insurance proceeds, prepaid expenses and deposits,

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not otherwise defined shall have the respective meanings ascribed to such terms in the Bidding Procedures Order or the motion requesting the relief granted therein, as applicable.

ownership interests, and books and records (collectively, the “*Assets*”), in each case, free and clear of all liens, claims, interests, or other encumbrances, other than expressly assumed liabilities and obligations, to the fullest extent permitted by the Bankruptcy Code.

The ability to undertake and consummate any sale of the Assets shall be subject to competitive bidding as set forth herein and approval by the Court. The Debtors will consider bids that are made for all or substantially all of the Assets. In addition, the Debtors will consider bids for less than substantially all of the Assets, however, the value of such bids will be evaluated against the Debtors intention to sell all of their Assets, and the value and complexity of the sale of any Assets not included in a bid. The Debtors will also consider bids that take the form of a sale of stock of one or more subsidiaries.

Any party interested in submitting a bid for any of the Debtors’ Assets should contact the Debtors’ investment banker, Moelis & Company LLC (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com)).

### **Important Dates and Deadlines**

<b>Date</b>	<b>Deadline</b>
<b>Monday, July 29, 2024, or as soon as reasonably practicable after entry of the Bidding Procedures Order</b>	Service of Sale Notice; Publication of Sale Notice
<b>Tuesday, July 30, 2024, or as soon as reasonably practicable thereafter</b>	Serve notice of potential assumption and assignment (the “ <i>Assumption and Assignment Notice</i> ”) to contract counterparties
<b>Tuesday, August 20, 2024 (or 21 days after service of an applicable notice of assumption and assignment)</b>	Deadline to object to proposed cure amounts and assumption and assignment (the “ <i>Assumption and Cure Objection Deadline</i> ”)
<b>Friday, September 6, 2024, at 5:00 p.m. (prevailing Pacific Time)</b>	Bid Deadline
<b>Monday, September 9, 2024, at 9:00 a.m. (prevailing Pacific Time)</b>	Qualified Bid Designation Date
<b>Tuesday, September 10, 2024, at 12:00 p.m. (prevailing Eastern Time)</b>	Auction (if necessary) to be held at the New York offices of A&O Shearman, or such other location announced to the bidders and Consultation Parties
<b>Thursday September 12, 2024</b>	Serve Notice of Successful Bidder on Counterparties
<b>Friday, September 19, 2024, at 12:00 p.m. (prevailing Pacific Time)</b>	Deadline to object to the proposed Sale (“ <i>Sale Objection Deadline</i> ”); deadline to object to adequate assurance (“ <i>Adequate Assurance Objection Deadline</i> ”).

<b>Tuesday, September 24, 2024, at 12:00 p.m. (prevailing Pacific Time)</b>	Deadline for responses to objections.
<b>Wednesday, September 25, 2024, at 10:00 a.m. (prevailing Pacific Time)<sup>3</sup></b>	Sale Hearing
<b>Thursday, September 26, 2024</b>	Entry of Sale Order
<b>On or before Monday, October 8, 2024</b>	Closing

### **Noticing**

#### **Consultation Parties**

Subject to the terms of these Bidding Procedures, the Debtors shall consult in good faith with counsel to (each of the following parties, to the extent applicable, including such party's advisors, a "***Consultation Party***"):

- i. the Official Committee of Unsecured Creditors (the "***Creditors' Committee***"), c/o Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020, Attn: Eric S. Chafetz and Jeffrey L. Cohen;
- ii. the DIP Lenders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; and 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley;
- iii. KfW IPEX-Bank GmbH, c/o Milbank LLP, 55 Hudson Yards, New York, NY 10001, Attn: Tyson Lomazow and Abigail Debold;
- iv. Pala Investments Limited, c/o Cleary Gottlieb Steen & Hamilton LLP, Attn: Solomon J. Noh (sjnoh@cgsh.com); One Liberty Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer;
- v. Triple Flag Mining Finance Bermuda Ltd., c/o Davis, Graham & Stubbs LLP, 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; and
- vi. only to the extent that any Assets situated in Canada are proposed to be sold, the information officer ("***Information Officer***") appointed in the recognition proceedings in respect of the Debtors under the *Companies' Creditors Arrangement Act*.

If any of the foregoing entities (including an individual member of the Creditors' Committee), or an affiliate of such an entity, indicates to the Debtor that it is considering submitting, or actually submits, a Bid in respect of all or a portion of the Assets, such entity shall cease being a Consultation Party (an "***Identified Party***"); *provided, however*, that (a) in the case

<sup>3</sup> Subject to the availability and convenience of the Court.



of an Identified Party other than the Creditors' Committee and the members thereof, such Identified Party shall have the rights afforded to a Consultation Party hereunder only to the extent that such consultation reasonably can be performed without providing such Identified Party any additional confidential information not previously provided to such Identified Party in respect of Assets for which it is considering submitting or actually submits a Bid; and (b) in the case of a member of the Creditors' Committee that is an Identified Party, the other members of the Creditors' Committee shall continue to be Consultation Parties; *provided, further*, that the Identified Party shall be excluded from any discussions or deliberations regarding the sale of such Assets and shall not receive any confidential information regarding the sale of such Assets. In the event that an Identified Party (or, if applicable, the affiliate of an Identified Party) indicates that it is no longer interested in submitting a Bid or, if applicable, continuing to submit Bids, it may elect by written notice to the Debtors to cease being an Identified Party and return to being a Consultation Party; *provided*, that, notwithstanding anything to the contrary herein, such party shall no longer be able to submit further Bids; *provided, further*, that, if any DIP Lender were to become an Identified Party and such DIP Lender later were to elect to return to being a Consultation Party, then, only if the aggregate Bids are insufficient to repay the obligations under the DIP Facility in full in cash, such DIP Lender shall be permitted to submit Bids (to the extent that other Bids, in the aggregate, would not allow the obligations under the DIP Facility to be repaid in full in cash), with respect to the Assets on which, in its capacity as a Consultation Party, it had not actually received information or participated in discussions. Nothing in these Bidding Procedures shall affect any rights or obligations under the DIP Facility.

#### Bid Notice Parties

All Bids must be submitted in writing to the following parties (collectively, the "***Bid Notice Parties***"):

- i. the Debtors, c/o Nevada Copper, Inc., 61 E. Pursel Lane, P.O. Box 1640, Yerington, NV 89447 (Attn: Gregory J. Martin (gjmartin@nevadacopper.com));
- ii. the Debtors' counsel, (a) Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick (fsosnick@aoshearman.com), Sara Coelho (sara.coelho@aoshearman.com), and Cody Wright (cody.wright@aoshearman.com); and (b) Torys LLP, 79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada (Attn: Tony DeMarinis (tdemarinis@torys.com) and Michael Amm (mamm@torys.com)); and
- iii. the Debtors' investment banker, Moelis & Company, 399 Park Ave 4th Floor, New York, NY 10022 (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com)).

The Debtors shall promptly provide to the Consultation Parties copies of all Bids received by the Debtors, but in no event later than the next business day following receipt.

#### Sale Notice Parties

Information that must be provided to the "***Sale Notice Parties***" under these Bidding Procedures must be provided to the following parties:

- i. the Consultation Parties (as applicable);

- ii. all persons and entities, known by the Debtors and their advisors to have expressed an interest in a transaction with respect to any of the Debtors' Assets during the past 12 months (for whom identifying information and addresses are available to the Debtors);
- iii. all persons and entities known by the Debtors to have asserted any lien, claim, encumbrance, or other interest in any Asset (for whom identifying information and addresses are available to the Debtors), including all known holders of claims and all creditors prior to the date of entry of the Bidding Procedures Order;
- iv. all parties to litigation with the Debtors that are known as of the date of entry of the Bidding Procedures Order, or their counsel of record;
- v. all Counterparties to Assigned Contracts and Leases under the proposed Sale;
- vi. any Governmental Authority known to have a claim in these Chapter 11 Cases;
- vii. the United States Attorney for the District of Nevada;
- viii. the Office of the Attorney General (or equivalent) in each state or province in which the Debtors operate;
- ix. the Office of the Secretary of State (or equivalent) in each state or province in which the Debtors operate or are organized;
- x. the Federal Trade Commission;
- xi. the United States Attorney General/Antitrust Division of Department of Justice;
- xii. the Information Officer c/o Alvarez & Marsal Canada Inc., Royal Bank Plaza, South Tower 200 Bay Street, Suite 3501 Toronto ON M5J 2J1 Canada, (Attn: Al Hutchens (ahutchens@alvarezandmarsal.com));
- xiii. Counsel to the Information Officer, Cassels Brock & Blackwell LLP, Suite 3200, Bay Adelaide Centre – North Tower, 40 Temperance Street, Toronto, Ontario M5H 0B4 (Attn: Natalie E. Levine (nlevine@cassels.com));
- xiv. all of the Debtors' known creditors (for whom identifying information and addresses are available to the Debtors);
- xv. the Master Service List maintained by the Debtors' Notice and Claims Agent; and
- xvi. all other Persons directed by the Court (for whom identifying information and addresses are available to the Debtors).

#### Public Announcement of Sale and Auction

By July 29, 2024, or as soon as reasonably practicable after entry of the Bidding Procedures Order, the Debtors shall publish the Sale Notice, with any modifications necessary for ease of publication, on one occasion in *The Wall Street Journal (National Edition)*, to provide notice to any other potential interested parties, and post the Sale Notice on their case website, <https://dm.epiq11.com/case/nevadacopper>.

#### Potential Bidder Requirements

To participate in the bidding process or otherwise be considered for any purpose hereunder, including to receive access to due diligence materials, a person or entity interested in purchasing the Assets or part of the Assets (a “**Potential Bidder**”) must deliver or have previously delivered to the Debtors the following preliminary documentation (collectively, the “**Preliminary Bid Documents**”):

- i. an executed confidentiality agreement (a “**Confidentiality Agreement**”) in form and substance acceptable to the Debtors;
- ii. sufficient information that the Potential Bidder has or can reasonably obtain the financial capacity to close a purchase of any portion, all, or substantially all of the Debtors’ Assets, the adequacy of which must be acceptable to the Debtors, in consultation with the Consultation Parties;
- iii. a statement indicating whether the Potential Bidder is requesting consent from the Debtors to partner with or otherwise work with any other interested party in connection with the potential submission of a joint Bid, the identity and domicile of any such party or parties, and a concise description of the nature of such partnership or joint Bid to the extent reasonably practicable, which the Debtors may approve in their reasonable business judgment, in consultation with the Consultation Parties, on a case-by-case basis; and
- iv. any other information required (as determined by the Debtors in consultation with the Consultation Parties) to allow the Debtors, in consultation with the Consultation Parties, to determine that the Potential Bidder intends to receive due diligence information solely for purposes consistent with these Bidding Procedures.

The Debtors, in consultation with their advisors and the Consultation Parties, will determine and notify each Potential Bidder whether such Potential Bidder has submitted adequate documents so that such Potential Bidder may proceed to conduct due diligence and submit a bid (such Potential Bidder, an “**Acceptable Bidder**”). The Debtors shall promptly inform the Consultation Parties of any entity that becomes an Acceptable Bidder. **For the avoidance of doubt, no Potential Bidder will be permitted to conduct any due diligence without entry into a Confidentiality Agreement.**

Promptly following the entry of these Bidding Procedures, the Debtors shall provide copies of all materials (which may be anonymized or in summary form as the Debtors deem necessary to protect confidentiality and preserve the integrity of the Sale Process, but which shall include at a minimum an indication of whether a bidder is a strategic or financial bidder and such bidder’s country of domicile) delivered by any Potential Bidder prior to the entry of these Bidding Procedures to the Consultation Parties and their counsel.

### **Qualified Bid Requirements**

To participate in the Auction, an Acceptable Bidder (it being understood that the Stalking Horse Bidder, if any, may satisfy the items below via the Stalking Horse Bid) must deliver to the Debtors and their advisors an irrevocable offer for the purchase of some or all of the Assets (each, a “**Bid**”), and shall meet the following criteria, in each case, on or prior to the Bid Deadline (as defined below):

- i. **Purchased Assets and Assumed Liabilities:** Each Bid must clearly state the following: (a) the particular Assets, or the portion thereof identified with reasonable

specificity, to be purchased and (b) the liabilities and obligations to be assumed, including any debt and cure costs to be assumed;

- ii. **Good Faith Deposit:** Except with respect to any Credit Bid, the Bid must be accompanied by a cash deposit in the amount equal to 10% of the aggregate purchase price of the Bid to be held in an interest-bearing escrow account to be identified and established by the Debtors (the “**Good Faith Deposit**”) on terms acceptable to the Debtors in consultation with the Consultation Parties. To the extent that a Bid is modified at or prior to the Auction, the applicable Acceptable Bidder must adjust its Good Faith Deposit so that it equals 10% of the increased aggregate purchase price promptly and in no event later than one business day following the conclusion of the Auction;
- iii. **Purchase Price:** Each Bid must (a) clearly set forth the purchase price to be paid, assuming a purchase of the applicable Assets and any assumption of liabilities (the “**Purchase Price**”), (b) identify separately the cash and non-cash components of the Purchase Price, including a cash component sufficient to pay any Stalking Horse Bid Protections in full, in cash, at Closing, and (c) indicate the allocation of the Purchase Price among the applicable Assets; *provided* that, for the avoidance of doubt, such allocation shall not prejudice the rights of any party in interest to contest such allocation. The Purchase Price should be a single point value in U.S. Dollars for the applicable Assets on a cash-free, debt-free basis. Any Bid for substantially all of the Assets must also include a statement as to whether the Bid is conditioned on purchasing all Assets or whether the Qualified Bid should be viewed as a separate Bid for one or more sets of Assets. The Debtors will consider the value to the estate as a whole when evaluating bids for only certain of the Assets. The Debtors reserve the right, in consultation with the Consultation Parties, to ask any Acceptable Bidder to allocate the value ascribed to their Bid for any particular Asset and to inquire about any significant assumption on which such valuations are based;
- iv. **Same or Better Terms; Bid Documents:** Each Bid must include duly executed and non-contingent, where applicable, transaction documents necessary to effectuate the transactions contemplated in the Bid (the “**Bid Documents**”). The Bid Documents shall include: (a) the form of purchase agreement on which the Acceptable Bidder is prepared to transact, together with a redline of such agreement marked against the Form APA, (b) a schedule of contracts and leases to be assumed to the extent applicable to the Bid, (c) any other material documents integral to such Bid, and (d) a statement from the Acceptable Bidder that (1) it is prepared to enter into and consummate the transactions contemplated in the form purchase agreement, no later than ten days after the conclusion of the Auction, (or, if no Auction is held, the Bid Deadline (as defined below)), or if a later date is required, the reasons that such a later date is required; and (2) that the Bid will be irrevocable (whether or not such Qualified Bid is selected as the Successful Bid or next highest or otherwise best bid (the “**Back-Up Bid**”)) until the consummation of the Sale Transaction;
- v. **No Qualified Bidder Bid Protections:** Each Bid, other than a Bid that has been designated as a Stalking Horse Bid (as defined herein), must include a statement that the Bid does not entitle such bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment or reimbursement and a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to bidding for the applicable Assets;

- 1 vi. **Employee Obligations:** Each Bid must indicate whether the Acceptable Bidder  
2 intends to hire employees of the Debtor (or if applicable, employees that are  
3 primarily employed in connection with the applicable Assets included in such Bid).  
4 The employees must be explicitly identified in an accompanying Schedule;
- 5 vii. **Sources of Financing:** To the extent that the Bid is not accompanied by evidence  
6 of the Acceptable Bidder's capacity to consummate the Sale Transaction set forth  
7 in its Bid with cash on hand, the Bid must include committed financing,  
8 documented to the Debtors' satisfaction, in consultation with the Consultation  
9 Parties, that demonstrates that the Acceptable Bidder has received sufficient debt  
10 and equity funding commitments to satisfy the Acceptable Bidder's obligations  
11 under the proposed Sale Transaction and other obligations under its Bid, including  
12 providing adequate assurance of future performance under all Contracts proposed  
13 to be assumed by such Bid. Such funding commitments or other financing must be  
14 unconditional and must not be subject to any internal approvals, syndication  
15 requirements, diligence, or credit committee approvals, and shall have covenants  
16 and conditions acceptable to the Debtors;
- 17 viii. **Contingencies; No Financing or Diligence Outs:** The Bid must not contain any  
18 contingencies as to the validity, effectiveness, or binding nature of the Bid,  
19 including, without limitation, contingencies for due diligence and inspection or  
20 financing of any kind (including any conditions pertaining to financial  
21 performance, conditions, or prospects) and all diligence must be completed before  
22 the Bid Deadline.
- 23 ix. **Identity:** Each Bid must fully disclose the identity and domicile of each entity and  
24 each entity's shareholders, partners, investors, and ultimate controlling entities that  
25 will be bidding for or purchasing the applicable Assets or otherwise participating  
26 in connection with such Bid, and the complete terms of any such participation,  
27 along with sufficient evidence that the Acceptable Bidder is legally empowered to  
28 complete the transactions on the terms contemplated by the parties. Each Bid must  
also include contact information for the specific person(s) whom Moelis and A&O  
Shearman should contact regarding such Bid;
- x. **As-Is, Where-Is:** Each Bid must include a written acknowledgement and  
representation that the Acceptable Bidder: (a) has had an opportunity to conduct  
any and all due diligence prior to making its offer; (b) has relied solely upon its  
own independent review, investigation, and inspection of any documents and the  
assets in making its Bid; and (c) did not rely upon any written or oral statements,  
representations, promises, warranties, or guaranties whatsoever, whether express,  
implied, by operation of law, or otherwise, regarding the completeness of any  
information provided in connection therewith, except as expressly stated in the  
Acceptable Bidder's proposed purchase agreement;
- xi. **Authorization:** Each Bid must contain evidence that the Acceptable Bidder has  
obtained all necessary authorizations or approvals from its shareholders or its board  
of managers or directors, or any other internal and other approvals, as applicable,  
with respect to the submission of its Bid and the consummation of the transactions  
contemplated in such Bid;
- xii. **Joint Bids:** The Debtors will be authorized to approve joint Bids in their reasonable  
business judgment, in consultation with the Consultation Parties, on a case-by-case  
basis, provided that a joint bid meets the Qualified Bid Requirements and the  
applicable bidders otherwise comply with these Bidding Procedures;



- xiii. **Adequate Assurance of Future Performance:** Each Bid must (a) identify any executory contracts (the “*Executory Contracts*”) and any unexpired leases (the “*Unexpired Leases*”) to be assumed or assumed and assigned in connection with the proposed Sale Transaction, (b) provide for the payment of all cure amounts (the “*Cure Amounts*”) related to such Executory Contracts and Unexpired Leases by the Acceptable Bidder, (c) demonstrate, in the Debtors’ reasonable business judgment, in consultation with the Consultation Parties (as defined herein), that the Acceptable Bidder can provide adequate assurance of future performance under all such Executory Contracts and Unexpired Leases sufficient to satisfy the requirements of sections 365(b)(3) and 365(f)(2)(B) of the Bankruptcy Code, and (d) provide the following documentation: (1) the legal name of the proposed assignee of Unexpired Leases (the “*Proposed Assignee*”) and any guarantors, as applicable; and (2) financial statements for the calendar years ended 2022 and 2023 for the Proposed Assignee and any guarantors, as applicable, and other financial information about the Proposed Assignee to demonstrate its ability to provide adequate assurance of future performance;
- xiv. **Acknowledgement of Compliance with Bidding Procedures, Bidding Order, Bankruptcy Code, and Non-Bankruptcy Law;** Each Bid must acknowledge its compliance in all respects with these Bidding Procedures, the Bidding Procedures Order, Bankruptcy Code and any applicable non-bankruptcy law;
- xv. **No Collusion:** The Acceptable Bidder must acknowledge in writing (a) that it has not engaged in any collusion with respect to any Bids or the Sale Transaction, specifying that it did not agree with any Acceptable Bidders or Potential Bidders to control price; and (b) agree not to engage in any collusion with respect to any Bids, the Auction, or the Sale Transaction. For the avoidance of doubt, this requirement does not restrict Potential Bidder(s) from working with other Potential Bidder(s) with the Debtors’ prior written consent (email shall suffice) following the Debtors’ consultation with the Consultation Parties;
- xvi. **Good Faith Offer:** The Bid must constitute a good faith, *bona fide* offer to consummate the Sale Transaction;
- xvii. **Irrevocable:** Each Bid must state that in the event such Bid is chosen as the Back-Up Bid (as defined below), it shall remain irrevocable until the Debtors and the Successful Bidder consummate the applicable Sale Transaction;
- xviii. **Back-Up Bid:** Each Bid shall provide that the Acceptable Bidder will serve as a Back-Up Bidder (as defined below) if their Bid is the next highest or otherwise best bid;
- xix. **Regulatory Approvals and Covenants:** A Bid must set forth each regulatory and third-party approval required for the Acceptable Bidder to consummate the Sale Transaction, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval would not be expected in time to allow a the closing of the Sale Transaction to occur by October 8, 2024, those actions the Acceptable Bidder will take to ensure receipt of such approvals as promptly as possible);
- xx. **Time Frame for Closing:** A Bid by an Acceptable Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other

considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame for the Closing set forth above, or on such timeframe as may be acceptable to the Debtors, in consultation with the Consultation Parties; *provided*, that if the Acceptable Bidder expects to be unable to close on its Bid on or before October 7, 2024, its Bid should indicate the date on which it expects to be able to close;

xxi. **No Fees:** Each Acceptable Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction, and by submitting its Bid, the Acceptable Bidder is agreeing to disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or other similar form of compensation; and that, for the avoidance of doubt, each Acceptable Bidder by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code; *provided* that the Debtors are authorized in their reasonable business judgment, in consultation with the Consultation Parties, to provide the Stalking Horse Bid Protections (as defined below) to one or more stalking horse bidders (each, a “*Stalking Horse Bidder*”) in accordance with these Bidding Procedures;

xxii. **Adherence to Bidding Procedures:** By submitting its Bid, each Acceptable Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction;

xxiii. **Consent to Jurisdiction:** The Acceptable Bidder must submit to the jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the Debtors’ qualification of Bids, to the Auction, the Sale, the Sale Transaction and the construction and enforcement of these Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the Bids, the Bid Documents, and any and all other agreements entered into in connection with any proposed Sale Transaction, and the Closing, as applicable;

xxiv. **Conditions to Closing:** Each Bid must identify with particularity each and every condition to closing, including the Executory Contracts and Unexpired Leases for which assumption and assignment is required; and

xxv. **Minimum Bid Requirement:** If there is a Stalking Horse Bid, in order to be a Qualified Bid, each Bid other than the Stalking Horse Bid must set forth a Purchase Price with a value, as determined by the Debtors in their reasonable business judgment, that exceeds in aggregate the sum of (a) the Purchase Price of such Stalking Horse Bid, (ii) the amount of the applicable Stalking Horse Bid Protections, and (iii) \$1,000,000 (collectively, the “*Minimum Bid Requirements*”).

Only Bids fulfilling all of the preceding requirements contained herein may be deemed to be Qualified Bids; *provided*, that a Bid not otherwise satisfying all of the preceding requirements may be designated a Qualified Bid, in the Debtors’ reasonable business judgment, in consultation with the Consultation Parties. Only those parties submitting Qualified Bids may be deemed to be Qualified Bidders.

For the avoidance of doubt, the Stalking Horse Bidder, if any, shall be deemed to be a Qualified Bidder and the Stalking Horse Bid, if any, shall be considered a Qualified Bid, such that any Stalking Horse Bidder shall be entitled to participate in the Auction.

Neither the Debtors nor any of their advisors are making or have at any time made any warranties or representations of any kind or character, express or implied, with respect to the Assets, including, but not limited to, any warranties or representations as to operating history or projections, valuation, governmental approvals, the compliance of the Assets with governmental laws, the truth, accuracy, or completeness of any documents related to the Assets, or any other information provided by or on behalf of the Debtors to a bidder, or any other matter or thing regarding the Assets. All bidders must acknowledge and agree that upon closing the Debtors shall sell and transfer to the Successful Bidder and the Successful Bidder shall accept the applicable Assets, except to the extent expressly provided in the Bankruptcy Court's order approving the Sale Transaction. Neither the Debtors nor any of their advisors will be liable for or bound by any express or implied warranties, guaranties, statements, representations, or information pertaining to the Assets or relating thereto that the Debtors, any advisor, or agent representing or purporting to represent the Debtors to whomever might have made or furnished, directly or indirectly, orally or in writing, unless (with respect to the Debtors only) specifically set forth in the Bankruptcy Court's order approving the Sale Transaction.

Within one business day after the Bid Deadline (the "***Qualified Bid Designation Date***"), the Debtors, in consultation with the Consultation Parties, shall determine which Acceptable Bidders are Qualified Bidders and will notify the Acceptable Bidders whether Bids submitted constitute Qualified Bids, which will enable such Qualified Bidders to participate in the Auction. Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors; *provided* that if the Debtors receive a Bid prior to the Bid Deadline that does not satisfy the requirements of a Qualified Bid, the Debtors may provide the Acceptable Bidder with the opportunity to remedy any deficiencies prior to the Auction.

### **Right to Credit Bid**

The DIP Lenders, and any other Qualified Bidder who has a valid and perfected lien on any Assets of the Debtors' estates, each (a "***Secured Creditor***") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; provided that a Secured Creditor shall have the right to credit bid its claim (a "***Credit Bid***") only with respect to the collateral by which such Secured Creditor is secured; *provided* that (i) any Credit Bid shall be conditioned on payment in full in cash of the DIP Facility, unless the DIP Lenders consent to a different treatment of such claims; (ii) the rights of any other Secured Creditor to challenge a Credit Bid that does not repay the secured claim of such Secured Creditor are fully preserved; and (iii) any Credit Bid must meet the above requirements for a Qualified Bid, including, if a Stalking Horse Bidder is approved, the Minimum Bid Requirements.

### **Obtaining Due Diligence Access**

Only Acceptable Bidders shall be eligible to receive due diligence information, access to the Debtors' electronic data room, and additional non-public information regarding the Debtors. Beginning on the date the Debtors determine that a party is an Acceptable Bidder, or as soon as reasonably practicable thereafter, the Debtors will provide such Acceptable Bidder with access to an electronic data room and reasonable due diligence information, as requested by such Acceptable Bidder, as soon as reasonably practicable after such request. The Debtors shall promptly consult with the Consultation Parties (a) with respect to any due diligence disputes that arise concerning any Acceptable Bidder and (b) prior to revoking due diligence access to any such entity. The Debtors shall post substantially all written due diligence provided to any Acceptable Bidder to the Debtors' electronic data room for the benefit of all Acceptable Bidders.

Acceptable Bidders will not, directly or indirectly, contact or initiate or engage in discussions in respect of matters relating to the Debtors or a potential transaction with any customer, supplier, or other contractual counterparty of the Debtors without the prior written



consent of the Debtors. The due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Debtors shall have no obligation to furnish any due diligence information.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors shall not furnish any confidential information relating to the Debtors or a potential transaction to any person except an Acceptable Bidder or such Acceptable Bidder's duly authorized representatives to the extent provided in an applicable Confidentiality Agreement.

The Debtors and their advisors, after consultation with the Consultation Parties, shall be permitted to coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; *provided* that the Debtors may decline, after consultation with the Consultation Parties, to provide such information to Acceptable Bidders who, in the Debtors' reasonable business judgment have not established, or who have raised doubt, that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate a Sale Transaction. For any bidder who is a competitor or customer of the Debtors or is affiliated with any competitors or customers of the Debtors, the Debtors reserve the right, in consultation with the Consultation Parties, to withhold or modify any diligence materials that the Debtors determine are business-sensitive or otherwise inappropriate for disclosure to such bidder.

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets (i) to any person or entity who is not an Acceptable Bidder and (ii) if and to the extent doing so would (a) violate any laws to which the Debtors are subject, including any privacy laws; (b) result in the disclosure of any trade secrets of third parties in breach of any contract with such third party; (c) violate any legally-binding obligation of any Debtor with respect to confidentiality, non-disclosure, or privacy; or (d) jeopardize protections afforded to any Debtor under the attorney-client privilege or the attorney work product doctrine (provided, the Debtors shall use commercially reasonable efforts to (1) provide such access as can be provided (or otherwise convey such information regarding the applicable matter as can be conveyed) without violating such privilege, doctrine, contract, obligation, or law; and (2) provide such information in a manner without violating such privilege, doctrine, contract, obligation or law).

The Debtors shall provide the Consultation Parties periodic updates regarding the activity of each Acceptable Bidder in the electronic data room in a form and frequency mutually acceptable to the Debtors and the Consultation Parties; provided that the Debtors shall cooperate in good faith to provide any such information reasonably requested by the Consultation Parties.

#### Communications with Acceptable Bidders (including Qualified Bidders)

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive direct communications, including any diligence requests, from Acceptable Bidders (including any Qualified Bidders) shall be through Moelis.

#### Due Diligence and Indications of Interest from Acceptable Bidders (including Qualified Bidders)

Each Acceptable Bidder (including, as applicable, any Qualified Bidder) shall:

- i. Provide a preliminary indication of interest as requested by the Debtors or their advisors, together with any other information or materials requested in connection therewith (collectively, an "*Indication of Interest*"); and
- ii. Comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors regarding the ability of such

Acceptable Bidder (including any Qualified Bidder) to consummate its contemplated transaction.

Failure by an Acceptable Bidder (including, as applicable, any Qualified Bidder, other than the Stalking Horse Bidder, if any) to provide an acceptable Indication of Interest or comply with reasonable requests for additional information and due diligence access may be a basis for the Debtors to determine that such bidder is no longer an Acceptable Bidder or that a Bid made by such bidder is not a Qualified Bid.

### **Bid Deadline**

An Acceptable Bidder that desires to make a bid on one or more of the Assets shall deliver Binding Bids to the Bid Notice Parties no later than **September 6, 2024, at 5:00 p.m. (prevailing Pacific Time)** (the “***Bid Deadline***”); provided that the Debtors may, in consultation with the Consultation Parties, extend the Bid Deadline for any reason whatsoever, in their reasonable business judgment, for all or certain Potential Bidders, without further order of the Court, subject to providing notice to all Potential Bidders and the Consultation Parties.

### **Evaluation of Qualified Bids**

The Debtors shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors’ business judgment, and in consultation with the Consultation Parties, the highest or otherwise best Qualified Bid or combination of Qualified Bids for any Assets (the “***Starting Bid***”). As stated above, the Debtors shall promptly provide to the Consultation Parties copies of all Bids received by the Debtors, including the Starting Bid, but in no event later than the next business day following receipt; *provided* that the Consultation Parties and the U.S. Trustee must treat such Bids and any related information as confidential and shall not publicly disclose such information without the prior written consent of the Debtors.

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors, in addition to any other factors that the Debtors deem appropriate: (i) the amount and nature of the total consideration; (ii) the Qualified Bidder’s ability to close a transaction and the timing thereof; (iii) the net economic effect of any changes to the value to be received by each of the Debtors’ estates from the transaction contemplated by the Bid Documents; (iv) the tax consequences of such Qualified Bid; and (v) the liabilities and obligations to be assumed pursuant to such Qualified Bid. Prior to commencing the Auction, the Debtors shall notify the Stalking Horse Bidder, if any, and all Qualified Bidders as to which Qualified Bid is the Starting Bid for the Auction with respect to the applicable assets. At such time, the Debtors shall also distribute copies of the Starting Bid to the Stalking Horse Bidder, if any, and each Qualified Bidder.

### **Stalking Horse Protections**

At any time until 20 days prior to the Bid Deadline, the Debtors shall be authorized, but not obligated, in an exercise of their reasonable business judgment, (i) in consultation with the Consultation Parties and (ii) with the consent of the DIP Lenders, to (a) select one or more Acceptable Bidders to act as the Stalking Horse Bidder in connection with the Auction for such assets, and (b) in connection with any stalking horse agreement with a Stalking Horse Bidder, and subject to the terms set forth below, (x) provide a break-up fee and (y) agree to reimburse the reasonable and documented out of pocket fees and expenses the (“***Stalking Horse Bid Protections***”) in an aggregate amount of break-up fee and reimbursement of expenses not to exceed three percent of the Purchase Price; *provided, however*, that if a DIP Lender, or any affiliate of a DIP Lender, has expressly indicated to the Debtors that it is considering submitting, or has actually

submitted, a Bid for any Assets, it shall not have consent rights with respect to the selection of the Stalking Horse Bidder or any protections to be afforded to such Stalking Horse Bidder.

In the event that the Debtors enter into a Stalking Horse Agreement with one or more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice and proposed form of order with the Court (the “***Stalking Horse Notice***”) and serve the Stalking Horse Notice on the Stalking Horse Bidder and the U.S. Trustee. The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder’s parent company or sponsor); (ii) set forth the amount of the Stalking Horse Bidder’s bid (the “***Stalking Horse Bid***”) and what portion (if any) is cash; (iii) state whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid; (iv) specify any proposed Bid Protections (including the amount and calculation thereof); (v) specify the Assets included in the Stalking Horse Bid; (vi) attach the Stalking Horse Agreement, including all exhibits, schedules and attachments thereto; and (vii) set forth the deadline to object to the Stalking Horse Bidder designation and any Bid Protections. If there are no objections to the Stalking Horse Notice within five business days of filing with the Court, (the “***Notice Period***”), the Debtors may submit a revised proposed form of order to the Court that incorporates any comments received during the Notice Period that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement, which the Court may enter without the need for further hearing. If a party timely files an objection to the Stalking Horse Notice, the Court shall hold a hearing after the expiration of the Notice Period or as soon thereafter as the Court is available.

Except as otherwise set forth herein, no person or entity, other than a Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fees, “topping,” termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

### **No Qualified Bids**

If no Qualified Bids other than the Stalking Horse Bid, if any, are received for the Assets included in the Stalking Horse Bid by the Bid Deadline, then the Debtors may cancel the Auction with respect to such Assets. If a Stalking Horse Bid is the only Qualified Bid received by the Bid Deadline, the Debtors may decide, in their reasonable business judgment, after consultation with the Consultation Parties, to designate the Stalking Horse Bid as the Successful Bid (as defined below) as to the applicable Assets and pursue entry of an order approving a Sale Transaction with respect to such Assets to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement. The Debtors promptly shall file notice of any cancellation of the Auction with the Court.

### **Auction**

Other than as expressly set forth herein, if the Debtors receive more than one Qualified Bid for the Assets (or, if applicable, any portion of Assets) by the Bid Deadline, the Debtors shall conduct the Auction to determine the Successful Bidder in their reasonable business judgment, in consultation with the Consultation Parties, with respect to such Assets or portion of Assets in accordance with the Auction Procedures (as defined below). If the Debtors do not receive a Qualified Bid for any particular Asset by the Bid Deadline, the Debtors will not conduct the Auction with respect to such Asset.

The Auction shall commence on **September 10, 2024 at 12:00 p.m. (prevailing Eastern Time) at the New York offices of A&O Shearman** or such later time or other place as the Debtors determine in consultation with the Consultation Parties.

The Auction will be conducted in accordance with the following procedures (the “**Auction Procedures**”):

- i. the Auction will be conducted openly; *provided* that, except as otherwise determined by the Debtors in consultation with the Consultation Parties, only (a) the Debtors, (b) the Consultation Parties, (c) representatives of the Office of the United States Trustee, (d) the Creditors’ Committee, (e) any other Qualified Bidders, and (f) the respective representatives and professionals of the foregoing parties shall be entitled to participate in the Auction, however, any party in interest may be permitted to attend the Auction;
- ii. except as otherwise provided herein, only Qualified Bidders shall be entitled to bid at the Auction;
- iii. the Qualified Bidders, including Stalking Horse Bidders, if any, must appear in person or through duly-authorized representatives at the Auction;
- iv. bidding shall begin with the Starting Bid;
- v. subsequent bids (each, an “**Overbid**”) may only be made at the Auction and shall be at least a 2% increase in cash, cash equivalents, or other such consideration that the Debtors, in their reasonable business judgment, in consultation with the Consultation Parties, deem equivalent over the previous bid (a “**Minimum Overbid**”), and each successive Overbid shall exceed the then-existing Overbid by an incremental amount that is not less than the Minimum Overbid. The Debtors may, in their reasonable business judgment, in consultation with the Consultation Parties, announce increases or reductions to the Minimum Overbid at any time during the Auction. For the avoidance of doubt, each successive Bid that a Qualified Bidder may submit at the Auction must contain a Purchase Price in cash, cash equivalents, or such other consideration that the Debtors, in their reasonable business judgment, in consultation with the Consultation Parties, deem equivalent that exceeds the then existing highest Bid by at least the amount of the Minimum Overbid
- vi. at the commencement of the Auction, the Debtors, in consultation with the Consultation Parties, may announce procedural and related rules governing the Auction, including time periods available to all Qualified Bidders to submit successive bid(s);
- vii. each Qualified Bidder will be permitted a reasonable time to respond to previous bids at the Auction, as determined by the Debtors in consultation with the Consultation Parties;
- viii. during the course of the Auction, the Debtors shall, after submission of each Overbid and consultation with the Consultation Parties, promptly inform each Qualified Bidder of the terms of the previous bids and inform each Qualified Bidder which Overbid(s) reflect, in the Debtors’ view, in consultation with the Consultation Parties, the highest or otherwise best bid(s) for the applicable Assets (the “**Prevailing Highest Bid**”);
- ix. to remain eligible to participate in the Auction, in each round of bidding, each Qualified Bidder, except the Qualified Bidder(s) that submitted the Prevailing Highest Bid, must submit an Overbid with respect to such round of bidding. To the extent a Qualified Bidder that did not submit the Prevailing Highest Bid fails to

1 submit an Overbid with respect to such round of bidding, such Qualified Bidder  
2 shall be disqualified from continuing to participate in the Auction; *provided,*  
3 *however,* that the Debtors, in their reasonable business judgment and in consultation  
4 with the Consultation Parties (to the extent such Consultation Parties have not  
submitted a Qualified Bid), may permit any such bidder to (a) re-join the Auction  
after submitting an Overbid or (b) join another Qualified Bidder in the Auction as  
an additional purchaser party or debt or equity financing source;

- 5 x. the Auction will be transcribed to ensure an accurate recording of the bidding at the  
Auction;
- 6 xi. each Qualified Bidder will be required to confirm on the record that it has not  
7 engaged, and will not engage, in any collusion with respect to the bidding or any  
8 Sale Transaction. For the avoidance of doubt, this requirement does not restrict  
Qualified Bidder(s) from working with other Qualified Bidder(s) with the Debtors'  
prior written consent;
- 9 xii. each Qualified Bidder will be required to confirm that its bid is a good faith, *bona*  
10 *fide* offer and it intends to consummate the Sale Transaction if selected as the  
Successful Bid in accordance with these Bidding Procedures (as may be modified  
11 in accordance herewith at the Auction);
- 12 xiii. the Court and the Debtors will not consider bids made after the Auction has been  
closed;
- 13 xiv. the Debtors, in their reasonable business judgment, in consultation with the  
14 Consultation Parties, may reject, at any time before entry of an order of the Court  
approving a Successful Bid, any Bid that the Debtors determine is (a) inadequate  
15 or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code,  
the Bidding Procedures, or the terms and conditions of the Sale Transaction, or  
16 (c) contrary to the best interests of the Debtors, their estates, their creditors, and  
other stakeholders;
- 17 xv. the Debtors have the right to request any additional information that will allow the  
18 Debtors to make a reasonable determination as to a Qualified Bidder's financial  
and other capabilities to consummate the transactions contemplated by their  
19 proposal and any further information that the Debtors believe is reasonably  
necessary to clarify and evaluate any Bid made by a Qualified Bidder during the  
20 Auction;
- 21 xvi. the Debtors reserve the right, in their reasonable business judgment, and in  
22 consultation with the Consultation Parties, to adjourn the Auction one or more times  
to, among other things, (a) facilitate discussions between the Debtors and Qualified  
23 Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and  
(c) provide Qualified Bidders the opportunity to provide the Debtors with such  
24 additional evidence as the Debtors, in their reasonable business judgment, and in  
consultation with the Consultation Parties, may require in order to determine that  
25 the Qualified Bidder has sufficient internal resources or has received sufficient non-  
contingent debt and equity funding commitments to consummate the proposed  
transaction at the prevailing amount; and
- 26 xvii. notwithstanding anything herein to the contrary, the Debtors may, in consultation  
27 with the Consultation Parties, at any time choose to adjourn the Auction by  
28



announcement at the Auction; *provided*, that in the event of an adjournment of the Auction, the Debtors promptly shall file notice thereof with the Court.

Any Auction rules adopted by the Debtors will not modify any of the terms of the Stalking Horse purchase agreement, if any, or the rights of the Stalking Horse Bidder, if any, without the consent of the Stalking Horse Bidder, if any.

#### **Acceptance of the Successful Bidder**

The Auction shall continue until (i) there is only one Qualified Bid or a combination of Qualified Bids that the Debtors determine, in their reasonable business judgment and in a manner consistent with the exercise of their fiduciary duties and outlined below in further detail, and in consultation with the Consultation Parties, is the highest or otherwise best bid to purchase the applicable Assets (each, a “**Successful Bid**”), and (ii) the Debtors determine, in their reasonable business judgment, in consultation with the Consultation Parties, that further bidding is unlikely to result in a different Successful Bid or Successful Bids that would be reasonably acceptable to the Debtors, at which point, the Auction will be closed.

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors, in consultation with the Consultation Parties, may consider the following factors in addition to any other factors that the Debtors deem appropriate: (i) the amount and nature of the total consideration, which includes but is not limited to, assumed liabilities (administrative liabilities, cure payments), and the amount of executory contracts and leased locations being assumed; (ii) the Qualified Bidder’s ability to close a transaction and the timing thereof; (iii) the net economic effect of any changes to the value to be received by each of the Debtors’ estates from the transaction contemplated by the Bid Documents; (iv) the tax consequences of such Qualified Bid; and (v) any other consideration that may impact the Debtors’ estates or stakeholders.

Any Qualified Bidder that submits a Successful Bid will be deemed a “Successful Bidder” with respect to the Assets contemplated for the purchase pursuant to such Successful Bid. The Debtors shall file notice of the Successful Bid and the Successful Bidder with the Court as soon as reasonably practicable after conclusion of the Auction. Following conclusion of the Auction and selection of a Successful Bidder, the Debtors shall present the results of the Auction at a hearing (the “**Sale Hearing**”) at which the Debtors shall seek Court approval to enter into a binding purchase agreement with the Successful Bidder on the terms of the Successful Bid (the order approving such entry, the “**Definitive Purchase Agreement Order**”). For the avoidance of doubt, the Definitive Purchase Agreement Order shall deem the Debtors’ selection of the Successful Bid final; *provided* that, notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures shall require the board of directors, board of managers, or such similar governing body of any Debtor to take or refrain from taking any action that it determined in good faith, in consultation with counsel, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

Within one business day of the selection of the Successful Bidder, such Successful Bidder (including both the Stalking Horse Bidder, if any, and Back-Up Bidder, if applicable) shall make a cash deposit, in addition to its Good Faith Deposit, in an amount calculated on the basis of the increased aggregate purchase price, submitted by wire transfer of immediately available funds to an escrow account to be identified and established by the Debtors pursuant to a customary and reasonable escrow agreement. Each Successful Bidder and the Debtors shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which each such Successful Bid was made.

### Designation of Back-Up Bidder

The Back-Up Bid to purchase any applicable Assets (the “**Back-Up Bidder**”) will be determined by the Debtors at the conclusion of the Auction, in consultation with the Consultation Parties, and will be announced at that time to all the Qualified Bidders participating in the Auction. Following consultation with the Consultation Parties, the Debtors’ selection of a Back-Up Bid shall be deemed final, and the Debtors shall not accept any further bids or offers to submit a bid after such selection. The Debtors will be authorized, but not required, to consummate the Transaction with the Backup Bidder without further order of the Bankruptcy Court, so long as such Backup Bid shall have been approved in connection with the Bankruptcy Court’s approval of the Successful Bid, or subject to Bankruptcy Court approval if not.

If for any reason a Successful Bidder fails to consummate the purchase of such assets within the time permitted, then the Back-Up Bidder will automatically be deemed to have submitted the Successful Bid for such assets, and the Back-Up Bidder shall be deemed a Successful Bidder for such assets and shall be required to consummate any Sale Transaction with the Debtors as soon as is reasonably practicable without further order of the Court in accordance with the terms and conditions of such Back-Up Bidder’s Bid, following a notice being filed with the Court; provided, however, that the Debtors shall first provide notice to Contract counterparties implicated by any Back-Up Bidder’s Bid and an opportunity to object to the assignment to the Back-Up Bidder within 5 days of receiving such notice. To the extent any objections are raised and remain unresolved, the Court may schedule a hearing on an expedited basis to adjudicate such objection.

The Back-Up Bid shall remain open and irrevocable until the earliest to occur of (i) 45 days after completion of the Auction, (ii) consummation of a Sale Transaction with one or more Successful Bidders at an Auction, and (iii) the release of such Back-Up Bid by the Debtors in writing (the “Back-Up Termination Date”). The Debtors shall return the Back-Up Bidder’s deposit owed within five business days of the Back-Up Termination Date.

### Approval of the Sale Transaction

A hearing to consider approval of each Sale Transaction (the “Sale Hearing”), currently is scheduled to take place on **September 25, 2024, at 10:00 a.m.** (prevailing Pacific Time), before the Honorable Hilary L. Barnes at the United States Bankruptcy Court for the District of Nevada, C. Clifton Young Federal Building, 300 Booth Street, Reno, NV 89509 (Courtroom 2) and telephonically.

At the Sale Hearing certain findings will be sought from the Court regarding the Auction, including, among other things, that: (1) the Auction was conducted, and the Successful Bidder was selected, in accordance with the Bidding Procedures; (2) the Auction was fair in substance and procedure; (3) the Successful Bid was a Qualified Bid as defined in the Bidding Procedures; and (4) consummation of any Sale Transaction as contemplated by the Successful Bid in the Auction will provide the highest or otherwise best offer for the applicable Assets and is in the best interests of the Debtors and their estates. **The Sale Hearing may be continued to a later date by the Debtors, in consultation with the Consultation Parties, by sending notice to creditors or other parties in interest prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party (including the Stalking Horse Bidder, if any).**

Objections to the Sale Transaction(s), and entry of any order approving the sale (the “**Sale Order**”) must (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and all orders of the Court; and (iii) be filed with the Court and served so as to be **actually received** by the Debtors, the Consultation Parties,

the Bid Notice Parties, and the foregoing parties' respective counsel by September 19, 2024, at 12:00 p.m. (prevailing Pacific Time).<sup>4</sup>

### **Return of Good Faith Deposit**

The Good Faith Deposit of the Successful Bidder or Successful Bidders, if any, will, upon consummation of the Successful Bid or Successful Bids, become property of the Debtors' estates and be credited to the portion of such Successful Bidder's or Successful Bidders' applicable Purchase Price.

If the Successful Bidder or Successful Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable), if any, fails to consummate the Successful Bid (or Back-Up Bid, if applicable), then the Good Faith Deposit of such Successful Bidder (or Back-Up Bidder, if applicable) irrevocably will be forfeited to the Debtors and may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors.

The Good Faith Deposit of any unsuccessful Qualified Bidders will be returned within five business days after consummation of the applicable Sale Transaction.

The return of any Good Faith Deposits of any Stalking Horse Bidders will be subject to the terms of such Stalking Horse Bidders' plan or purchase agreement, as applicable. All such deposits shall be held in escrow and at no time shall be deemed property of the Debtors' estates absent further order of the Court.

### **Commissions**

Other than with respect to (i) any Stalking Horse Bid Protections that become payable pursuant to the terms of a Stalking Horse Agreement, if any, and (ii) any payment obligations with respect to the Debtors' investment banker, Moelis & Company, (a) the Debtors shall be under no obligation to pay any commissions, fees, or expenses to any bidder's agent, advisor or broker; (b) all commissions, fees, or expenses for any such agents, advisors, or brokers shall be paid by the applicable bidder at such bidder's discretion; and (c) in no case shall any commissions, fees, or expenses for any bidder's agent, advisor, or broker be deducted from any proceeds derived from any sale of the Assets.

### **Reservation of Rights**

The Debtors, in consultation with the Consultation Parties, reserve their rights to modify these Bidding Procedures in their reasonable business judgment and in a manner consistent with the exercise of their fiduciary duties in any manner that will best promote the goals of the bidding process, or impose, at or before the Auction, additional customary terms and conditions on the sale of the applicable Assets, including, without limitation: (1) extending the deadlines set forth in the Bidding Procedures; (2) adjourning the Auction without further notice; (3) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (4) canceling the Auction; (5) rejecting any or all Bids or Qualified Bids; and (6) adjusting the applicable minimum overbid increment; *provided, however*, that the Debtors may not amend these Bidding Procedures, the Bidding Procedures Order or the bidding process to reduce or otherwise modify their obligations to consult with any Consultation Party without the consent of such Consultation Party or further order of the Court. All such modifications and additional rules will be communicated in advance to each of the Consultation Parties and the U.S. Trustee, Acceptable

<sup>4</sup> In the event that the Debtors, in consultation with the Consultation Parties, reasonably determine in their business judgment to pursue a Sale Transaction pursuant to a Plan, a separate deadline to object to such Sale Transaction shall be set by order of the Court.



Bidders and Qualified Bidders; *provided, further*, that, to the extent such modifications occur at the Auction, disclosure of such modifications shall be limited to those in attendance at the Auction. If any of the DIP Lenders, the Office of the U.S. Trustee or any official committee of unsecured creditors appointed in these cases determines in good faith that any modification to these Bidding Procedures or the Bidding Procedures Order, or any adoption of new rules, procedures or deadlines, would not be consistent with this paragraph or these Bidding Procedures or the Bidding Procedures Order, such DIP Lender, U.S. Trustee, or Committee may file an objection with the Bankruptcy Court, and no such modification or adoption shall become effective until such objection is resolved. The Debtors shall provide advance notice in writing of any such modification to the Consultation Parties and the U.S. Trustee and any Qualified Bidder, including the Stalking Horse Bidder, if any.

All parties expressly reserve all of their rights (and do not waive any such rights) to seek Court relief with regard to the Auction, the Bidding Procedures, the Sale Transaction, and any related items (including, if necessary, to seek an extension of the Bid Deadline).

Each reference in these Bidding Procedures and the Bidding Procedures Order to “consultation” (or similar phrase) with the Consultation Parties shall mean consultation in good faith. All Consultation Parties will be permitted to seek relief from the Bankruptcy Court on an expedited basis if they disagree with any actions or decisions made by the Debtors as part of these Bidding Procedures. The rights of all Consultation Parties with respect to the outcome of the Auction are reserved.

#### **Consent to Jurisdiction**

All Qualified Bidders at the Auction will be deemed to have consented to the core jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the Sale, the Sale Transaction(s) and the construction and enforcement of these Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the Bids, the Bid Documents, and any and all other agreements entered into in connection with any proposed Sale Transaction, as applicable, and consented to the entry of a final order or judgment in any way related to these Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale any Sale Transaction if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Any parties raising a dispute relating to these Bidding Procedures must request that such dispute be heard by the Court on an expedited basis.

#### **Fiduciary Matters**

Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures or the Bidding Procedures Order shall require a Debtor or the board of directors, board of managers, or similar governing body of a Debtor to take any action or to refrain from taking any action related to any sale transaction or with respect to these Bidding Procedures, to the extent such Debtor, board of director, board of managers, or such similar governing body reasonably determines in good faith, in consultation with counsel, that taking or failing to take such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

**EXHIBIT B**

**Form of Sale Notice**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: 24-50566-hlb  
Chapter 11

Jointly Administered with:  
Case No. 24-50567-hlb  
Case No. 24-50568-hlb  
Case No. 24-50569-hlb  
Case No. 24-50570-hlb  
Case No. 24-50571-hlb

Hearing Date:  
Hearing Time:

**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION, AND  
SALE HEARING FOR THE SALE OF SUBSTANTIALLY ALL ASSETS**

**PLEASE TAKE NOTICE** that on [ ], 2024, the United States Bankruptcy Court for the District of Nevada (the “Court”) entered the [ *Order (I) Approving Auction and Bidding, Noticing, and Assumption and Assignment Procedures; (II) Scheduling Certain Dates and Deadlines with Respect Thereto; (III) Approving Form Notice to Be Provided to Interested Parties; and (IV) Granting Related Relief* [Docket No. [ ]]] (the “**Bidding Procedures Order**”)<sup>2</sup> in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”).

**PLEASE TAKE FURTHER NOTICE** that, if the Debtors receive qualified competing bids within the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct an auction (the “**Auction**”) of the Assets **on September 10, 2024, at 12:00 p.m. (prevailing Eastern Time)** at the New York offices of Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, or such other location announced to the bidders and Consultation Parties.

**PLEASE TAKE FURTHER NOTICE** that only the Debtors, the Consultation Parties, Qualified Bidders, the U.S. Trustee, and any other parties as the Debtors may determine to include in their reasonable discretion, in consultation with the Consultation Parties, in each case, along with their representatives and advisors, shall be entitled to attend the Auction, and only Qualified Bidders will be entitled to make Overbids at the Auction. **All interested or potentially affected parties should carefully read the Bidding Procedures and the Bidding Procedures Order.**

**PLEASE TAKE FURTHER NOTICE** that the Debtors will seek approval of the Sale Transaction(s) at a hearing scheduled to commence on or before **September 25, 2024, at 10:00 a.m. (prevailing Pacific Time)** (the “**Sale Hearing**”) before the Honorable Judge Barnes, at the United States Bankruptcy Court for the District of Nevada, 300 Booth Street, 5th Floor, Courtroom 2, Reno, Nevada 89509, and telephonically.

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not defined in this notice have the meanings given to them in the Bidding Procedures Order.

**PLEASE TAKE FURTHER NOTICE** that, except as otherwise set forth in the Bidding Procedures Order, objections to consummation or approval of the Sale and each Sale Transaction must (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual bases for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be ***actually received on or before September 19, 2024, at 12:00 p.m. (prevailing Pacific Time)*** by the following parties:

- i. the Debtors, c/o Nevada Copper, Inc., 61 E. Pursel Lane, P.O. Box 1640, Yerington, NV 89447 (Attn: Gregory J. Martin (gjmartin@nevadacopper.com));
- ii. the Debtors' counsel, Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick (fsosnick@aoshearman.com), Sara Coelho (sara.coelho@aoshearman.com), and Cody Wright (cody.wright@aoshearman.com));
- iii. the Debtors' investment banker, Moelis & Company, 399 Park Ave 4th Floor, New York, NY 10022 (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com));
- iv. the Office of the United States Trustee for Region 17, 300 Booth Street, Suite 3009, Reno, NV 89509 (Attn: Jared Day (Jared.A.Day@usdoj.gov));
- v. proposed counsel to the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 (Attn: Eric S. Chafetz (EChafetz@lowenstein.com) and Jeffrey L. Cohen (JCohen@lowenstein.com));
- vi. the DIP Lenders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; and 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley; and
- vii. counsel to the Stalking Horse Bidder, if any.

**PLEASE TAKE FURTHER NOTICE** Copies of the Bidding Procedures Motion, Bidding Procedures Order, Bidding Procedures, the Form APA, and any other documents filed in the Debtors' chapter 11 cases are available upon request, by calling the Debtors' claims and noticing agent, Epiq Corporate Restructuring, LLC (i) for U.S. parties, toll-free at (877) 635-8338, or (ii) for non-U.S. parties, at +1 (971) 306-8096, or by visiting the Debtors' restructuring website at <https://dm.epiq11.com/case/nevadacopper>.

#### **CONSEQUENCES OF FAILING TO TIMELY MAKE AN OBJECTION**

**ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE OR A SALE TRANSACTION, AS APPLICABLE, ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE APPLICABLE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS MAY BE SET FORTH IN THE APPLICABLE PURCHASE AGREEMENT OR THE PLAN, AS APPLICABLE.**

1 Dated: [●], 2024

Respectfully submitted,

2 /s/ DRAFT

3 **McDONALD CARANO LLP**

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7 -and-

8 **ALLEN OVERY SHEARMAN**

9 **STERLING US LLP**

Fredric Sosnick (New York Bar No. 2472488)

10 (admitted *pro hac vice*)

Sara Coelho (New York Bar No. 4530267)

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sara.coelho@aoshearman.com

14 *Proposed Counsel to the Debtors and Debtors*  
15 *in Possession*

**EXHIBIT C**

**Form of Assumption and Assignment Notice**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: 24-50566-hlb  
Chapter 11

Jointly Administered with:  
Case No. 24-50567-hlb  
Case No. 24-50568-hlb  
Case No. 24-50569-hlb  
Case No. 24-50570-hlb  
Case No. 24-50571-hlb

Hearing Date:  
Hearing Time:

**NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT  
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU  
OR ONE OF YOUR AFFILIATES ARE A COUNTERPARTY TO AN  
EXECUTORY CONTRACT OR UNEXPIRED LEASE WITH ONE OR MORE  
OF THE DEBTORS AS SET FORTH ON **EXHIBIT A** ATTACHED HERETO.

**PLEASE TAKE NOTICE** that on [ ], 2024, the United States Bankruptcy Court for the District of Nevada (the “Court”) entered the [*Order (I) Approving Auction and Bidding, Noticing, and Assumption and Assignment Procedures; (II) Scheduling Certain Dates and Deadlines with Respect Thereto; (III) Approving Form Notice to Be Provided to Interested Parties; and (IV) Granting Related Relief*] [Docket No. [ ]]] (the “**Bidding Procedures Order**”) in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the “Debtors”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Bidding Procedures and the terms of any Successful Bid, the Debtors **may** assume and assign to the Successful Bidder the contract or agreement listed on **Exhibit A** to which you are a counterparty, upon approval of the Sale Transaction. The Debtors have conducted a review of their books and records and have determined that the Cure Payments for unpaid monetary obligations under the Debtors’ executory contracts and leases, which are set forth on **Exhibit A**. **You are receiving this Assumption and Assignment Notice (which has been filed on the docket of the above-captioned chapter 11 cases) because you may be a counterparty to a contract or lease (a “Counterparty”) that is proposed to be assumed and assigned to the Successful Bidder in connection with the Sale.**

**PLEASE TAKE FURTHER NOTICE** that if you disagree with the proposed Cure Payments, object to a proposed assignment to the Successful Bidder of any contract or lease, or dispute the ability of the Successful Bidder to provide adequate assurance of future performance with respect to any contract, your objection must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Bankruptcy Rules, and any order governing the administration of these chapter 11 cases; (iii) state with specificity the nature of the objection and,

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion or the Bidding Procedures.



if the objection pertains to the proposed Cure Payments, state the correct Cure Payments alleged to be owed to the objecting Counterparty, together with any applicable and appropriate documentation in support thereof; and (iv) **no later than [Tuesday, August 20, 2024, at 12:00 p.m. (prevailing Pacific Time)]** (the “**Assumption and Cure Objection Deadline**”), filed with the Court and served upon the following parties:

- i. the Debtors, c/o Nevada Copper, Inc., 61 E. Pursel Lane, P.O. Box 1640, Yerington, NV 89447 (Attn: Gregory J. Martin (gjmartin@nevadacopper.com));
- ii. the Debtors’ counsel, Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick (fsosnick@aoshearman.com), Sara Coelho (sara.coelho@aoshearman.com), and Cody Wright (cody.wright@aoshearman.com));
- iii. the Debtors’ investment banker, Moelis & Company, 399 Park Ave 4th Floor, New York, NY 10022 (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com));
- iv. the Office of the United States Trustee for Region 17, 300 Booth Street, Suite 3009, Reno, NV 89509 (Attn: Jared Day (Jared.A.Day@usdoj.gov));
- v. proposed counsel to the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 (Attn: Eric S. Chafetz (EChafetz@lowenstein.com) and Jeffrey L. Cohen (JCohen@lowenstein.com));
- vi. the DIP Lenders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; and 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley; and
- vii. counsel to the Stalking Horse Bidder, if any.

**PLEASE TAKE FURTHER NOTICE** that if no objection to (i) the Cure Payments, (ii) the proposed assignment and assumption of any Executory Contract or Unexpired Lease, or (iii) adequate assurance of the Successful Bidder’s ability to perform is filed by the Cure Objection Deadline, then (a) you will be deemed to have stipulated that the Cure Payments as determined by the Debtors are correct, (b) you will be forever barred, estopped, and enjoined from asserting any additional Cure Payments are due under the Executory Contract or Unexpired Lease, and (c) you will be forever barred, estopped, and enjoined from objecting to such proposed assignment to the Successful Bidder on the grounds that the Successful Bidder has not provided adequate assurance of future performance as of the closing date of the Sale Transaction.

**PLEASE TAKE FURTHER NOTICE** that any objection to the proposed assumption and assignment of an Executory Contract or Unexpired Lease or related Cure Payments in connection with the Successful Bid that otherwise complies with these procedures yet remains unresolved as of the commencement of the Sale Hearing, shall be heard at a later date as may be fixed by the Court.

**PLEASE THAT FURTHER NOTICE** that, notwithstanding anything herein, the mere listing of any contract or lease on the Contract Assumption Notice or any Supplemental Assumption Notice (i) does not require or guarantee that such contract or lease is an Executory Contract or Unexpired Lease, (ii) does not require that such contract or lease can or will be assumed by the Debtors at any time or assumed and assigned, and (iii) does not



1 constitute an admission that any stated Cure Amount constitutes a claim against the Debtors  
2 or a right against the Successful Bidder; and all rights of the Debtors and the Successful  
3 Bidder with respect to such agreements are reserved. Moreover, the Debtors explicitly reserve  
4 the right, in their reasonable discretion, to seek to reject or assume each Executory Contract or  
Unexpired Lease pursuant to section 365(a) of the Bankruptcy Code and in accordance with the  
procedures allowing the Debtors and/or the Successful Bidder, as applicable, to designate any  
Executory Contract or Unexpired Lease as either rejected or assumed on a post-closing basis.

5 **PLEASE TAKE FURTHER NOTICE** that, nothing herein (i) alters in any way the  
6 prepetition nature of the Executory Contracts or Unexpired Leases or the validity, priority, or  
7 amount of any claims of a counterparty to any Contract against the Debtors that may arise under  
8 such Executory Contract or Unexpired Lease, (ii) creates a postpetition contract or agreement, or  
9 (iii) elevates to administrative expense priority any claims of a counterparty to any Executory  
Contract or Unexpired Lease against the Debtors that may arise under such Executory Contract or  
Unexpired Lease.

10 **PLEASE TAKE FURTHER NOTICE** that if the Debtors (i) identify additional contracts  
11 or leases that may be assumed and assigned to any Successful Bidder, (ii) remove any contracts or  
12 leases from the list filed with the court, or (iii) modify the previously stated Cure Amount  
13 associated with any contract or lease, then the Debtors promptly will file and serve a supplemental  
notice of contract assumption (a "***Supplemental Assumption and Assignment Notice***") on each of  
the affected Counterparties. Each Supplemental Assumption Notice will include the same  
information with respect to the applicable contract or lease as was included herein. A Successful  
Bidder may designate additional contracts or leases to be assumed and assigned up to seven  
business days prior to closing and may remove contracts or leases from the list of Executory  
Contracts and Unexpired Leases up to two business days prior to closing.

14 **PLEASE TAKE FURTHER NOTICE** that in the event that the Debtors and a  
15 Counterparty cannot resolve an objection to a Cure Amount, the contract or lease at issue may be  
16 assumed by the Debtors and assigned to the applicable Successful Bidder, provided that the  
17 Debtors shall segregate the Cure Amount that the Counterparty asserts is required to be paid,  
18 pending a resolution of the dispute by the Court or mutual agreement by the parties. Any objection  
to the proposed assumption and assignment of a contract or lease or related Cure Amount proposed  
in connection with the Sale that remained unresolved as of the Sale Hearing, shall be heard at the  
Sale Hearing (or at a later date as fixed by the Court).

19 **PLEASE TAKE FURTHER NOTICE** that no contract or lease shall be deemed assumed  
20 and assigned pursuant to section 365 of the Bankruptcy Code until the later of (i) the date the Court  
has entered an order assuming and assigning such contract or lease or (ii) the date the Sale has  
closed.

21 **PLEASE TAKE FURTHER NOTICE** Copies of the Bidding Procedures Motion,  
22 Bidding Procedures Order, Bidding Procedures, the Form APA, and any other documents  
23 filed in the Debtors' chapter 11 cases are available upon request, by calling the Debtors'  
24 claims and noticing agent, Epiq Corporate Restructuring, LLC (i) for U.S. parties, toll-free  
at (877) 635-8338, or (ii) for non-U.S. parties, at +1 (971) 306-8096, or by visiting the Debtors'  
restructuring website at <https://dm.epiq11.com/case/nevadacopper>.

1 Dated: [●], 2024

Respectfully submitted,

2 /s/ DRAFT

3 **McDONALD CARANO LLP**

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4 Amanda M. Perach (Nevada Bar No. 12399)

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7 -and-

8 **ALLEN OVERY SHEARMAN**

9 **STERLING US LLP**

Fredric Sosnick (New York Bar No. 2472488)

10 (admitted *pro hac vice*)

Sara Coelho (New York Bar No. 4530267)

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14 *Proposed Counsel to the Debtors and Debtors*  
15 *in Possession*

**EXHIBIT 2**

**Redline to First Revised Proposed Bidding Procedures Order**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: 24-50566-hlb  
Chapter 11

Jointly Administered with:  
Case No. 24-50567-hlb  
Case No. 24-50568-hlb  
Case No. 24-50569-hlb  
Case No. 24-50570-hlb  
Case No. 24-50571-hlb

Hearing Date:  
Hearing Time:

**ORDER (I) APPROVING AUCTION AND BIDDING, NOTICING, AND ASSUMPTION AND ASSIGNMENT PROCEDURES; (II) SCHEDULING CERTAIN DATES AND DEADLINES WITH RESPECT THERETO; (III) APPROVING FORM NOTICE TO BE PROVIDED TO INTERESTED PARTIES; AND (IV) GRANTING RELATED RELIEF**

Upon the Debtors' Motion for Entry of an Order (I) (A) Approving the Auction and Bidding Procedures; (B) Approving Stalking Horse Bid Protections; (C) Scheduling Certain Dates and Deadlines with Respect Thereto and an Auction; (D) Approving the Form and Manner of Notice Thereof; (E) Approving the Form APA; and (II) (A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases; (B) Authorizing the Assumption and Assignment of Assumed Contracts; (C) Authorizing the Sale of Assets; and (III) Granting Related Relief (the "**Motion**")<sup>2</sup> of the Debtors for entry of an order (this "**Order**"), (i) approving the proposed marketing, auction, and bidding procedures attached hereto as **Exhibit A**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

(the “**Bidding Procedures**”) by which the Debtors will solicit and select the highest or otherwise best offer(s) for the sale or sales (collectively, the “**Sale**,” and each such sale transaction, a “**Sale Transaction**”) of all, substantially all, or any portion of the Debtors’ assets (the “**Assets**”); (ii) establishing certain dates and deadlines related thereto and scheduling an auction or auctions, if any, for the Sale (the “**Auction**”); (iii) approving the manner of notice of the Auction and sale hearing (the “**Sale Hearing**”) as may be necessary; (iv) approving procedures for the assumption and assignment of certain Executory Contracts and Unexpired Leases (each as defined in the Bidding Procedures) in connection with the Sale Transaction, if any; (v) approving the break-up fee and expense reimbursements relating to potential stalking horse bidders if the Debtors determine to enter into such an arrangement with a bidder for the Assets (the “**Stalking Horse Bid Protections**”); and (vi) granting related relief; all as more fully set forth in the Motion; and upon the Sale Declaration, First Day Declaration, and *Supplemental Declaration of Zul Jamal in Support of Debtors’ Bidding Procedures Motion* [ECF No. 369]; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a final order consistent with Article III of the United States Constitution; and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and, under the circumstances, proper and adequate notice of the Motion and the hearing thereon having been given; and it appearing that no other or further notice is necessary; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:**

1. Jurisdiction and Venue. Consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court

1 pursuant to 28 U.S.C. §§ 1408 and 1409. The Court has jurisdiction to consider the Motion and  
2 the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334.

3 2. Statutory and Legal Predicates. The statutory and legal predicates for the relief  
4 requested in the Motion are sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code,  
5 Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and Local Rules 3017 and 6004.

6 3. Bidding Procedures. The Debtors have articulated good and sufficient business  
7 reasons for the Court to approve the Bidding Procedures. The Bidding Procedures are fair,  
8 reasonable, and appropriate. The Bidding Procedures are reasonably designed to promote a  
9 competitive and robust bidding process to generate the greatest level of interest in the Debtors'  
10 business resulting in the highest or otherwise best offer. The Bidding Procedures comply with  
11 the requirements of Local Rule 6004.

12 4. Sale Notice. The Sale Notice attached hereto as **Exhibit B** and the procedures  
13 with respect to such Sale Notice contain the type of information required under Bankruptcy Rule  
14 2002 and Local Rule 6004 and comply in all respects with applicable provisions of the  
15 Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

16 5. Assumption and Assignment Procedures. The Debtors have articulated good and  
17 sufficient business reasons for the Court to approve the Assumption and Assignment Procedures.  
18 The Assumption and Assignment Procedures, including the Assumption and Assignment Notice  
19 attached hereto as **Exhibit C**, are fair, reasonable, and appropriate. The Assumption and  
20 Assignment Procedures provide an adequate opportunity for all Counterparties to raise any  
21 objections to the proposed assumption and assignment or to the proposed Cure Amounts. The  
22 Assumption and Assignment Procedures comply with the provisions of section 365 of the  
23 Bankruptcy Code and Bankruptcy Rule 6006.

24 6. Notice. All other notices to be provided pursuant to the procedures set forth in  
25 the Motion are good and sufficient notice to all parties in interest of all matters pertinent hereto.  
26 No further notice is required.

1           7.     Relief is Warranted. The legal and factual bases set forth in the Motion establish  
2 just and sufficient cause to grant the relief requested therein.

3           8.     Other Findings. The findings and conclusions set forth herein constitute the  
4 Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made  
5 applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the  
6 following findings of fact constitute conclusions of law, they are adopted as such. To the extent  
7 any of the following conclusions of law constitute findings of fact, they are adopted as such.

8 **NOW, AND THEREFORE, IT IS HEREBY ORDERED THAT:**

9           9.     The Motion is GRANTED as set forth herein.

10 **I.     The Bidding Procedures**

11           10.    The Bidding Procedures, substantially in the form attached to this Order as  
12 Exhibit A, are approved and incorporated into this Order by reference, as though fully set forth  
13 herein. Accordingly, the failure to recite or reference any particular provision of the Bidding  
14 Procedures shall not diminish the effectiveness of such provision, it being the intent of the Court  
15 that the Bidding Procedures be authorized and approved in their entirety. The Debtors are  
16 authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

17           11.    Any deposit (including any Good Faith Deposit) provided by a Qualified Bidder  
18 shall be held in escrow by the Debtors or their agent on terms acceptable to the Debtors (in  
19 consultation with the Consultation Parties), and shall not become property of the Debtors'  
20 bankruptcy estates unless and until released from escrow to the Debtors pursuant to the terms of  
21 the applicable escrow agreement, the Bidding Procedures, or order of this Court after notice and  
22 a hearing, as applicable.

23 **II.    Important Dates and Deadlines**

24           12.    Sale Hearing. The Sale Hearing will commence on **Wednesday, September 25,**  
25 **2024, at 10:00 a.m.** (prevailing Pacific Time). Subject to the terms of the Bidding Procedures,  
26 the Debtors may, in their reasonable business judgment, in consultation with the Consultation  
27  
28

Parties and with the consent of the Successful Bidder(s), adjourn or reschedule any Sale Hearing, with notice to the Sale Notice Parties.

13. Sale Objection Deadline. Any objections to the Sale (a “***Sale Objection***”) by a Sale Notice Party must be made by **Friday, September 19, 2024, at 12:00 p.m.** (prevailing Pacific Time) (the “***Sale Objection Deadline***”).<sup>3</sup> The Sale Objection Deadline may be extended by the Debtors with the consent of the Court.

14. Competitive Bidding. The following dates and deadlines regarding competitive bidding are hereby established, in each case subject to extension in accordance with the Bidding Procedures:

- i. Bid Deadline: **Friday, September 6, 2024, at 12:00 p.m.** (prevailing Pacific Time), the deadline by which all Qualified Bids must be actually received in writing by the Bid Notice Parties (the “***Bid Deadline***”); and
- ii. Auction: **Tuesday, September 10, 2024, at 12:00 p.m. (prevailing Eastern Time)**, is the date and time the Auction, if one is needed, will be held at the New York offices of Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, or at such other time and location (including via remote video) as designated by the Debtors, in consultation with the Consultation Parties and providing notice to the Sale Notice Parties, and subject to the terms of the Bidding Procedures.

15. Stalking Horse Bidders and Bid Protections. The Debtors, upon entry of this Order, shall be authorized, but are not obligated or directed, in an exercise of their reasonable business judgment, (i) in consultation with the Consultation Parties and (ii) with the consent of the DIP Lenders, to select one or more Stalking Horse Bidders with respect to some or all of the Debtors’ Assets by no later than **August 17, 2024, at 5:00 p.m., prevailing Pacific Time**, enter into a Stalking Horse Agreement that would provide such Stalking Horse Bidders with Stalking Horse Bid Protections; *provided, however*, that if a DIP Lender, or any affiliate of a DIP Lender, has expressly indicated to the Debtors that it is considering submitting, or has actually submitted,

<sup>3</sup> In the event that the Debtors, in consultation with the Consultation Parties, reasonably determine in their business judgment to pursue a Sale Transaction pursuant to a chapter 11 plan, a separate deadline to object to such Sale Transaction shall be set by further order of this Court.



1 a Bid for any Assets, it shall not have consent rights with respect to the selection of a Stalking  
2 Horse Bidder, if any, or any protections to be afforded to such Stalking Horse Bidder.

3 16. In the event that the Debtors enter into a Stalking Horse Agreement with one or  
4 more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice  
5 and proposed form of order with the Court (the “***Stalking Horse Notice***”) and serve the Stalking  
6 Horse Notice on the Stalking Horse Bidder and the Office of the United States Trustee for  
7 Region 17. The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse  
8 Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse  
9 Bidder’s parent company or sponsor); (ii) set forth the amount of the Stalking Horse Bid and  
10 what portion (if any) is cash; (iii) state whether the Stalking Horse Bidder has any connection to  
11 the Debtors other than those that arise from the Stalking Horse Bid; (iv) specify any proposed  
12 Bid Protections (including the amount and calculation thereof); (v) specify the Assets included in  
13 the Stalking Horse Bid; (vi) attach the Stalking Horse Agreement, including all exhibits,  
14 schedules and attachments thereto; and (vii) set forth the deadline to object to the Stalking Horse  
15 Bidder designation and any Bid Protections. If there are no objections to the Stalking Horse  
16 Notice within five business days of filing with the Court, (the “***Notice Period***”), the Debtors may  
17 submit a revised proposed form of order to the Court that incorporates any comments received  
18 during the Notice Period that authorizes the Debtors to designate a Stalking Horse Bidder and to  
19 enter into a Stalking Horse Agreement, which may be entered by the Court without the need for  
20 further hearing. If a party timely files an objection to the Stalking Horse Notice in accordance  
21 with the Bidding Procedures, the Court shall hold a hearing after the expiration of the Notice  
22 Period and as soon thereafter as the Court is available. Upon entry of the order that authorizes  
23 the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement,  
24 as applicable, the Debtors are authorized, but not directed, to incur and pay the Stalking Horse  
25 Bid Protections to each Stalking Horse Bidder as set forth in the Stalking Horse Agreement, in  
26 an aggregate amount not to exceed three percent of the proposed Purchase Price.

1           17. Except as otherwise set forth in the Bidding Procedures, no person or entity, other  
2 than a Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fees,  
3 “topping,” termination, or other similar fee or payment, and by submitting a bid, such person or  
4 entity is deemed to have waived their right to request or to file with this Court any request for  
5 expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section  
6 503(b) or otherwise.

7 **III. Sale Notice Procedures**

8           18. The Sale Notice procedures, substantially in the form set forth in the Sale Notice  
9 attached to this Order as **Exhibit B**, are approved. The Debtors are authorized to implement the  
10 Sale Notice procedures as set forth in the Bidding Procedures Motion, the Bidding Procedures,  
11 and the Sale Notice.

12 **IV. Assumption and Assignment Procedures**

13           19. The (i) Assumption and Assignment Procedures, as set forth in the Bidding  
14 Procedures, and (ii) the Assumption and Assignment Notice in the form attached to this Order as  
15 **Exhibit C**, are approved.

16           20. The Assumption and Assignment Procedures shall govern the assumption or  
17 assumption and assignment of all of the Debtors’ Executory Contracts and Unexpired Leases to  
18 be assumed or assumed and assigned in connection with the Sale, subject to the payment of any  
19 amounts necessary to cure any defaults arising under any such Executory Contract or Unexpired  
20 Lease.

21           21. Cigna Health and Life Insurance Company (“**Cigna**”) and the Debtors are parties  
22 to three Agreements (collectively, the “**Cigna Contracts**”) that facilitate the Debtors’ self-insured  
23 employee healthcare benefits plan. Notwithstanding anything in this Order to the contrary,  
24 unless Cigna and the Debtors agree otherwise, the Debtors shall, not later than 12:00 noon  
25 (prevailing Pacific Time) on the date that is two business days prior to any Sale Hearing, provide  
26 to Cigna, through its counsel, written notice of the Debtors’ irrevocable (subject to closing of the  
27 applicable Sale Transaction(s)) decision as to whether or not they propose to assume and assign  
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1 any or all of the Cigna Contracts to the Successful Bidder as part of the proposed Sale  
2 Transaction(s).

3 **V. Related Relief**

4 22. The Debtors shall file the a form of asset purchase agreement on the docket of  
5 these Chapter 11 Cases by no later than July 25, 2024.

6 23. The Debtors are authorized to make non-substantive changes to the Bidding  
7 Procedures, the Assumption and Assignment Procedures, the Assumption and Assignment  
8 Notice, the Sale Notice, and any related documents without further order of the Court, including,  
9 without limitation, changes to correct typographical and grammatical errors.

10 24. All persons and entities (whether or not selected as a Qualified Bidder) that  
11 submit a bid for any of the Debtors' Assets during the Sale Process, including at any Auctions,  
12 shall be deemed to have knowingly and voluntarily: (i) submitted to the exclusive jurisdiction of  
13 this Court with respect to all matters related to the terms and conditions of the transfer of Assets,  
14 the Auctions (if any), and any Sale Transaction; (ii) consented to the entry of a final order by the  
15 Court in connection with the Motion or this Order (including any disputes relating to the Bidding  
16 Procedures, the Debtors' conduct in evaluating bids and conducting any Auction(s), the Sale  
17 Process, and/or any Sale Transactions) to the extent that it is later determined that the Court,  
18 absent consent of the parties, cannot enter final orders or judgments in connection herewith  
19 consistent with Article III of the United States Constitution; and (iii) waived any right to jury  
20 trial in connection with any disputes relating to any of the foregoing matters.

21 25. To the extent the Debtors are seeking to sell any assets in which other persons or  
22 entities have an interest or assume and assign any Executory Contracts with counterparties, such  
23 persons, entities, and counterparties' rights to object to such sale or such assumption and  
24 assignment are reserved until the applicable deadline set forth in the Bidding Procedures.

25 26. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d),  
26 7062, or 9014, or any applicable provisions of the Bankruptcy Rules or the Local Rules or  
27 otherwise stating the contrary, the terms and conditions of this Order shall be immediately  
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1 effective and enforceable upon its entry, and any applicable stay of the effectiveness and  
2 enforceability of this Order is hereby waived.

3 27. Prior to mailing and publishing the Sale Notice and the Assumption and  
4 Assignment Notice, as applicable, the Debtors may fill in any missing dates and other  
5 information, conform the provisions thereof to the provisions of this Order, and make such other  
6 non-material changes as the Debtors deem necessary or appropriate.

7 28. To the extent the provisions of this Order are inconsistent with the provisions of  
8 any exhibits referenced herein or with the Motion, the provisions of this Order shall control.

9 29. The Debtors are authorized to take all actions reasonably necessary or appropriate  
10 to effectuate the relief granted in this Order.

11 30. The Court shall retain exclusive jurisdiction with respect to all matters arising  
12 from or related to the implementation, interpretation, or enforcement of this Order.

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14 **IT IS SO ORDERED**  
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**L.R. 9021 CERTIFICATION**

In accordance with L.R. 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

- ☐ The court has waived the requirement of approval under L.R. 9021(b)(1).
- ☐ No party appeared at the hearing or filed an objection to the motion.
- ☐ I have delivered a copy of this proposed order to all counsel who appeared at the

hearing, and each has approved or disapproved the order, or failed to respond, as indicated below.

Approve

Disapprove

US Trustee

- ☐ I certify that this is a case under chapter 7 or 13, that I have served a copy of this order with the motion pursuant to L.R. 9014(g), and that no party has objected to the form or content of the order.

###

Prepared and submitted by:

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*Proposed Counsel to the Debtors and  
Debtors in Possession*

APPROVED/DISAPPROVED

**EXHIBIT A**

**Bidding Procedures**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: 24-50566-hlb  
Chapter 11

Jointly Administered with:  
Case No. 24-50567-hlb  
Case No. 24-50568-hlb  
Case No. 24-50569-hlb  
Case No. 24-50570-hlb  
Case No. 24-50571-hlb

**BIDDING PROCEDURES**

On June 10, 2024, Nevada Copper, Inc., and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

On [ ], 2024, the United States Bankruptcy Court for the District of Nevada (the “**Court**”) entered an order (ECF No. [ ]) (the “**Bidding Procedures Order**”).<sup>2</sup> In the Bidding Procedures Order, the Court approved the following procedures (the “**Bidding Procedures**”) setting forth the process by which the Debtors are authorized to solicit bids for and conduct auction(s) (each, an “**Auction**”) for sale(s) or disposition(s) of all or substantially all of the Debtors’ Assets (as defined herein) or any portion thereof, either as a going concern or as a liquidation (collectively, the “**Sale**,” and each such sale transaction, a “**Sale Transaction**”). On [July ], 2024, the Debtors filed a proposed form of asset purchase agreement (the “**Form APA**”) on the docket of the Chapter 11 Cases.

**Copies of the Bidding Procedures Motion, Bidding Procedures Order, Bidding Procedures, the Form APA, and any other documents filed in the Debtors’ chapter 11 cases are available upon request, by calling the Debtors’ claims and noticing agent, Epiq Corporate Restructuring, LLC (i) for U.S. parties, toll-free at (877) 635-8338, or (ii) for non-U.S. parties, at +1 (971) 306-8096, or by visiting the Debtors’ restructuring website at <https://dm.epiq11.com/case/nevadacopper>.**

**Description of the Assets to Be Auctioned**

The Debtors are seeking to sell all of their assets as a going concern (or as a liquidation) pursuant to the terms of the Form APA. These assets include, but are not limited to, the Debtors’ going-concern business, real property, unexpired leases, executory contracts, equipment,

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not otherwise defined shall have the respective meanings ascribed to such terms in the Bidding Procedures Order or the motion requesting the relief granted therein, as applicable.

inventory, supplies, intellectual property, insurance proceeds, prepaid expenses and deposits, ownership interests, and books and records (collectively, the “*Assets*”), in each case, free and clear of all liens, claims, interests, or other encumbrances, other than expressly assumed liabilities and obligations, to the fullest extent permitted by the Bankruptcy Code.

The ability to undertake and consummate any sale of the Assets shall be subject to competitive bidding as set forth herein and approval by the Court. The Debtors will consider bids that are made for all or substantially all of the Assets. In addition, the Debtors will consider bids for less than substantially all of the Assets, however, the value of such bids will be evaluated against the Debtors intention to sell all of their Assets, and the value and complexity of the sale of any Assets not included in a bid. The Debtors will also consider bids that take the form of a sale of stock of one or more subsidiaries.

Any party interested in submitting a bid for any of the Debtors’ Assets should contact the Debtors’ investment banker, Moelis & Company LLC (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com)).

### Important Dates and Deadlines

Date	Deadline
<b>Monday, July 29, 2024, or as soon as reasonably practicable after entry of the Bidding Procedures Order</b>	Service of Sale Notice; Publication of Sale Notice
<b>Tuesday, July 30, 2024, or as soon as reasonably practicable thereafter</b>	Serve notice of potential assumption and assignment (the “ <i>Assumption and Assignment Notice</i> ”) to contract counterparties
<b>Tuesday, August 20, 2024 (or 21 days after service of an applicable notice of assumption and assignment)</b>	Deadline to object to proposed cure amounts and assumption and assignment (the “ <i>Assumption and Cure Objection Deadline</i> ”)
<b>Friday, September 6, 2024, at 5:00 p.m. (prevailing Pacific Time)</b>	Bid Deadline
<b>Monday, September 9, 2024, at 9:00 a.m. (prevailing Pacific Time)</b>	Qualified Bid Designation Date
<b>Tuesday, September 10, 2024, at 12:00 p.m. (prevailing Eastern Time)</b>	Auction (if necessary) to be held at the New York offices of A&O Shearman, or such other location announced to the bidders and Consultation Parties
<b>Thursday September 12, 2024</b>	Serve Notice of Successful Bidder on Counterparties
<b>Friday, September 19, 2024, at 12:00 p.m. (prevailing Pacific Time)</b>	Deadline to object to the proposed Sale (“ <i>Sale Objection Deadline</i> ”); deadline to object to adequate assurance (“ <i>Adequate Assurance Objection Deadline</i> ”).



<b>Tuesday, September 24, 2024, at 12:00 p.m. (prevailing Pacific Time)</b>	Deadline for responses to objections.
<b>Wednesday, September 25, 2024, at 10:00 a.m. (prevailing Pacific Time)<sup>3</sup></b>	Sale Hearing
<b>Thursday, September 26, 2024</b>	Entry of Sale Order
<b>On or before Monday, October 8, 2024</b>	Closing

### Noticing

#### Consultation Parties

Subject to the terms of these Bidding Procedures, the Debtors shall consult in good faith with counsel to (each of the following parties, to the extent applicable, including such party's advisors, a "**Consultation Party**"):

- i. the Official Committee of Unsecured Creditors (the "**Creditors' Committee**"), c/o Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020, Attn: Eric S. Chafetz and Jeffrey L. Cohen;
- ii. the DIP Lenders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; and 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley;
- iii. KfW IPEX-Bank GmbH, c/o Milbank LLP, 55 Hudson Yards, New York, NY 10001, Attn: Tyson Lomazow and Abigail Debold;
- iv. Pala Investments Limited, c/o Cleary Gottlieb Steen & Hamilton LLP, Attn: Solomon J. Noh (sjnoh@cgsh.com); One Liberty Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer; ~~and~~
- v. Triple Flag Mining Finance Bermuda Ltd., c/o Davis, Graham & Stubbs LLP, 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; and
- vi. ~~v.~~ only to the extent that any Assets situated in Canada are proposed to be sold, the information officer ("**Information Officer**") appointed in the recognition proceedings in respect of the Debtors under the *Companies' Creditors Arrangement Act*.

If any of the foregoing entities (including an individual member of the Creditors' Committee), or an affiliate of such an entity, indicates to the Debtor that it is considering submitting, or actually submits, a ~~Qualified~~ Bid in respect of all or a portion of the Assets, such

<sup>3</sup> Subject to the availability and convenience of the Court.

entity shall cease being a Consultation Party (an “**Identified Party**”); *provided, however*, that (a) in the case of ~~any~~ Identified Party, other than the Creditors’ Committee and the members thereof, such Identified Party shall have the rights afforded to a Consultation Party hereunder only to the extent that such consultation reasonably can be performed without providing such Identified Party any additional confidential information not previously provided to such Identified Party in respect of Assets for which it is considering submitting or actually submits a Bid; and (b) in the case of a member of the Creditors’ Committee that is an Identified Party, the other members of the Creditors’ Committee shall continue to be Consultation Parties; *provided, further*, that the Identified Party shall be excluded from any discussions or deliberations regarding the sale of such Assets and shall not receive any confidential information regarding the sale of such Assets. In the event that an Identified Party (or, if applicable, the affiliate of an Identified Party) indicates that it is no longer interested in submitting a ~~Qualified~~ Bid or, if applicable, continuing to submit Bids, it ~~shall~~ may elect by written notice to the Debtors to cease being an Identified Party and return to being a Consultation Party; *provided*, that, notwithstanding anything to the contrary herein, such party shall no longer be able to submit further Bids; *provided, further, that, if any DIP Lender were to become an Identified Party and such DIP Lender later were to elect to return to being a Consultation Party, then, only if the aggregate Bids are insufficient to repay the obligations under the DIP Facility in full in cash, such DIP Lender shall be permitted to submit Bids (to the extent that other Bids, in the aggregate, would not allow the obligations under the DIP Facility to be repaid in full in cash), with respect to the Assets on which, in its capacity as a Consultation Party, it had not actually received information or participated in discussions.* Nothing in these Bidding Procedures shall affect any rights or obligations under the DIP Facility.

#### Bid Notice Parties

All Bids must be submitted in writing to the following parties (collectively, the “**Bid Notice Parties**”):

- i. the Debtors, c/o Nevada Copper, Inc., 61 E. Pursel Lane, P.O. Box 1640, Yerington, NV 89447 (Attn: Gregory J. Martin (gjmartin@nevadacopper.com));
- ii. the Debtors’ counsel, (a) Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick (fsosnick@aoshearman.com), Sara Coelho (sara.coelho@aoshearman.com), and Cody Wright (cody.wright@aoshearman.com); and (b) Torys LLP, 79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada (Attn: Tony DeMarinis (tdemarinis@torys.com) and Michael Amm (mamm@torys.com)); and
- iii. the Debtors’ investment banker, Moelis & Company, 399 Park Ave 4th Floor, New York, NY 10022 (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com)).

The Debtors shall promptly provide to the Consultation Parties copies of all Bids received by the Debtors, but in no event later than the next business day following receipt.

#### Sale Notice Parties

Information that must be provided to the “**Sale Notice Parties**” under these Bidding Procedures must be provided to the following parties:

- i. the Consultation Parties (as applicable);

- ii. all persons and entities, known by the Debtors and their advisors to have expressed an interest in a transaction with respect to any of the Debtors' Assets during the past 12 months (for whom identifying information and addresses are available to the Debtors);
- iii. all persons and entities known by the Debtors to have asserted any lien, claim, encumbrance, or other interest in any Asset (for whom identifying information and addresses are available to the Debtors), including all known holders of claims and all creditors prior to the date of entry of the Bidding Procedures Order;
- iv. all parties to litigation with the Debtors that are known as of the date of entry of the Bidding Procedures Order, or their counsel of record;
- v. all Counterparties to Assigned Contracts and Leases under the proposed Sale;
- vi. any Governmental Authority known to have a claim in these Chapter 11 Cases;
- vii. the United States Attorney for the District of Nevada;
- viii. the Office of the Attorney General (or equivalent) in each state or province in which the Debtors operate;
- ix. the Office of the Secretary of State (or equivalent) in each state or province in which the Debtors operate or are organized;
- x. the Federal Trade Commission;
- xi. the United States Attorney General/Antitrust Division of Department of Justice;
- xii. the Information Officer c/o Alvarez & Marsal Canada Inc., Royal Bank Plaza, South Tower 200 Bay Street, Suite 3501 Toronto ON M5J 2J1 Canada, (Attn: Al Hutchens (ahutchens@alvarezandmarsal.com));
- xiii. Counsel to the Information Officer, Cassels Brock & Blackwell LLP, Suite 3200, Bay Adelaide Centre – North Tower, 40 Temperance Street, Toronto, Ontario M5H 0B4 (Attn: Natalie E. Levine (nlevine@cassels.com));
- xiv. all of the Debtors' known creditors (for whom identifying information and addresses are available to the Debtors);
- xv. the Master Service List maintained by the Debtors' Notice and Claims Agent; and
- xvi. all other Persons directed by the Court (for whom identifying information and addresses are available to the Debtors).

#### Public Announcement of Sale and Auction

By July 29, 2024, or as soon as reasonably practicable after entry of the Bidding Procedures Order, the Debtors shall publish the Sale Notice, with any modifications necessary for ease of publication, on one occasion in *The Wall Street Journal (National Edition)*, to provide notice to any other potential interested parties, and post the Sale Notice on their case website, <https://dm.epiq11.com/case/nevadacopper>.

### Potential Bidder Requirements

To participate in the bidding process or otherwise be considered for any purpose hereunder, including to receive access to due diligence materials, a person or entity interested in purchasing the Assets or part of the Assets (a “*Potential Bidder*”) must deliver or have previously delivered to the Debtors the following preliminary documentation (collectively, the “*Preliminary Bid Documents*”):

- i. an executed confidentiality agreement (a “*Confidentiality Agreement*”) in form and substance acceptable to the Debtors;
- ii. sufficient information that the Potential Bidder has or can reasonably obtain the financial capacity to close a purchase of any portion, all, or substantially all of the Debtors’ Assets, the adequacy of which must be acceptable to the Debtors, in consultation with the Consultation Parties;
- iii. a statement indicating whether the Potential Bidder is requesting consent from the Debtors to partner with or otherwise work with any other interested party in connection with the potential submission of a joint Bid, the identity and domicile of any such party or parties, and a concise description of the nature of such partnership or joint Bid to the extent reasonably practicable, which the Debtors may approve in their reasonable business judgment, in consultation with the Consultation Parties, on a case-by-case basis; and
- iv. any other information required (as determined by the Debtors in consultation with the Consultation Parties) to allow the Debtors, in consultation with the Consultation Parties, to determine that the Potential Bidder intends to receive due diligence information solely for purposes consistent with these Bidding Procedures.

The Debtors, in consultation with their advisors and the Consultation Parties, will determine and notify each Potential Bidder whether such Potential Bidder has submitted adequate documents so that such Potential Bidder may proceed to conduct due diligence and submit a bid (such Potential Bidder, an “*Acceptable Bidder*”). The Debtors shall promptly inform the Consultation Parties of any entity that becomes an Acceptable Bidder. **For the avoidance of doubt, no Potential Bidder will be permitted to conduct any due diligence without entry into a Confidentiality Agreement.**

Promptly following the entry of these Bidding Procedures, the Debtors shall provide copies of all materials (which may be anonymized or in summary form as the Debtors deem necessary to protect confidentiality and preserve the integrity of the Sale Process, but which shall include at a minimum an indication of whether a bidder is a strategic or financial bidder and such bidder’s country of domicile) delivered by any Potential Bidder prior to the entry of these Bidding Procedures to the Consultation Parties and their counsel.

### Qualified Bid Requirements

To participate in the Auction, an Acceptable Bidder (it being understood that the Stalking Horse Bidder, if any, may satisfy the items below via the Stalking Horse Bid) must deliver to the Debtors and their advisors an irrevocable offer for the purchase of some or all of the Assets (each, a “*Bid*”), and shall meet the following criteria, in each case, on or prior to the Bid Deadline (as defined below):

- i. **Purchased Assets and Assumed Liabilities:** Each Bid must clearly state the following: (a) the particular Assets, or the portion thereof identified with reasonable specificity, to be purchased and (b) the liabilities and obligations to be assumed, including any debt and cure costs to be assumed;
- ii. **Good Faith Deposit:** Except with respect to any Credit Bid, the Bid must be accompanied by a cash deposit in the amount equal to 10% of the aggregate purchase price of the Bid to be held in an interest-bearing escrow account to be identified and established by the Debtors (the “**Good Faith Deposit**”) on terms acceptable to the Debtors in consultation with the Consultation Parties. To the extent that a Bid is modified at or prior to the Auction, the applicable Acceptable Bidder must adjust its Good Faith Deposit so that it equals 10% of the increased aggregate purchase price promptly and in no event later than one business day following the conclusion of the Auction;
- iii. **Purchase Price:** Each Bid must (a) clearly set forth the purchase price to be paid, assuming a purchase of the applicable Assets and any assumption of liabilities (the “**Purchase Price**”), (b) identify separately the cash and non-cash components of the Purchase Price, including a cash component sufficient to pay any Stalking Horse Bid Protections in full, in cash, at Closing, and (c) indicate the allocation of the Purchase Price among the applicable Assets; *provided* that, for the avoidance of doubt, such allocation shall not prejudice the rights of any party in interest to contest such allocation. The Purchase Price should be a single point value in U.S. Dollars for the applicable Assets on a cash-free, debt-free basis. Any Bid for substantially all of the Assets must also include a statement as to whether the Bid is conditioned on purchasing all Assets or whether the Qualified Bid should be viewed as a separate Bid for one or more sets of Assets. The Debtors will consider the value to the estate as a whole when evaluating bids for only certain of the Assets. The Debtors reserve the right, in consultation with the Consultation Parties, to ask any Acceptable Bidder to allocate the value ascribed to their Bid for any particular Asset and to inquire about any significant assumption on which such valuations are based;
- iv. **Same or Better Terms; Bid Documents:** Each Bid must include duly executed and non-contingent, where applicable, transaction documents necessary to effectuate the transactions contemplated in the Bid (the “**Bid Documents**”). The Bid Documents shall include: (a) the form of purchase agreement on which the Acceptable Bidder is prepared to transact, together with a redline of such agreement marked against the Form APA, (b) a schedule of contracts and leases to be assumed to the extent applicable to the Bid, (c) any other material documents integral to such Bid, and (d) a statement from the Acceptable Bidder that (1) it is prepared to enter into and consummate the transactions contemplated in the form purchase agreement, no later than ten days after the conclusion of the Auction, (or, if no Auction is held, the Bid Deadline (as defined below)), or if a later date is required, the reasons that such a later date is required; and (2) that the Bid will be irrevocable (whether or not such Qualified Bid is selected as the Successful Bid or next highest or otherwise best bid (the “**Back-Up Bid**”)) until the consummation of the Sale Transaction;
- v. **No Qualified Bidder Bid Protections:** Each Bid, other than a Bid that has been designated as a Stalking Horse Bid (as defined herein), must include a statement that the Bid does not entitle such bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment or reimbursement and a



waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to bidding for the applicable Assets;

- vi. **Employee Obligations:** Each Bid must indicate whether the Acceptable Bidder intends to hire employees of the Debtor (or if applicable, employees that are primarily employed in connection with the applicable Assets included in such Bid). The employees must be explicitly identified in an accompanying Schedule;
- vii. **Sources of Financing:** To the extent that the Bid is not accompanied by evidence of the Acceptable Bidder's capacity to consummate the Sale Transaction set forth in its Bid with cash on hand, the Bid must include committed financing, documented to the Debtors' satisfaction, in consultation with the Consultation Parties, that demonstrates that the Acceptable Bidder has received sufficient debt and equity funding commitments to satisfy the Acceptable Bidder's obligations under the proposed Sale Transaction and other obligations under its Bid, including providing adequate assurance of future performance under all Contracts proposed to be assumed by such Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors;
- viii. **Contingencies; No Financing or Diligence Outs:** The Bid must not contain any contingencies as to the validity, effectiveness, or binding nature of the Bid, including, without limitation, contingencies for due diligence and inspection or financing of any kind (including any conditions pertaining to financial performance, conditions, or prospects) and all diligence must be completed before the Bid Deadline.
- ix. **Identity:** Each Bid must fully disclose the identity and domicile of each entity and each entity's shareholders, partners, investors, and ultimate controlling entities that will be bidding for or purchasing the applicable Assets or otherwise participating in connection with such Bid, and the complete terms of any such participation, along with sufficient evidence that the Acceptable Bidder is legally empowered to complete the transactions on the terms contemplated by the parties. Each Bid must also include contact information for the specific person(s) whom Moelis and A&O Shearman should contact regarding such Bid;
- x. **As-Is, Where-Is:** Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (a) has had an opportunity to conduct any and all due diligence prior to making its offer; (b) has relied solely upon its own independent review, investigation, and inspection of any documents and the assets in making its Bid; and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the completeness of any information provided in connection therewith, except as expressly stated in the Acceptable Bidder's proposed purchase agreement;
- xi. **Authorization:** Each Bid must contain evidence that the Acceptable Bidder has obtained all necessary authorizations or approvals from its shareholders or its board of managers or directors, or any other internal and other approvals, as applicable, with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid;

- xii. **Joint Bids:** The Debtors will be authorized to approve joint Bids in their reasonable business judgment, in consultation with the Consultation Parties, on a case-by-case basis, provided that a joint bid meets the Qualified Bid Requirements and the applicable bidders otherwise comply with these Bidding Procedures;
- xiii. **Adequate Assurance of Future Performance:** Each Bid must (a) identify any executory contracts (the “*Executory Contracts*”) and any unexpired leases (the “*Unexpired Leases*”) to be assumed or assumed and assigned in connection with the proposed Sale Transaction, (b) provide for the payment of all cure amounts (the “*Cure Amounts*”) related to such Executory Contracts and Unexpired Leases by the Acceptable Bidder, (c) demonstrate, in the Debtors’ reasonable business judgment, in consultation with the Consultation Parties (as defined herein), that the Acceptable Bidder can provide adequate assurance of future performance under all such Executory Contracts and Unexpired Leases sufficient to satisfy the requirements of sections 365(b)(3) and 365(f)(2)(B) of the Bankruptcy Code, and (d) provide the following documentation: (1) the legal name of the proposed assignee of Unexpired Leases (the “*Proposed Assignee*”) and any guarantors, as applicable; and (2) financial statements for the calendar years ended 2022 and 2023 for the Proposed Assignee and any guarantors, as applicable, and other financial information about the Proposed Assignee to demonstrate its ability to provide adequate assurance of future performance;
- xiv. **Acknowledgement of Compliance with Bidding Procedures, Bidding Order, Bankruptcy Code, and Non-Bankruptcy Law;** Each Bid must acknowledge its compliance in all respects with these Bidding Procedures, the Bidding Procedures Order, Bankruptcy Code and any applicable non-bankruptcy law;
- xv. **No Collusion:** The Acceptable Bidder must acknowledge in writing (a) that it has not engaged in any collusion with respect to any Bids or the Sale Transaction, specifying that it did not agree with any Acceptable Bidders or Potential Bidders to control price; and (b) agree not to engage in any collusion with respect to any Bids, the Auction, or the Sale Transaction. For the avoidance of doubt, this requirement does not restrict Potential Bidder(s) from working with other Potential Bidder(s) with the Debtors’ prior written consent (email shall suffice) following the Debtors’ consultation with the Consultation Parties;
- xvi. **Good Faith Offer:** The Bid must constitute a good faith, *bona fide* offer to consummate the Sale Transaction;
- xvii. **Irrevocable:** Each Bid must state that in the event such Bid is chosen as the Back-Up Bid (as defined below), it shall remain irrevocable until the Debtors and the Successful Bidder consummate the applicable Sale Transaction;
- xviii. **Back-Up Bid:** Each Bid shall provide that the Acceptable Bidder will serve as a Back-Up Bidder (as defined below) if their Bid is the next highest or otherwise best bid;
- xix. **Regulatory Approvals and Covenants:** A Bid must set forth each regulatory and third-party approval required for the Acceptable Bidder to consummate the Sale Transaction, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval would not be expected in time to allow a the closing of the Sale Transaction to occur by October 8, 2024,

those actions the Acceptable Bidder will take to ensure receipt of such approvals as promptly as possible);

- xx. **Time Frame for Closing:** A Bid by an Acceptable Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame for the Closing set forth above, or on such timeframe as may be acceptable to the Debtors, in consultation with the Consultation Parties; *provided*, that if the Acceptable Bidder expects to be unable to close on its Bid on or before October 7, 2024, its Bid should indicate the date on which it expects to be able to close;
- xxi. **No Fees:** Each Acceptable Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction, and by submitting its Bid, the Acceptable Bidder is agreeing to disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or other similar form of compensation; and that, for the avoidance of doubt, each Acceptable Bidder by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code; *provided* that the Debtors are authorized in their reasonable business judgment, in consultation with the Consultation Parties, to provide the Stalking Horse Bid Protections (as defined below) to one or more stalking horse bidders (each, a “***Stalking Horse Bidder***”) in accordance with these Bidding Procedures;
- xxii. **Adherence to Bidding Procedures:** By submitting its Bid, each Acceptable Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction;
- xxiii. **Consent to Jurisdiction:** The Acceptable Bidder must submit to the jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the Debtors’ qualification of Bids, to the Auction, the Sale, the Sale Transaction and the construction and enforcement of these Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the Bids, the Bid Documents, and any and all other agreements entered into in connection with any proposed Sale Transaction, and the Closing, as applicable;
- xxiv. **Conditions to Closing:** Each Bid must identify with particularity each and every condition to closing, including the Executory Contracts and Unexpired Leases for which assumption and assignment is required; and
- xxv. **Minimum Bid Requirement:** If there is a Stalking Horse Bid, in order to be a Qualified Bid, each Bid other than the Stalking Horse Bid must set forth a Purchase Price with a value, as determined by the Debtors in their reasonable business judgment, that exceeds in aggregate the sum of (a) the Purchase Price of such Stalking Horse Bid, (ii) the amount of the applicable Stalking Horse Bid Protections, and (iii) \$1,000,000 (collectively, the “***Minimum Bid Requirements***”).

Only Bids fulfilling all of the preceding requirements contained herein may be deemed to be Qualified Bids; *provided*, that a Bid not otherwise satisfying all of the preceding requirements may be designated a Qualified Bid, in the Debtors’ reasonable business judgment, in consultation



with the Consultation Parties. Only those parties submitting Qualified Bids may be deemed to be Qualified Bidders.

For the avoidance of doubt, the Stalking Horse Bidder, if any, shall be deemed to be a Qualified Bidder and the Stalking Horse Bid, if any, shall be considered a Qualified Bid, such that any Stalking Horse Bidder shall be entitled to participate in the Auction.

Neither the Debtors nor any of their advisors are making or have at any time made any warranties or representations of any kind or character, express or implied, with respect to the Assets, including, but not limited to, any warranties or representations as to operating history or projections, valuation, governmental approvals, the compliance of the Assets with governmental laws, the truth, accuracy, or completeness of any documents related to the Assets, or any other information provided by or on behalf of the Debtors to a bidder, or any other matter or thing regarding the Assets. All bidders must acknowledge and agree that upon closing the Debtors shall sell and transfer to the Successful Bidder and the Successful Bidder shall accept the applicable Assets, except to the extent expressly provided in the Bankruptcy Court's order approving the Sale Transaction. Neither the Debtors nor any of their advisors will be liable for or bound by any express or implied warranties, guaranties, statements, representations, or information pertaining to the Assets or relating thereto that the Debtors, any advisor, or agent representing or purporting to represent the Debtors to whomever might have made or furnished, directly or indirectly, orally or in writing, unless (with respect to the Debtors only) specifically set forth in the Bankruptcy Court's order approving the Sale Transaction.

Within one business day after the Bid Deadline (the "***Qualified Bid Designation Date***"), the Debtors, in consultation with the Consultation Parties, shall determine which Acceptable Bidders are Qualified Bidders and will notify the Acceptable Bidders whether Bids submitted constitute Qualified Bids, which will enable such Qualified Bidders to participate in the Auction. Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors; *provided* that if the Debtors receive a Bid prior to the Bid Deadline that does not satisfy the requirements of a Qualified Bid, the Debtors may provide the Acceptable Bidder with the opportunity to remedy any deficiencies prior to the Auction.

#### **Right to Credit Bid**

The DIP Lenders, and any other Qualified Bidder who has a valid and perfected lien on any Assets of the Debtors' estates, each (a "***Secured Creditor***") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; provided that a Secured Creditor shall have the right to credit bid its claim (a "***Credit Bid***") only with respect to the collateral by which such Secured Creditor is secured; *provided* that (i) any Credit Bid shall be conditioned on payment in full in cash of the DIP Facility, unless the DIP Lenders consent to a different treatment of such claims; (ii) the rights of any other Secured Creditor to challenge a Credit Bid that does not repay the secured claim of such Secured Creditor are fully preserved; and (iii) any Credit Bid must meet the above requirements for a Qualified Bid, including, if a Stalking Horse Bidder is approved, the Minimum Bid Requirements.

#### **Obtaining Due Diligence Access**

Only Acceptable Bidders shall be eligible to receive due diligence information, access to the Debtors' electronic data room, and additional non-public information regarding the Debtors. Beginning on the date the Debtors determine that a party is an Acceptable Bidder, or as soon as reasonably practicable thereafter, the Debtors will provide such Acceptable Bidder with access to an electronic data room and reasonable due diligence information, as requested by such Acceptable Bidder, as soon as reasonably practicable after such request. The Debtors shall

promptly consult with the Consultation Parties (a) with respect to any due diligence disputes that arise concerning any Acceptable Bidder and (b) prior to revoking due diligence access to any such entity. The Debtors shall post substantially all written due diligence provided to any Acceptable Bidder to the Debtors' electronic data room for the benefit of all Acceptable Bidders.

Acceptable Bidders will not, directly or indirectly, contact or initiate or engage in discussions in respect of matters relating to the Debtors or a potential transaction with any customer, supplier, or other contractual counterparty of the Debtors without the prior written consent of the Debtors. The due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Debtors shall have no obligation to furnish any due diligence information.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors shall not furnish any confidential information relating to the Debtors or a potential transaction to any person except an Acceptable Bidder or such Acceptable Bidder's duly authorized representatives to the extent provided in an applicable Confidentiality Agreement.

The Debtors and their advisors, after consultation with the Consultation Parties, shall be permitted to coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; *provided* that the Debtors may decline, after consultation with the Consultation Parties, to provide such information to Acceptable Bidders who, in the Debtors' reasonable business judgment have not established, or who have raised doubt, that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate a Sale Transaction. For any bidder who is a competitor or customer of the Debtors or is affiliated with any competitors or customers of the Debtors, the Debtors reserve the right, in consultation with the Consultation Parties, to withhold or modify any diligence materials that the Debtors determine are business-sensitive or otherwise inappropriate for disclosure to such bidder.

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets (i) to any person or entity who is not an Acceptable Bidder and (ii) if and to the extent doing so would (a) violate any laws to which the Debtors are subject, including any privacy laws; (b) result in the disclosure of any trade secrets of third parties in breach of any contract with such third party; (c) violate any legally-binding obligation of any Debtor with respect to confidentiality, non-disclosure, or privacy; or (d) jeopardize protections afforded to any Debtor under the attorney-client privilege or the attorney work product doctrine (provided, the Debtors shall use commercially reasonable efforts to (1) provide such access as can be provided (or otherwise convey such information regarding the applicable matter as can be conveyed) without violating such privilege, doctrine, contract, obligation, or law; and (2) provide such information in a manner without violating such privilege, doctrine, contract, obligation or law).

The Debtors shall provide the Consultation Parties periodic updates regarding the activity of each Acceptable Bidder in the electronic data room in a form and frequency mutually acceptable to the Debtors and the Consultation Parties; provided that the Debtors shall cooperate in good faith to provide any such information reasonably requested by the Consultation Parties.

#### Communications with Acceptable Bidders (including Qualified Bidders)

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive direct communications, including any diligence requests, from Acceptable Bidders (including any Qualified Bidders) shall be through Moelis.

#### Due Diligence and Indications of Interest from Acceptable Bidders (including Qualified Bidders)

Each Acceptable Bidder (including, as applicable, any Qualified Bidder) shall:

- i. Provide a preliminary indication of interest as requested by the Debtors or their advisors, together with any other information or materials requested in connection therewith (collectively, an “***Indication of Interest***”); and
- ii. Comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors regarding the ability of such Acceptable Bidder (including any Qualified Bidder) to consummate its contemplated transaction.

Failure by an Acceptable Bidder (including, as applicable, any Qualified Bidder, other than the Stalking Horse Bidder, if any) to provide an acceptable Indication of Interest or comply with reasonable requests for additional information and due diligence access may be a basis for the Debtors to determine that such bidder is no longer an Acceptable Bidder or that a Bid made by such bidder is not a Qualified Bid.

### **Bid Deadline**

An Acceptable Bidder that desires to make a bid on one or more of the Assets shall deliver Binding Bids to the Bid Notice Parties no later than **September 6, 2024, at 5:00 p.m. (prevailing Pacific Time)** (the “***Bid Deadline***”); provided that the Debtors may, in consultation with the Consultation Parties, extend the Bid Deadline for any reason whatsoever, in their reasonable business judgment, for all or certain Potential Bidders, without further order of the Court, subject to providing notice to all Potential Bidders and the Consultation Parties.

### **Evaluation of Qualified Bids**

The Debtors shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors’ business judgment, and in consultation with the Consultation Parties, the highest or otherwise best Qualified Bid or combination of Qualified Bids for any Assets (the “***Starting Bid***”). As stated above, the Debtors shall promptly provide to the Consultation Parties copies of all Bids received by the Debtors, including the Starting Bid, but in no event later than the next business day following receipt; *provided* that the Consultation Parties and the U.S. Trustee must treat such Bids and any related information as confidential and shall not publicly disclose such information without the prior written consent of the Debtors.

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors, in addition to any other factors that the Debtors deem appropriate: (i) the amount and nature of the total consideration; (ii) the Qualified Bidder’s ability to close a transaction and the timing thereof; (iii) the net economic effect of any changes to the value to be received by each of the Debtors’ estates from the transaction contemplated by the Bid Documents; (iv) the tax consequences of such Qualified Bid; and (v) the liabilities and obligations to be assumed pursuant to such Qualified Bid. Prior to commencing the Auction, the Debtors shall notify the Stalking Horse Bidder, if any, and all Qualified Bidders as to which Qualified Bid is the Starting Bid for the Auction with respect to the applicable assets. At such time, the Debtors shall also distribute copies of the Starting Bid to the Stalking Horse Bidder, if any, and each Qualified Bidder.

### **Stalking Horse Protections**

At any time until 20 days prior to the Bid Deadline, the Debtors shall be authorized, but not obligated, in an exercise of their reasonable business judgment, (i) in consultation with the Consultation Parties and (ii) with the consent of the DIP Lenders, to (a) select one or more Acceptable Bidders to act as the Stalking Horse Bidder in connection with the Auction for such

assets, and (b) in connection with any stalking horse agreement with a Stalking Horse Bidder, and subject to the terms set forth below, (x) provide a break-up fee and (y) agree to reimburse the reasonable and documented out of pocket fees and expenses the (“***Stalking Horse Bid Protections***”) in an aggregate amount of break-up fee and reimbursement of expenses not to exceed three percent of the Purchase Price; *provided, however*, that if a DIP Lender, or any affiliate of a DIP Lender, has expressly indicated to the Debtors that it is considering submitting, or has actually submitted, a Bid for any Assets, it shall not have consent rights with respect to the selection of the Stalking Horse Bidder or any protections to be afforded to such Stalking Horse Bidder.

In the event that the Debtors enter into a Stalking Horse Agreement with one or more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice and proposed form of order with the Court (the “***Stalking Horse Notice***”) and serve the Stalking Horse Notice on the Stalking Horse Bidder and the U.S. Trustee. The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder’s parent company or sponsor); (ii) set forth the amount of the Stalking Horse Bidder’s bid (the “***Stalking Horse Bid***”) and what portion (if any) is cash; (iii) state whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid; (iv) specify any proposed Bid Protections (including the amount and calculation thereof); (v) specify the Assets included in the Stalking Horse Bid; (vi) attach the Stalking Horse Agreement, including all exhibits, schedules and attachments thereto; and (vii) set forth the deadline to object to the Stalking Horse Bidder designation and any Bid Protections. If there are no objections to the Stalking Horse Notice within five business days of filing with the Court, (the “Notice Period”), the Debtors may submit a revised proposed form of order to the Court that incorporates any comments received during the Notice Period that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement, which the Court may enter without the need for further hearing. If a party timely files an objection to the Stalking Horse Notice, the Court shall hold a hearing after the expiration of the Notice Period or as soon thereafter as the Court is available.

Except as otherwise set forth herein, no person or entity, other than a Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fees, “topping,” termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

### **No Qualified Bids**

If no Qualified Bids other than the Stalking Horse Bid, if any, are received for the Assets included in the Stalking Horse Bid by the Bid Deadline, then the Debtors may cancel the Auction with respect to such Assets. If a Stalking Horse Bid is the only Qualified Bid received by the Bid Deadline, the Debtors may decide, in their reasonable business judgment, after consultation with the Consultation Parties, to designate the Stalking Horse Bid as the Successful Bid (as defined below) as to the applicable Assets and pursue entry of an order approving a Sale Transaction with respect to such Assets to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement. The Debtors promptly shall file notice of any cancellation of the Auction with the Court.

### **Auction**

Other than as expressly set forth herein, if the Debtors receive more than one Qualified Bid for the Assets (or, if applicable, any portion of Assets) by the Bid Deadline, the Debtors shall conduct the Auction to determine the Successful Bidder in their reasonable business judgment, in consultation with the Consultation Parties, with respect to such Assets or portion of Assets in



accordance with the Auction Procedures (as defined below). If the Debtors do not receive a Qualified Bid for any particular Asset by the Bid Deadline, the Debtors will not conduct the Auction with respect to such Asset.

The Auction shall commence on **September 10, 2024 at 12:00 p.m. (prevailing Eastern Time) at the New York offices of A&O Shearman** or such later time or other place as the Debtors determine in consultation with the Consultation Parties.

The Auction will be conducted in accordance with the following procedures (the “**Auction Procedures**”):

- i. the Auction will be conducted openly; *provided* that, except as otherwise determined by the Debtors in consultation with the Consultation Parties, only (a) the Debtors, (b) the Consultation Parties, (c) representatives of the Office of the United States Trustee, (d) the Creditors’ Committee, (e) any other Qualified Bidders, and (f) the respective representatives and professionals of the foregoing parties shall be entitled to participate in the Auction, however, any party in interest may be permitted to attend the Auction;
- ii. except as otherwise provided herein, only Qualified Bidders shall be entitled to bid at the Auction;
- iii. the Qualified Bidders, including Stalking Horse Bidders, if any, must appear in person or through duly-authorized representatives at the Auction;
- iv. bidding shall begin with the Starting Bid;
- v. subsequent bids (each, an “**Overbid**”) may only be made at the Auction and shall be at least a 2% increase in cash, cash equivalents, or other such consideration that the Debtors, in their reasonable business judgment, in consultation with the Consultation Parties, deem equivalent over the previous bid (a “**Minimum Overbid**”), and each successive Overbid shall exceed the then-existing Overbid by an incremental amount that is not less than the Minimum Overbid. The Debtors may, in their reasonable business judgment, in consultation with the Consultation Parties, announce increases or reductions to the Minimum Overbid at any time during the Auction. For the avoidance of doubt, each successive Bid that a Qualified Bidder may submit at the Auction must contain a Purchase Price in cash, cash equivalents, or such other consideration that the Debtors, in their reasonable business judgment, in consultation with the Consultation Parties, deem equivalent that exceeds the then existing highest Bid by at least the amount of the Minimum Overbid
- vi. at the commencement of the Auction, the Debtors, in consultation with the Consultation Parties, may announce procedural and related rules governing the Auction, including time periods available to all Qualified Bidders to submit successive bid(s);
- vii. each Qualified Bidder will be permitted a reasonable time to respond to previous bids at the Auction, as determined by the Debtors in consultation with the Consultation Parties;
- viii. during the course of the Auction, the Debtors shall, after submission of each Overbid and consultation with the Consultation Parties, promptly inform each Qualified Bidder of the terms of the previous bids and inform each Qualified

Bidder which Overbid(s) reflect, in the Debtors' view, in consultation with the Consultation Parties, the highest or otherwise best bid(s) for the applicable Assets (the "***Prevailing Highest Bid***");

- ix. to remain eligible to participate in the Auction, in each round of bidding, each Qualified Bidder, except the Qualified Bidder(s) that submitted the Prevailing Highest Bid, must submit an Overbid with respect to such round of bidding. To the extent a Qualified Bidder that did not submit the Prevailing Highest Bid fails to submit an Overbid with respect to such round of bidding, such Qualified Bidder shall be disqualified from continuing to participate in the Auction; *provided, however*, that the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties (to the extent such Consultation Parties have not submitted a Qualified Bid), may permit any such bidder to (a) re-join the Auction after submitting an Overbid or (b) join another Qualified Bidder in the Auction as an additional purchaser party or debt or equity financing source;
- x. the Auction will be transcribed to ensure an accurate recording of the bidding at the Auction;
- xi. each Qualified Bidder will be required to confirm on the record that it has not engaged, and will not engage, in any collusion with respect to the bidding or any Sale Transaction. For the avoidance of doubt, this requirement does not restrict Qualified Bidder(s) from working with other Qualified Bidder(s) with the Debtors' prior written consent;
- xii. each Qualified Bidder will be required to confirm that its bid is a good faith, *bona fide* offer and it intends to consummate the Sale Transaction if selected as the Successful Bid in accordance with these Bidding Procedures (as may be modified in accordance herewith at the Auction);
- xiii. the Court and the Debtors will not consider bids made after the Auction has been closed;
- xiv. the Debtors, in their reasonable business judgment, in consultation with the Consultation Parties, may reject, at any time before entry of an order of the Court approving a Successful Bid, any Bid that the Debtors determine is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale Transaction, or (c) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders;
- xv. the Debtors have the right to request any additional information that will allow the Debtors to make a reasonable determination as to a Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by their proposal and any further information that the Debtors believe is reasonably necessary to clarify and evaluate any Bid made by a Qualified Bidder during the Auction;
- xvi. the Debtors reserve the right, in their reasonable business judgment, and in consultation with the Consultation Parties, to adjourn the Auction one or more times to, among other things, (a) facilitate discussions between the Debtors and Qualified Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business

1 judgment, and in consultation with the Consultation Parties, may require in order  
2 to determine that the Qualified Bidder has sufficient internal resources or has  
received sufficient non-contingent debt and equity funding commitments to  
consummate the proposed transaction at the prevailing amount; and

- 3 xvii. notwithstanding anything herein to the contrary, the Debtors may, in consultation  
4 with the Consultation Parties, at any time choose to adjourn the Auction by  
announcement at the Auction; *provided*, that in the event of an adjournment of the  
5 Auction, the Debtors promptly shall file notice thereof with the Court.

6 Any Auction rules adopted by the Debtors will not modify any of the terms of the  
Stalking Horse purchase agreement, if any, or the rights of the Stalking Horse Bidder, if any,  
7 without the consent of the Stalking Horse Bidder, if any.

### 8 Acceptance of the Successful Bidder

9 The Auction shall continue until (i) there is only one Qualified Bid or a combination of  
Qualified Bids that the Debtors determine, in their reasonable business judgment and in a  
10 manner consistent with the exercise of their fiduciary duties and outlined below in further detail,  
and in consultation with the Consultation Parties, is the highest or otherwise best bid to purchase  
the applicable Assets (each, a “**Successful Bid**”), and (ii) the Debtors determine, in their  
11 reasonable business judgment, in consultation with the Consultation Parties, that further bidding  
is unlikely to result in a different Successful Bid or Successful Bids that would be reasonably  
12 acceptable to the Debtors, at which point, the Auction will be closed.

13 When determining the highest or otherwise best Qualified Bid, as compared to other  
Qualified Bids, the Debtors, in consultation with the Consultation Parties, may consider the  
14 following factors in addition to any other factors that the Debtors deem appropriate: (i) the  
amount and nature of the total consideration, which includes but is not limited to, assumed  
15 liabilities (administrative liabilities, cure payments), and the amount of executory contracts and  
leased locations being assumed; (ii) the Qualified Bidder’s ability to close a transaction and the  
16 timing thereof; (iii) the net economic effect of any changes to the value to be received by each of  
the Debtors’ estates from the transaction contemplated by the Bid Documents; (iv) the tax  
17 consequences of such Qualified Bid; and (v) any other consideration that may impact the  
Debtors’ estates or stakeholders.

18 Any Qualified Bidder that submits a Successful Bid will be deemed a “Successful  
19 Bidder” with respect to the Assets contemplated for the purchase pursuant to such Successful  
Bid. The Debtors shall file notice of the Successful Bid and the Successful Bidder with the  
20 Court as soon as reasonably practicable after conclusion of the Auction. Following conclusion  
of the Auction and selection of a Successful Bidder, the Debtors shall present the results of the  
21 Auction at a hearing (the “**Sale Hearing**”) at which the Debtors shall seek Court approval to  
enter into a binding purchase agreement with the Successful Bidder on the terms of the  
22 Successful Bid (the order approving such entry, the “**Definitive Purchase Agreement Order**”).  
For the avoidance of doubt, the Definitive Purchase Agreement Order shall deem the Debtors’  
23 selection of the Successful Bid final; *provided* that, notwithstanding anything to the contrary in  
these Bidding Procedures, nothing in these Bidding Procedures shall require the board of  
24 directors, board of managers, or such similar governing body of any Debtor to take or refrain  
from taking any action that it determined in good faith, in consultation with counsel, would be  
25 inconsistent with applicable law or its fiduciary obligations under applicable law.

26 Within one business day of the selection of the Successful Bidder, such Successful  
Bidder (including both the Stalking Horse Bidder, if any, and Back-Up Bidder, if applicable)  
27 shall make a cash deposit, in addition to its Good Faith Deposit, in an amount calculated on the

basis of the increased aggregate purchase price, submitted by wire transfer of immediately available funds to an escrow account to be identified and established by the Debtors pursuant to a customary and reasonable escrow agreement. Each Successful Bidder and the Debtors shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which each such Successful Bid was made.

#### **Designation of Back-Up Bidder**

The Back-Up Bid to purchase any applicable Assets (the “**Back-Up Bidder**”) will be determined by the Debtors at the conclusion of the Auction, in consultation with the Consultation Parties, and will be announced at that time to all the Qualified Bidders participating in the Auction. Following consultation with the Consultation Parties, the Debtors’ selection of a Back-Up Bid shall be deemed final, and the Debtors shall not accept any further bids or offers to submit a bid after such selection. The Debtors will be authorized, but not required, to consummate the Transaction with the Backup Bidder without further order of the Bankruptcy Court, so long as such Backup Bid shall have been approved in connection with the Bankruptcy Court’s approval of the Successful Bid, or subject to Bankruptcy Court approval if not.

If for any reason a Successful Bidder fails to consummate the purchase of such assets within the time permitted, then the Back-Up Bidder will automatically be deemed to have submitted the Successful Bid for such assets, and the Back-Up Bidder shall be deemed a Successful Bidder for such assets and shall be required to consummate any Sale Transaction with the Debtors as soon as is reasonably practicable without further order of the Court in accordance with the terms and conditions of such Back-Up Bidder’s Bid, following a notice being filed with the Court; provided, however, that the Debtors shall first provide notice to Contract counterparties implicated by any Back-Up Bidder’s Bid and an opportunity to object to the assignment to the Back-Up Bidder within 5 days of receiving such notice. To the extent any objections are raised and remain unresolved, the Court may schedule a hearing on an expedited basis to adjudicate such objection.

The Back-Up Bid shall remain open and irrevocable until the earliest to occur of (i) 45 days after completion of the Auction, (ii) consummation of a Sale Transaction with one or more Successful Bidders at an Auction, and (iii) the release of such Back-Up Bid by the Debtors in writing (the “Back-Up Termination Date”). The Debtors shall return the Back-Up Bidder’s deposit owed within five business days of the Back-Up Termination Date.

#### **Approval of the Sale Transaction**

A hearing to consider approval of each Sale Transaction (the “Sale Hearing”), currently is scheduled to take place on **September 25, 2024, at 10:00 a.m.** (prevailing Pacific Time), before the Honorable Hilary L. Barnes at the United States Bankruptcy Court for the District of Nevada, C. Clifton Young Federal Building, 300 Booth Street, Reno, NV 89509 (Courtroom 2) and telephonically.

At the Sale Hearing certain findings will be sought from the Court regarding the Auction, including, among other things, that: (1) the Auction was conducted, and the Successful Bidder was selected, in accordance with the Bidding Procedures; (2) the Auction was fair in substance and procedure; (3) the Successful Bid was a Qualified Bid as defined in the Bidding Procedures; and (4) consummation of any Sale Transaction as contemplated by the Successful Bid in the Auction will provide the highest or otherwise best offer for the applicable Assets and is in the best interests of the Debtors and their estates. **The Sale Hearing may be continued to a later date by the Debtors, in consultation with the Consultation Parties, by sending notice to creditors or other parties in interest prior to, or making an announcement at, the Sale**



**Hearing. No further notice of any such continuance will be required to be provided to any party (including the Stalking Horse Bidder, if any).**

Objections to the Sale Transaction(s), and entry of any order approving the sale (the “**Sale Order**”) must (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and all orders of the Court; and (iii) be filed with the Court and served so as to be **actually received** by the Debtors, the Consultation Parties, the Bid Notice Parties, and the foregoing parties’ respective counsel by September 19, 2024, at 12:00 p.m. (prevailing Pacific Time).<sup>4</sup>

### **Return of Good Faith Deposit**

The Good Faith Deposit of the Successful Bidder or Successful Bidders, if any, will, upon consummation of the Successful Bid or Successful Bids, become property of the Debtors’ estates and be credited to the portion of such Successful Bidder’s or Successful Bidders’ applicable Purchase Price.

If the Successful Bidder or Successful Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable), if any, fails to consummate the Successful Bid (or Back-Up Bid, if applicable), then the Good Faith Deposit of such Successful Bidder (or Back-Up Bidder, if applicable) irrevocably will be forfeited to the Debtors and may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors.

The Good Faith Deposit of any unsuccessful Qualified Bidders will be returned within five business days after consummation of the applicable Sale Transaction.

The return of any Good Faith Deposits of any Stalking Horse Bidders will be subject to the terms of such Stalking Horse Bidders’ plan or purchase agreement, as applicable. All such deposits shall be held in escrow and at no time shall be deemed property of the Debtors’ estates absent further order of the Court.

### **Commissions**

Other than with respect to (i) any Stalking Horse Bid Protections that become payable pursuant to the terms of a Stalking Horse Agreement, if any, and (ii) any payment obligations with respect to the Debtors’ investment banker, Moelis & Company, (a) the Debtors shall be under no obligation to pay any commissions, fees, or expenses to any bidder’s agent, advisor or broker; (b) all commissions, fees, or expenses for any such agents, advisors, or brokers shall be paid by the applicable bidder at such bidder’s discretion; and (c) in no case shall any commissions, fees, or expenses for any bidder’s agent, advisor, or broker be deducted from any proceeds derived from any sale of the Assets.

### **Reservation of Rights**

The Debtors, in consultation with the Consultation Parties, reserve their rights to modify these Bidding Procedures in their reasonable business judgment and in a manner consistent with the exercise of their fiduciary duties in any manner that will best promote the goals of the bidding process, or impose, at or before the Auction, additional customary terms and conditions

<sup>4</sup> In the event that the Debtors, in consultation with the Consultation Parties, reasonably determine in their business judgment to pursue a Sale Transaction pursuant to a Plan, a separate deadline to object to such Sale Transaction shall be set by order of the Court.

on the sale of the applicable Assets, including, without limitation: (1) extending the deadlines set forth in the Bidding Procedures; (2) adjourning the Auction without further notice; (3) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (4) canceling the Auction; (5) rejecting any or all Bids or Qualified Bids; and (6) adjusting the applicable minimum overbid increment; *provided, however*, that the Debtors may not amend these Bidding Procedures, the Bidding Procedures Order or the bidding process to reduce or otherwise modify their obligations to consult with any Consultation Party without the consent of such Consultation Party or further order of the Court. All such modifications and additional rules will be communicated in advance to each of the Consultation Parties and the U.S. Trustee, Acceptable Bidders and Qualified Bidders; *provided, further*, that, to the extent such modifications occur at the Auction, disclosure of such modifications shall be limited to those in attendance at the Auction. If any of the DIP Lenders, the Office of the U.S. Trustee or any official committee of unsecured creditors appointed in these cases determines in good faith that any modification to these Bidding Procedures or the Bidding Procedures Order, or any adoption of new rules, procedures or deadlines, would not be consistent with this paragraph or these Bidding Procedures or the Bidding Procedures Order, such DIP Lender, U.S. Trustee, or Committee may file an objection with the Bankruptcy Court, and no such modification or adoption shall become effective until such objection is resolved. The Debtors shall provide advance notice in writing of any such modification to the Consultation Parties and the U.S. Trustee and any Qualified Bidder, including the Stalking Horse Bidder, if any.

All parties expressly reserve all of their rights (and do not waive any such rights) to seek Court relief with regard to the Auction, the Bidding Procedures, the Sale Transaction, and any related items (including, if necessary, to seek an extension of the Bid Deadline).

Each reference in these Bidding Procedures and the Bidding Procedures Order to “consultation” (or similar phrase) with the Consultation Parties shall mean consultation in good faith. All Consultation Parties will be permitted to seek relief from the Bankruptcy Court on an expedited basis if they disagree with any actions or decisions made by the Debtors as part of these Bidding Procedures. The rights of all Consultation Parties with respect to the outcome of the Auction are reserved.

#### **Consent to Jurisdiction**

All Qualified Bidders at the Auction will be deemed to have consented to the core jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the Sale, the Sale Transaction(s) and the construction and enforcement of these Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the Bids, the Bid Documents, and any and all other agreements entered into in connection with any proposed Sale Transaction, as applicable, and consented to the entry of a final order or judgment in any way related to these Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale any Sale Transaction if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Any parties raising a dispute relating to these Bidding Procedures must request that such dispute be heard by the Court on an expedited basis.

#### **Fiduciary Matters**

Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures or the Bidding Procedures Order shall require a Debtor or the board of directors, board of managers, or similar governing body of a Debtor to take any action or to refrain from taking any action related to any sale transaction or with respect to these Bidding

Procedures, to the extent such Debtor, board of director, board of managers, or such similar governing body reasonably determines in good faith, in consultation with counsel, that taking or failing to take such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

**EXHIBIT B**

**Form of Sale Notice**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: 24-50566-hlb  
Chapter 11

Jointly Administered with:  
Case No. 24-50567-hlb  
Case No. 24-50568-hlb  
Case No. 24-50569-hlb  
Case No. 24-50570-hlb  
Case No. 24-50571-hlb

Hearing Date:  
Hearing Time:

**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION, AND  
SALE HEARING FOR THE SALE OF SUBSTANTIALLY ALL ASSETS**

**PLEASE TAKE NOTICE** that on [ ], 2024, the United States Bankruptcy Court for the District of Nevada (the “Court”) entered the [*Order (I) Approving Auction and Bidding, Noticing, and Assumption and Assignment Procedures; (II) Scheduling Certain Dates and Deadlines with Respect Thereto; (III) Approving Form Notice to Be Provided to Interested Parties; and (IV) Granting Related Relief*] [Docket No. [ ]] (the “**Bidding Procedures Order**”)<sup>2</sup> in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”).

**PLEASE TAKE FURTHER NOTICE** that, if the Debtors receive qualified competing bids within the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct an auction (the “**Auction**”) of the Assets **on September 10, 2024, at 12:00 p.m. (prevailing Eastern Time)** at the New York offices of Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, or such other location announced to the bidders and Consultation Parties.

**PLEASE TAKE FURTHER NOTICE** that only the Debtors, the Consultation Parties, Qualified Bidders, the U.S. Trustee, and any other parties as the Debtors may determine to include in their reasonable discretion, in consultation with the Consultation Parties, in each case, along with their representatives and advisors, shall be entitled to attend the Auction, and only Qualified Bidders will be entitled to make Overbids at the Auction. **All interested or potentially affected parties should carefully read the Bidding Procedures and the Bidding Procedures Order.**

**PLEASE TAKE FURTHER NOTICE** that the Debtors will seek approval of the Sale Transaction(s) at a hearing scheduled to commence on or before **September 25, 2024, at 10:00 a.m. (prevailing Pacific Time)** (the “**Sale Hearing**”) before the Honorable Judge Barnes, at the

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not defined in this notice have the meanings given to them in the Bidding Procedures Order.

United States Bankruptcy Court for the District of Nevada, 300 Booth Street, 5th Floor, Courtroom 2, Reno, Nevada 89509, and telephonically.

**PLEASE TAKE FURTHER NOTICE** that, except as otherwise set forth in the Bidding Procedures Order, objections to consummation or approval of the Sale and each Sale Transaction must (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual bases for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be ***actually received on or before September 19, 2024, at 12:00 p.m. (prevailing Pacific Time)*** by the following parties:

- i. the Debtors, c/o Nevada Copper, Inc., 61 E. Pursel Lane, P.O. Box 1640, Yerington, NV 89447 (Attn: Gregory J. Martin (gjmartin@nevadacopper.com));
- ii. the Debtors' counsel, Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick (fsosnick@aoshearman.com), Sara Coelho (sara.coelho@aoshearman.com), and Cody Wright (cody.wright@aoshearman.com));
- iii. the Debtors' investment banker, Moelis & Company, 399 Park Ave 4th Floor, New York, NY 10022 (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com));
- iv. the Office of the United States Trustee for Region 17, 300 Booth Street, Suite 3009, Reno, NV 89509 (Attn: Jared Day (Jared.A.Day@usdoj.gov));
- v. proposed counsel to the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 (Attn: Eric S. Chafetz (EChafetz@lowenstein.com) and Jeffrey L. Cohen (JCohen@lowenstein.com));
- vi. the DIP Lenders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; and 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley; and
- vii. counsel to the Stalking Horse Bidder, if any.

**PLEASE TAKE FURTHER NOTICE** Copies of the Bidding Procedures Motion, Bidding Procedures Order, Bidding Procedures, the Form APA, and any other documents filed in the Debtors' chapter 11 cases are available upon request, by calling the Debtors' claims and noticing agent, Epiq Corporate Restructuring, LLC (i) for U.S. parties, toll-free at (877) 635-8338, or (ii) for non-U.S. parties, at +1 (971) 306-8096, or by visiting the Debtors' restructuring website at <https://dm.epiq11.com/case/nevadacopper>.

#### **CONSEQUENCES OF FAILING TO TIMELY MAKE AN OBJECTION**

**ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE OR A SALE TRANSACTION, AS APPLICABLE, ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE APPLICABLE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS MAY BE SET**

**FORTH IN THE APPLICABLE PURCHASE AGREEMENT OR THE PLAN, AS APPLICABLE.**

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1 Dated: [●], 2024

Respectfully submitted,

2 /s/ DRAFT

3 **McDONALD CARANO LLP**

4 Ryan J. Works (Nevada Bar No. 9224)

Amanda M. Perach (Nevada Bar No. 12399)

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7 -and-

8 **ALLEN OVERY SHEARMAN**

9 **STERLING US LLP**

10 Fredric Sosnick (New York Bar No. 2472488)

(admitted *pro hac vice*)

11 Sara Coelho (New York Bar No. 4530267)

(admitted *pro hac vice*)

599 Lexington Avenue

12 New York, New York 10022

Telephone: (212) 848-4000

13 Email: fsosnick@aoshearman.com

sara.coelho@aoshearman.com

14 *Proposed Counsel to the Debtors and*  
15 *Debtors in Possession*  
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**EXHIBIT C**

**Form of Assumption and Assignment Notice**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: 24-50566-hlb  
Chapter 11

Jointly Administered with:  
Case No. 24-50567-hlb  
Case No. 24-50568-hlb  
Case No. 24-50569-hlb  
Case No. 24-50570-hlb  
Case No. 24-50571-hlb

Hearing Date:  
Hearing Time:

**NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT  
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU  
OR ONE OF YOUR AFFILIATES ARE A COUNTERPARTY TO AN  
EXECUTORY CONTRACT OR UNEXPIRED LEASE WITH ONE OR MORE  
OF THE DEBTORS AS SET FORTH ON **EXHIBIT A** ATTACHED HERETO.

**PLEASE TAKE NOTICE** that on [ ], 2024, the United States Bankruptcy Court for the District of Nevada (the “Court”) entered the [*Order (I) Approving Auction and Bidding, Noticing, and Assumption and Assignment Procedures; (II) Scheduling Certain Dates and Deadlines with Respect Thereto; (III) Approving Form Notice to Be Provided to Interested Parties; and (IV) Granting Related Relief*] [Docket No. [ ]] (the “**Bidding Procedures Order**”) in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the “Debtors”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Bidding Procedures and the terms of any Successful Bid, the Debtors **may** assume and assign to the Successful Bidder the contract or agreement listed on **Exhibit A** to which you are a counterparty, upon approval of the Sale Transaction. The Debtors have conducted a review of their books and records and have determined that the Cure Payments for unpaid monetary obligations under the Debtors’ executory contracts and leases, which are set forth on **Exhibit A**. **You are receiving this Assumption and Assignment Notice (which has been filed on the docket of the above-captioned chapter 11 cases) because you may be a counterparty to a contract or lease (a “Counterparty”) that is proposed to be assumed and assigned to the Successful Bidder in connection with the Sale.**

**PLEASE TAKE FURTHER NOTICE** that if you disagree with the proposed Cure Payments, object to a proposed assignment to the Successful Bidder of any contract or lease, or dispute the ability of the Successful Bidder to provide adequate assurance of future performance

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion or the Bidding Procedures.

with respect to any contract, your objection must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Bankruptcy Rules, and any order governing the administration of these chapter 11 cases; (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Payments, state the correct Cure Payments alleged to be owed to the objecting Counterparty, together with any applicable and appropriate documentation in support thereof; and (iv) **no later than [Tuesday, August 20, 2024, at 12:00 p.m. (prevailing Pacific Time)]** (the “**Assumption and Cure Objection Deadline**”), filed with the Court and served upon the following parties:

- i. the Debtors, c/o Nevada Copper, Inc., 61 E. Pursel Lane, P.O. Box 1640, Yerington, NV 89447 (Attn: Gregory J. Martin (gjmartin@nevadacopper.com));
- ii. the Debtors’ counsel, Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick (fsosnick@aoshearman.com), Sara Coelho (sara.coelho@aoshearman.com), and Cody Wright (cody.wright@aoshearman.com));
- iii. the Debtors’ investment banker, Moelis & Company, 399 Park Ave 4th Floor, New York, NY 10022 (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com));
- iv. the Office of the United States Trustee for Region 17, 300 Booth Street, Suite 3009, Reno, NV 89509 (Attn: Jared Day (Jared.A.Day@usdoj.gov));
- v. proposed counsel to the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 (Attn: Eric S. Chafetz (EChafetz@lowenstein.com) and Jeffrey L. Cohen (JCohen@lowenstein.com));
- vi. the DIP Lenders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; and 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley; and
- vii. counsel to the Stalking Horse Bidder, if any.

**PLEASE TAKE FURTHER NOTICE** that if no objection to (i) the Cure Payments, (ii) the proposed assignment and assumption of any Executory Contract or Unexpired Lease, or (iii) adequate assurance of the Successful Bidder’s ability to perform is filed by the Cure Objection Deadline, then (a) you will be deemed to have stipulated that the Cure Payments as determined by the Debtors are correct, (b) you will be forever barred, estopped, and enjoined from asserting any additional Cure Payments are due under the Executory Contract or Unexpired Lease, and (c) you will be forever barred, estopped, and enjoined from objecting to such proposed assignment to the Successful Bidder on the grounds that the Successful Bidder has not provided adequate assurance of future performance as of the closing date of the Sale Transaction.

**PLEASE TAKE FURTHER NOTICE** that any objection to the proposed assumption and assignment of an Executory Contract or Unexpired Lease or related Cure Payments in connection with the Successful Bid that otherwise complies with these procedures yet remains unresolved as of the commencement of the Sale Hearing, shall be heard at a later date as may be fixed by the Court.

**PLEASE TAKE FURTHER NOTICE** that, notwithstanding anything herein, **the mere listing of any contract or lease on the Contract Assumption Notice or any Supplemental**

1 **Assumption Notice (i) does not require or guarantee that such contract or lease is an**  
2 **Executory Contract or Unexpired Lease, (ii) does not require that such contract or lease**  
3 **can or will be assumed by the Debtors at any time or assumed and assigned, and (iii) does**  
4 **not constitute an admission that any stated Cure Amount constitutes a claim against the**  
5 **Debtors or a right against the Successful Bidder; and all rights of the Debtors and the**  
6 **Successful Bidder with respect to such agreements are reserved.** Moreover, the Debtors explicitly reserve the right, in their reasonable discretion, to seek to reject or assume each Executory Contract or Unexpired Lease pursuant to section 365(a) of the Bankruptcy Code and in accordance with the procedures allowing the Debtors and/or the Successful Bidder, as applicable, to designate any Executory Contract or Unexpired Lease as either rejected or assumed on a post-closing basis.

7 **PLEASE TAKE FURTHER NOTICE** that, nothing herein (i) alters in any way the  
8 prepetition nature of the Executory Contracts or Unexpired Leases or the validity, priority, or  
9 amount of any claims of a counterparty to any Contract against the Debtors that may arise under  
10 such Executory Contract or Unexpired Lease, (ii) creates a postpetition contract or agreement, or  
11 (iii) elevates to administrative expense priority any claims of a counterparty to any Executory  
12 Contract or Unexpired Lease against the Debtors that may arise under such Executory Contract  
13 or Unexpired Lease.

14 **PLEASE TAKE FURTHER NOTICE** that if the Debtors (i) identify additional  
15 contracts or leases that may be assumed and assigned to any Successful Bidder, (ii) remove any  
16 contracts or leases from the list filed with the court, or (iii) modify the previously stated Cure  
17 Amount associated with any contract or lease, then the Debtors promptly will file and serve a  
18 supplemental notice of contract assumption (a “**Supplemental Assumption and Assignment**  
19 **Notice**”) on each of the affected Counterparties. Each Supplemental Assumption Notice will  
20 include the same information with respect to the applicable contract or lease as was included  
21 herein. A Successful Bidder may designate additional contracts or leases to be assumed and  
22 assigned up to seven business days prior to closing and may remove contracts or leases from the  
23 list of Executory Contracts and Unexpired Leases up to two business days prior to closing.

24 **PLEASE TAKE FURTHER NOTICE** that in the event that the Debtors and a  
25 Counterparty cannot resolve an objection to a Cure Amount, the contract or lease at issue may be  
26 assumed by the Debtors and assigned to the applicable Successful Bidder, provided that the  
27 Debtors shall segregate the Cure Amount that the Counterparty asserts is required to be paid,  
pending a resolution of the dispute by the Court or mutual agreement by the parties. Any  
objection to the proposed assumption and assignment of a contract or lease or related Cure  
Amount proposed in connection with the Sale that remained unresolved as of the Sale Hearing,  
shall be heard at the Sale Hearing (or at a later date as fixed by the Court).

**PLEASE TAKE FURTHER NOTICE** that no contract or lease shall be deemed  
assumed and assigned pursuant to section 365 of the Bankruptcy Code until the later of (i) the  
date the Court has entered an order assuming and assigning such contract or lease or (ii) the date  
the Sale has closed.

**PLEASE TAKE FURTHER NOTICE** Copies of the Bidding Procedures Motion,  
Bidding Procedures Order, Bidding Procedures, the Form APA, and any other documents  
filed in the Debtors’ chapter 11 cases are available upon request, by calling the Debtors’  
claims and noticing agent, Epiq Corporate Restructuring, LLC (i) for U.S. parties, toll-free  
at (877) 635-8338, or (ii) for non-U.S. parties, at +1 (971) 306-8096, or by visiting the  
Debtors’ restructuring website at <https://dm.epiq11.com/case/nevadacopper>.

1 Dated: [●], 2024

Respectfully submitted,

2 /s/ DRAFT

3 **McDONALD CARANO LLP**

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7 -and-

8 **ALLEN OVERY SHEARMAN**

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14 *Proposed Counsel to the Debtors and*  
15 *Debtors in Possession*

**EXHIBIT 3**

**Redline to Initial Proposed Order**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: 24-50566-hlb  
Chapter 11

Jointly Administered with:  
Case No. 24-50567-hlb  
Case No. 24-50568-hlb  
Case No. 24-50569-hlb  
Case No. 24-50570-hlb  
Case No. 24-50571-hlb

Hearing Date:  
Hearing Time:

**ORDER (I) APPROVING AUCTION AND BIDDING, NOTICING, AND ASSUMPTION AND ASSIGNMENT PROCEDURES; (II) SCHEDULING CERTAIN DATES AND DEADLINES WITH RESPECT THERETO; (III) APPROVING FORM NOTICE TO BE PROVIDED TO INTERESTED PARTIES; AND (IV) GRANTING RELATED RELIEF**

Upon the Debtors' Motion for Entry of an Order (I) (A) Approving the Auction and Bidding Procedures; (B) Approving Stalking Horse Bid Protections; (C) Scheduling Certain Dates and Deadlines with Respect Thereto and an Auction; (D) Approving the Form and Manner of Notice Thereof; (E) Approving the Form APA; and (II) (A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases; (B) Authorizing the Assumption and Assignment of Assumed Contracts; (C) Authorizing the Sale of Assets; and (III) Granting Related Relief (the "**Motion**")<sup>2</sup> of the Debtors for entry of an order (this "**Order**"), (i) approving the proposed marketing, auction, and bidding procedures attached hereto as **Exhibit A**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

(the “**Bidding Procedures**”) by which the Debtors will solicit and select the highest or otherwise best offer(s) for the sale or sales (collectively, the “**Sale**,” and each such sale transaction, a “**Sale Transaction**”) of all, substantially all, or any portion of the Debtors’ assets (the “**Assets**”); (ii) establishing certain dates and deadlines related thereto and scheduling an auction or auctions, if any, for the Sale (the “**Auction**”); (iii) approving the manner of notice of the Auction and sale hearing (the “**Sale Hearing**”) as may be necessary; (iv) approving ~~a form of asset purchase agreement, substantially in the form attached hereto as Exhibit D (the “Form APA”); (v) approving~~ procedures for the assumption and assignment of certain Executory Contracts ~~(as defined below)~~ and Unexpired Leases (each as defined ~~below~~ in the Bidding Procedures) in connection with the Sale Transaction, if any; ~~(vi)~~ approving the break-up fee and expense reimbursements relating to potential stalking horse bidders if the Debtors determine to enter into such an arrangement with a bidder for the Assets (the “**Stalking Horse Bid Protections**”); and ~~(vii)~~ granting related relief; all as more fully set forth in the Motion; and upon the Sale Declaration ~~and~~ First Day Declaration; and Supplemental Declaration of Zul Jamal in Support of Debtors’ Bidding Procedures Motion [ECF No. 369]; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a final order consistent with Article III of the United States Constitution; and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and, under the circumstances, proper and adequate notice of the Motion and the hearing thereon having been given; and it appearing that no other or further notice is necessary; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:**



1           1.     Jurisdiction and Venue. Consideration of the Motion and the relief requested  
2 therein is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court  
3 pursuant to 28 U.S.C. §§ 1408 and 1409. The Court has jurisdiction to consider the Motion and  
4 the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334.

5           2.     Statutory and Legal Predicates. The statutory and legal predicates for the relief  
6 requested in the Motion are sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code,  
7 Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and Local Rules 3017 and 6004.

8           3.     Bidding Procedures. The Debtors have articulated good and sufficient business  
9 reasons for the Court to approve the Bidding Procedures. The Bidding Procedures are fair,  
10 reasonable, and appropriate. The Bidding Procedures are reasonably designed to promote a  
11 competitive and robust bidding process to generate the greatest level of interest in the Debtors'  
12 business resulting in the highest or otherwise best offer. The Bidding Procedures comply with  
13 the requirements of Local Rule 6004.

14           4.     Sale Notice. The Sale Notice attached hereto as **Exhibit B** and the procedures  
15 with respect to such Sale Notice contain the type of information required under Bankruptcy Rule  
16 2002 and Local Rule 6004 and comply in all respects with applicable provisions of the  
17 Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

18           5.     Assumption and Assignment Procedures. The Debtors have articulated good and  
19 sufficient business reasons for the Court to approve the Assumption and Assignment Procedures.  
20 The Assumption and Assignment Procedures, including the Assumption and Assignment Notice  
21 attached hereto as **Exhibit C**, are fair, reasonable, and appropriate. The Assumption and  
22 Assignment Procedures provide an adequate opportunity for all Counterparties to raise any  
23 objections to the proposed assumption and assignment or to the proposed Cure Amounts. The  
24 Assumption and Assignment Procedures comply with the provisions of section 365 of the  
25 Bankruptcy Code and Bankruptcy Rule 6006.  
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1           6.     Notice. All other notices to be provided pursuant to the procedures set forth in  
2 the Motion are good and sufficient notice to all parties in interest of all matters pertinent hereto.  
3 No further notice is required.

4           7.     Relief is Warranted. The legal and factual bases set forth in the Motion establish  
5 just and sufficient cause to grant the relief requested therein.

6           8.     Other Findings. The findings and conclusions set forth herein constitute the  
7 Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made  
8 applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the  
9 following findings of fact constitute conclusions of law, they are adopted as such. To the extent  
10 any of the following conclusions of law constitute findings of fact, they are adopted as such.

11 **NOW, AND THEREFORE, IT IS HEREBY ORDERED THAT:**

12           9.     The Motion is GRANTED as set forth herein.

13 **I.     The Bidding Procedures**

14           10.    The Bidding Procedures, substantially in the form attached to this Order as  
15 Exhibit A, are approved and incorporated into this Order by reference, as though fully set forth  
16 herein. Accordingly, the failure to recite or reference any particular provision of the Bidding  
17 Procedures shall not diminish the effectiveness of such provision, it being the intent of the Court  
18 that the Bidding Procedures be authorized and approved in their entirety. The Debtors are  
19 authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

20           11.    Any deposit (including any Good Faith Deposit) provided by a Qualified Bidder  
21 shall be held in escrow by the Debtors or their agent on terms acceptable to the Debtors (in  
22 consultation with the Consultation Parties), and shall not become property of the Debtors'  
23 bankruptcy estates unless and until released from escrow to the Debtors pursuant to the terms of  
24 the applicable escrow agreement, the Bidding Procedures, or order of this Court after notice and  
25 a hearing, as applicable.

## II. Important Dates and Deadlines

12. Sale Hearing. The Sale Hearing will commence on **Wednesday, September 25, 2024, at 10:00 a.m.** (prevailing Pacific Time). Subject to the terms of the Bidding Procedures, the Debtors may, in their reasonable business judgment, in consultation with the Consultation Parties and with the consent of the Successful Bidder(s), adjourn or reschedule any Sale Hearing, with notice to the Sale Notice Parties.

13. Sale Objection Deadline. Any objections to the Sale (a “***Sale Objection***”) by a Sale Notice Party must be made by **Friday, September 19, 2024, at 12:00 p.m.** (prevailing Pacific Time) (the “***Sale Objection Deadline***”).<sup>3</sup> The Sale Objection Deadline may be extended by the Debtors with the consent of the Court.

14. Competitive Bidding. The following dates and deadlines regarding competitive bidding are hereby established, in each case subject to extension in accordance with the Bidding Procedures:

- i. Bid Deadline: **Friday, September 6, 2024, at 12:00 p.m.** (prevailing Pacific Time), the deadline by which all Qualified Bids must be actually received in writing by the Bid Notice Parties (the “***Bid Deadline***”); and
- ii. Auction: **Tuesday, September 10, 2024, at 12:00 p.m. (prevailing Eastern Time)**, is the date and time the Auction, if one is needed, will be held at the New York offices of Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, or at such other time and location (including via remote video) as designated by the Debtors, in consultation with the Consultation Parties and providing notice to the Sale Notice Parties, and subject to the terms of the Bidding Procedures.

15. Stalking Horse Bidders and Bid Protections. The Debtors, upon entry of this Order, shall be authorized, but are not obligated or directed, in an exercise of their reasonable business judgment, (i) in consultation with the Consultation Parties and (ii) with the consent of the DIP Lenders, to select one or more Stalking Horse Bidders with respect to some or all of the Debtors’ Assets by no later than **August 17, 2024, at 5:00 p.m., prevailing Pacific Time**, enter

<sup>3</sup> In the event that the Debtors, in consultation with the Consultation Parties, reasonably determine in their business judgment to pursue a Sale Transaction pursuant to a chapter 11 plan, a separate deadline to object to such Sale Transaction shall be set by further order of this Court.

1 into a Stalking Horse Agreement that would provide such Stalking Horse Bidders with Stalking  
 2 Horse Bid Protections ~~without further action or order by this Court~~; *provided, however*, that if a  
 3 DIP Lender, or any affiliate of a DIP Lender, has expressly indicated to the Debtors that it is  
 4 considering submitting, or has actually submitted, a Bid for any Assets, it shall not have consent  
 5 rights with respect to the selection of ~~the~~ Stalking Horse Bidder, if any, or any protections to be  
 6 afforded to such Stalking Horse Bidder.

7 16. In the event that the Debtors enter into a Stalking Horse Agreement with one or  
 8 more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice  
 9 and proposed form of order with the Court (the “*Stalking Horse Notice*”) and serve the Stalking  
 10 Horse Notice on the Stalking Horse Bidder and the Office of the United States Trustee for  
 11 Region 17. The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse  
 12 Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse  
 13 Bidder’s parent company or sponsor); (ii) set forth the amount of the Stalking Horse Bid and  
 14 what portion (if any) is cash; (iii) state whether the Stalking Horse Bidder has any connection to  
 15 the Debtors other than those that arise from the Stalking Horse Bid; (iv) specify any proposed  
 16 Bid Protections (including the amount and calculation thereof); (v) specify the Assets included in  
 17 the Stalking Horse Bid; (vi) attach the Stalking Horse Agreement, including all exhibits,  
 18 schedules and attachments thereto; and (vii) set forth the deadline to object to the Stalking Horse  
 19 Bidder designation and any Bid Protections. If there are no objections to the Stalking Horse  
 20 Notice within five business days of filing with the Court, (the “*Notice Period*”), the Debtors may  
 21 submit ~~an~~ a revised proposed form of order to the Court that incorporates any comments received  
 22 during the Notice Period that authorizes the Debtors to designate a Stalking Horse Bidder and to  
 23 enter into a Stalking Horse Agreement, which may be entered by the Court without the need for  
 24 further hearing. If a party timely files an objection to the Stalking Horse Notice in accordance  
 25 with the Bidding Procedures, the Court shall hold a hearing after the expiration of the Notice  
 26 Period and as soon thereafter as the Court is available. Upon entry of the order that authorizes  
 27 the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement-  
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~~or otherwise approves the Stalking Horse's Plan Term Sheet~~, as applicable, the Debtors are authorized, but not directed, to incur and pay the Stalking Horse Bid Protections to each Stalking Horse Bidder as set forth in the Stalking Horse Agreement, in an aggregate amount not to exceed three percent of the proposed Purchase Price.

17. Except as otherwise set forth in the Bidding Procedures, no person or entity, other than a Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fees, "topping," termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

### III. Sale Notice Procedures

18. The Sale Notice procedures, substantially in the form set forth in the Sale Notice attached to this Order as **Exhibit B**, are approved. The Debtors are authorized to implement the Sale Notice procedures as set forth in the Bidding Procedures Motion, the Bidding Procedures, and the Sale Notice.

### IV. Assumption and Assignment Procedures

19. The (a) Assumption and Assignment Procedures, as set forth in the Bidding Procedures, and (b) the Assumption and Assignment Notice in the form attached to this Order as **Exhibit C**, are approved.

20. The Assumption and Assignment Procedures shall govern the assumption or assumption and assignment of all of the Debtors' Executory Contracts and Unexpired Leases to be assumed or assumed and assigned in connection with the Sale, subject to the payment of any amounts necessary to cure any defaults arising under any such Executory Contract or Unexpired Lease.

21. Cigna Health and Life Insurance Company ("Cigna") and the Debtors are parties to three Agreements (collectively, the "Cigna Contracts") that facilitate the Debtors' self-insured employee healthcare benefits plan. Notwithstanding anything in this Order to the contrary,

1 | unless Cigna and the Debtors agree otherwise, the Debtors shall, not later than 12:00 noon  
 2 | (prevailing Pacific Time) on the date that is two business days prior to any Sale Hearing, provide  
 3 | to Cigna, through its counsel, written notice of the Debtors' irrevocable (subject to closing of the  
 4 | applicable Sale Transaction(s)) decision as to whether or not they propose to assume and assign  
 5 | any or all of the Cigna Contracts to the Successful Bidder as part of the proposed Sale  
 6 | Transaction(s).

7 | **V. Related Relief**

8 | 22. The Debtors shall file the a form of asset purchase agreement on the docket of  
 9 | these Chapter 11 Cases by no later than July 25, 2024.

10 | 23. ~~21.~~ The Debtors are authorized to make non-substantive changes to the Bidding  
 11 | Procedures, the Assumption and Assignment Procedures, the Assumption and Assignment  
 12 | Notice, the Sale Notice, and any related documents without further order of the Court, including,  
 13 | without limitation, changes to correct typographical and grammatical errors.

14 | 24. ~~22.~~ All persons and entities (whether or not selected as a Qualified Bidder) that  
 15 | submit a bid for any of the Debtors' Assets during the ~~sale process~~ Sale Process, including at  
 16 | ~~the any~~ Auctions, shall be deemed to have knowingly and voluntarily: (i) submitted to the  
 17 | exclusive jurisdiction of this Court with respect to all matters related to the terms and conditions  
 18 | of the transfer of Assets, the Auctions (if any), and any Sale Transaction; (ii) consented to the  
 19 | entry of a final order by the Court in connection with the Motion or this Order (including any  
 20 | disputes relating to the Bidding ~~and~~ Procedures, the Debtors' conduct in evaluating bids and  
 21 | conducting any Auction(s), the Sale Process, ~~the Auctions,~~ and/or any Sale Transactions) to the  
 22 | extent that it is later determined that the Court, absent consent of the parties, cannot enter final  
 23 | orders or judgments in connection herewith consistent with Article III of the United States  
 24 | Constitution; and (iii) waived any right to jury trial in connection with any disputes relating to  
 25 | any of the foregoing matters.

26 | 25. To the extent the Debtors are seeking to sell any assets in which other persons or  
 27 | entities have an interest or assume and assign any Executory Contracts with counterparties, such  
 28 |

persons, entities, and counterparties' rights to object to such sale or such assumption and assignment are reserved until the applicable deadline set forth in the Bidding Procedures.

26. ~~23.~~ Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014, or any applicable provisions of the Bankruptcy Rules or the Local Rules or otherwise stating the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and any applicable stay of the effectiveness and enforceability of this Order is hereby waived.

27. ~~24.~~ Prior to mailing and publishing the Sale Notice and the Assumption and Assignment Notice, as applicable, the Debtors may fill in any missing dates and other information, conform the provisions thereof to the provisions of this Order, and make such other, non-material changes as the Debtors deem necessary or appropriate.

28. ~~25.~~ To the extent the provisions of this Order are inconsistent with the provisions of any exhibits referenced herein or with the Motion, the provisions of this Order shall control.

29. ~~26.~~ The Debtors are authorized to take all actions reasonably necessary or appropriate to effectuate the relief granted in this Order.

30. ~~27.~~ The Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**IT IS SO ORDERED**

**L.R. 9021 CERTIFICATION**

In accordance with L.R. 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

- ☐ The court has waived the requirement of approval under L.R. 9021(b)(1).
- ☐ No party appeared at the hearing or filed an objection to the motion.
- ☐ I have delivered a copy of this proposed order to all counsel who appeared at the

hearing, and each has approved or disapproved the order, or failed to respond, as indicated below.

Approve

Disapprove

US Trustee

- ☐ I certify that this is a case under chapter 7 or 13, that I have served a copy of this order with the motion pursuant to L.R. 9014(g), and that no party has objected to the form or content of the order.

###

Prepared and submitted by:

/s/ ~~DRAFT~~

**McDONALD CARANO LLP**

Ryan J. Works (Nevada Bar No. 9224)

Amanda M. Perach (Nevada Bar No. 12399)

2300 West Sahara Avenue, Suite 1200

Las Vegas, Nevada 89102

**ALLEN OVERY SHEARMAN STERLING US LLP**

Fredric Sosnick (New York Bar No. 2472488) (admitted *pro hac vice* ~~pending~~)

Sara Coelho (New York Bar No. 4530267) (admitted *pro hac vice* ~~pending~~)

599 Lexington Avenue

New York, New York 10022

*Proposed Counsel to the Debtors and  
Debtors in Possession*

APPROVED/DISAPPROVED



**EXHIBIT A**

**Bidding Procedures**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: 24-50566-hlb  
Chapter 11

Jointly Administered with:  
Case No. 24-50567-hlb  
Case No. 24-50568-hlb  
Case No. 24-50569-hlb  
Case No. 24-50570-hlb  
Case No. 24-50571-hlb

**BIDDING PROCEDURES**

On June 10, 2024, Nevada Copper, Inc., and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

On [ ], 2024, the United States Bankruptcy Court for the District of Nevada (the “**Court**”) entered an order (ECF No. [ ]) (the “**Bidding Procedures Order**”).<sup>2</sup> In the Bidding Procedures Order, the Court approved the following procedures (the “**Bidding Procedures**”) setting forth the process by which the Debtors are authorized to solicit bids for and conduct ~~an~~ auction(~~thes~~) (each, an “**Auction**”) for a sale(~~s~~) or disposition(~~s~~) of all or substantially all of the Debtors’ Assets (as defined herein) or any portion thereof, either as a going concern or as a liquidation (collectively, the “**Sale**,” and each such sale transaction, a “**Sale Transaction**”). On [ ~~June~~ July ], 2024, the Debtors filed a proposed form of asset purchase agreement (the “**Form APA**”) on the docket of the Chapter 11 Cases.

**Copies of the Bidding Procedures Motion, Bidding Procedures Order, Bidding Procedures, the Form APA, and any other documents filed in the Debtors’ chapter 11 cases are available upon request, by calling the Debtors’ claims and noticing agent, Epiq Corporate Restructuring, LLC (i) for U.S. parties, toll-free at (877) 635-8338, or (ii) for non-U.S. parties, at +1 (971) 306-8096, or by visiting the Debtors’ restructuring website at <https://dm.epiq11.com/case/nevadacopper>.**

**Description of the Assets to Be Auctioned**

The Debtors are seeking to sell all of their assets as a going concern (or as a liquidation) pursuant to the terms of the Form APA. These assets include, but are not limited to, the Debtors’ going-concern business, real property, unexpired leases, executory contracts, equipment,

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not otherwise defined shall have the respective meanings ascribed to such terms in the Bidding Procedures Order or the ~~Motion~~ motion requesting the relief granted therein, as applicable.

inventory, supplies, intellectual property, insurance proceeds, prepaid expenses and deposits, ownership interests, and books and records (collectively, the “*Assets*”), in each case, free and clear of all liens, claims, interests, or other encumbrances, other than expressly assumed liabilities and obligations, to the fullest extent permitted by the Bankruptcy Code.

The ability to undertake and consummate any sale of the Assets shall be subject to competitive bidding as set forth herein and approval by the Court. The Debtors will consider bids that are made for all or substantially all of the Assets. In addition, the Debtors will consider bids for less than substantially all of the Assets, however, the value of such bids will be evaluated against the Debtors intention to sell all of their Assets, and the value and complexity of the sale of any Assets not included in a bid. The Debtors will also consider bids that take the form of a sale of stock of one or more subsidiaries.

Any party interested in submitting a bid for any of the Debtors’ Assets should contact the Debtors’ investment banker, Moelis & Company LLC (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com)).

### Important Dates and Deadlines

Date	Deadline
<b>Monday, July 29, 2024, or as soon as reasonably practicable after entry of the Bidding Procedures Order</b>	Service of Sale Notice; Publication of Sale Notice
<b>Tuesday, July 30, 2024, or as soon as reasonably practicable thereafter</b>	Serve notice of potential assumption and assignment (the “ <i>Assumption and Assignment Notice</i> ”) to contract counterparties
<b>Tuesday, August 20, 2024 (or 21 days after service of an applicable notice of assumption and assignment)</b>	Deadline to object to proposed cure amounts and assumption and assignment (the “ <i>Assumption and Cure Objection Deadline</i> ”)
<b>Friday, September 6, 2024, at 5:00 p.m. (prevailing Pacific Time)</b>	Bid Deadline
<b>Monday, September 9, 2024, at 9:00 a.m. (prevailing Pacific Time)</b>	Qualified Bid Designation Date
<b>Tuesday, September 10, 2024, at 12:00 p.m. (prevailing Eastern Time)</b>	Auction (if necessary) to be held at the New York offices of A&O Shearman, or such other location announced to the bidders and Consultation Parties
<b>Thursday September 12, 2024</b>	Serve Notice of Successful Bidder on <del>Contract</del> Counterparties
<b>Friday, September 19, 2024, at 12:00 p.m. (prevailing Pacific Time)</b>	Deadline to object to the proposed Sale (“ <i>Sale Objection Deadline</i> ”); deadline to object to adequate assurance (“ <i>Adequate Assurance Objection Deadline</i> ”).

<b>Tuesday, September 24, 2024, at 12:00 p.m. (prevailing Pacific Time)</b>	Deadline for responses to objections.
<b>Wednesday, September 25, 2024, at 10:00 a.m. (prevailing Pacific Time)<sup>3</sup></b>	Sale Hearing
<b>Thursday, September 26, 2024</b>	Entry of Sale Order
<b>On or before Monday, October 8, 2024</b>	Closing

### Noticing

#### Consultation Parties

Subject to the terms of these Bidding Procedures, the Debtors shall consult in good faith with counsel to (each of the following parties, to the extent applicable, including such party's advisors, a "***Consultation Party***"):

- i. ~~any~~the Official Committee of Unsecured Creditors ~~appointed in these Chapter 11 Cases~~ (the "***Creditors' Committee***"), c/o Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020, Attn: Eric S. Chafetz and Jeffrey L. Cohen;
- ii. the DIP Lenders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; and 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley; ~~and~~
- iii. KfW IPEX-Bank GmbH, c/o Milbank LLP, 55 Hudson Yards, New York, NY 10001, Attn: Tyson Lomazow and Abigail Debold;
- iv. Pala Investments Limited, c/o Cleary Gottlieb Steen & Hamilton LLP, Attn: Solomon J. Noh (sjnoh@cgsh.com); One Liberty Plaza, New York, NY 10006, Attn: Lisa M. Schweitzer;
- v. Triple Flag Mining Finance Bermuda Ltd., c/o Davis, Graham & Stubbs LLP, 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; and
- vi. ~~iii-~~only to the extent that any Assets situated in Canada are proposed to be sold, the information officer ("***Information Officer***") appointed in the recognition proceedings in respect of the Debtors under the *Companies' Creditors Arrangement Act*.

~~Notwithstanding~~If any of the foregoing, ~~the consultation rights afforded herein shall not: (i) limit the Debtors' discretion in any way with respect to the evaluation of bids, compliance~~

<sup>3</sup> Subject to the availability and convenience of the Court.

with these procedures, and other matters, including at the Auction; (ii) include the right to veto any decision made by the Debtors in the exercise of their reasonable business judgment; or (iii) otherwise limit the Debtors' reservation of rights in respect of their fiduciary obligations, including as described herein. Moreover, notwithstanding the foregoing, if a DIP Lender entities (including an individual member of the Creditors' Committee), or an affiliate of a DIP Lender such an entity, indicates to the Debtor that it is considering submitting, or actually submits, a Qualified Bid in respect of all or a portion of the Assets, such party shall have entity shall cease being a Consultation Party (an "*Identified Party*"); provided, however, that (a) in the case of an Identified Party other than the Creditors' Committee and the members thereof, such Identified Party shall have the rights afforded to a Consultation Rights Party hereunder only to the extent that such consultation reasonably can be performed without providing such Identified Party any additional confidential information not previously provided to such Identified Party in respect of Assets for which it is considering submitting or actually submits a Bid; and (b) in the case of a member of the Creditors' Committee that is an Identified Party, the other members of the Creditors' Committee shall continue to be Consultation Parties; provided, further, that the Identified Party shall be excluded from any discussions or deliberations regarding the sale of such Assets and shall not receive any confidential information regarding the sale of such Assets to the DIP Lenders. In the event that an Identified Party (or, if applicable, the affiliate of an Identified Party) indicates that it is no longer interested in submitting a Bid or, if applicable, continuing to submit Bids, it may elect by written notice to the Debtors to cease being an Identified Party and return to being a Consultation Party; provided, that, notwithstanding anything to the contrary herein, such party shall no longer be able to submit further Bids; provided, further, that, if any DIP Lender were to become an Identified Party and such DIP Lender later were to elect to return to being a Consultation Party, then, only if the aggregate Bids are insufficient to repay the obligations under the DIP Facility in full in cash, such DIP Lender shall be permitted to submit Bids (to the extent that other Bids, in the aggregate, would not allow the obligations under the DIP Facility to be repaid in full in cash), with respect to the Assets on which, in its capacity as a Consultation Party, it had not actually received information or participated in discussions. Nothing in these Bidding Procedures shall affect any rights or obligations under the DIP Facility.

~~If a member or an affiliate of a member of the Creditors' Committee submits a Qualified Bid in respect of all or a portion of the Assets, the Creditors' Committee will continue to have Consultation Rights; provided that the Creditors' Committee shall exclude such member from any discussions or deliberations regarding the sale of such Assets and shall not provide any confidential information regarding the sale of such Assets to such member.~~

#### Bid Notice Parties

All Bids must be submitted in writing to the following parties (collectively, the "*Bid Notice Parties*"):

- i. the Debtors, c/o Nevada Copper, Inc., 61 E. Pursel Lane, P.O. Box 1640, Yerington, NV 89447 (Attn: Gregory J. Martin (gjmartin@nevadacopper.com));
- ii. the Debtors' counsel, (a) Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick (fsosnick@aoshearman.com), Sara Coelho (sara.coelho@aoshearman.com), and Cody Wright (cody.wright@aoshearman.com); and (b) Torys LLP, 79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada (Attn: Tony DeMarinis (tdemarinis@torys.com) and Michael Amm (mamm@torys.com)); and
- iii. the Debtors' investment banker, Moelis & Company, 399 Park Ave 4th Floor, New York, NY 10022 (Attn: Douglas Pierson (Douglas.Pierson@moelis.com),

Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com),  
Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com)).

The Debtors shall promptly provide ~~copies of any Bids received~~ to the Consultation Parties ~~within one Business Day of~~ copies of all Bids received by the Debtors, but in no event later than the next business day following receipt.

#### Sale Notice Parties

Information that must be provided to the “*Sale Notice Parties*” under these Bidding Procedures must be provided to the following parties:

- i. the Consultation Parties (as applicable);
- ii. all persons and entities, known by the Debtors and their advisors to have expressed an interest in a transaction with respect to any of the Debtors’ Assets during the past 12 months (for whom identifying information and addresses are available to the Debtors);
- iii. all persons and entities known by the Debtors to have asserted any lien, claim, encumbrance, or other interest in any Asset (for whom identifying information and addresses are available to the Debtors), including all known holders of claims and all creditors prior to the date of entry of the Bidding Procedures Order;
- iv. all parties to litigation with the Debtors that are known as of the date of entry of the Bidding Procedures Order, or their counsel of record;
- v. all Counterparties to Assigned Contracts and Leases under the proposed Sale;
- vi. any Governmental Authority known to have a claim in these Chapter 11 Cases;
- vii. the United States Attorney for the District of Nevada;
- viii. the Office of the Attorney General (or equivalent) in each state or province in which the Debtors operate;
- ix. the Office of the Secretary of State (or equivalent) in each state or province in which the Debtors operate or are organized;
- x. the Federal Trade Commission;
- xi. the United States Attorney General/Antitrust Division of Department of Justice;
- xii. the Information Officer c/o Alvarez & Marsal Canada Inc., Royal Bank Plaza, South Tower 200 Bay Street, Suite 3501 Toronto ON M5J 2J1 Canada, (Attn: Al Hutchens (ahutchens@alvarezandmarsal.com));
- xiii. Counsel to the Information Officer, Cassels Brock & Blackwell LLP, Suite 3200, Bay Adelaide Centre – North Tower, 40 Temperance Street, Toronto, Ontario M5H 0B4 (Attn: Natalie E. Levine (nlevine@cassels.com));
- xiv. all of the Debtors’ known creditors (for whom identifying information and addresses are available to the Debtors);



- xv. the Master Service List maintained by the Debtors' Notice and Claims Agent; and
- xvi. all other Persons directed by the Court (for whom identifying information and addresses are available to the Debtors).

### Public Announcement of Sale and Auction

By July 29, 2024, or as soon as reasonably practicable after entry of the Bidding Procedures Order, the Debtors shall publish the Sale Notice, with any modifications necessary for ease of publication, on one occasion in *The Wall Street Journal (National Edition)*, to provide notice to any other potential interested parties, and post the Sale Notice on their case website, <https://dm.epiq11.com/case/nevadacopper>.

### Potential Bidder Requirements

To participate in the bidding process or otherwise be considered for any purpose hereunder, including to receive access to due diligence materials, a person or entity interested in purchasing the Assets or part of the Assets (a "**Potential Bidder**") must deliver or have previously delivered to the Debtors the following preliminary documentation (collectively, the "**Preliminary Bid Documents**"):

- i. an executed confidentiality agreement (a "**Confidentiality Agreement**") in form and substance acceptable to the Debtors;
- ii. sufficient information that the Potential Bidder has or can reasonably obtain the financial capacity to close a purchase of any portion, all, or substantially all of the Debtors' Assets, the adequacy of which must be acceptable to the Debtors, in consultation with the Consultation Parties;
- iii. a statement indicating whether the Potential Bidder is requesting consent from the Debtors to partner with or otherwise work with any other interested party in connection with the potential submission of a joint Bid, the identity and domicile of any such party or parties, and a concise description of the nature of such partnership or joint Bid to the extent reasonably practicable, which the Debtors may approve in their reasonable business judgment, in consultation with the Consultation Parties, on a case-by-case basis; and
- iv. any other information required (as determined by the Debtors in consultation with the Consultation Parties) to allow the Debtors, in consultation with the Consultation Parties, to determine that the Potential Bidder intends to receive due diligence information solely for purposes consistent with these Bidding Procedures.

The Debtors, in consultation with their advisors and the Consultation Parties, will determine and notify each Potential Bidder whether such Potential Bidder has submitted adequate documents so that such Potential Bidder may proceed to conduct due diligence and submit a bid (such Potential Bidder, an "**Acceptable Bidder**"). The Debtors shall promptly inform the Consultation Parties of any entity that becomes an Acceptable Bidder. **For the avoidance of doubt, no Potential Bidder will be permitted to conduct any due diligence without entry into a Confidentiality Agreement.**

Promptly following the entry of these Bidding Procedures, the Debtors shall provide copies of all materials (which may be anonymized or in summary form as the Debtors deem necessary to protect confidentiality and preserve the integrity of the Sale Process, but which shall

include at a minimum an indication of whether a bidder is a strategic or financial bidder and such bidder's country of domicile) delivered by any Potential Bidder prior to the entry of these Bidding Procedures to the Consultation Parties and their counsel.

### **Qualified Bid Requirements**

To participate in the Auction, an Acceptable Bidder (it being understood that the Stalking Horse Bidder, if any, may satisfy the items below via the Stalking Horse Bid) must deliver to the Debtors and their advisors an irrevocable offer for the purchase of some or all of the Assets (each, a "***Bid***"), and shall meet the following criteria, in each case, on or prior to the Bid Deadline (as defined below):

- i. **Purchased Assets and Assumed Liabilities:** Each Bid must clearly state the following: (a) the particular Assets, or the portion thereof identified with reasonable specificity, to be purchased and (b) the liabilities and obligations to be assumed, including any debt and cure costs to be assumed;
- ii. **Good Faith Deposit:** Except with respect to any Credit Bid, the Bid must be accompanied by a cash deposit in the amount equal to 10% of the aggregate purchase price of the Bid to be held in an interest-bearing escrow account to be identified and established by the Debtors (the "***Good Faith Deposit***") on terms acceptable to the Debtors in consultation with the Consultation Parties. To the extent that a Bid is modified at or prior to the Auction, the applicable Acceptable Bidder must adjust its Good Faith Deposit so that it equals 10% of the increased aggregate purchase price promptly and in no event later than one business day following the conclusion of the Auction;
- iii. **Purchase Price:** Each Bid must (a) clearly set forth the purchase price to be paid, assuming a purchase of the applicable Assets and any assumption of liabilities (the "***Purchase Price***"), (b) identify separately the cash and non-cash components of the Purchase Price, including a cash component sufficient to pay any Stalking Horse Bid Protections in full, in cash, at Closing, and (c) indicate the allocation of the Purchase Price among the applicable Assets; *provided that*, for the avoidance of doubt, such allocation shall not prejudice the rights of any party in interest to contest such allocation. The Purchase Price should be a single point value in U.S. Dollars for the applicable Assets on a cash-free, debt-free basis. Any Bid for substantially all of the Assets must also include a statement as to whether the Bid is conditioned on purchasing all Assets or whether the Qualified Bid should be viewed as a separate Bid for one or more sets of Assets. The Debtors will consider the value to the estate as a whole when evaluating bids for only certain of the Assets. The Debtors reserve the right, in consultation with the Consultation Parties, to ask any Acceptable Bidder to allocate the value ascribed to their Bid for any particular Asset and to inquire about any significant assumption on which such valuations are based;
- iv. **Same or Better Terms; Bid Documents:** Each Bid must include duly executed and non-contingent, where applicable, transaction documents necessary to effectuate the transactions contemplated in the Bid (the "***Bid Documents***"). The Bid Documents shall include: (a) the form of purchase agreement on which the Acceptable Bidder is prepared to transact, together with a redline of such agreement marked against the Form APA, (b) a schedule of contracts and leases to be assumed to the extent applicable to the Bid, (c) any other material documents integral to such Bid, and (d) a statement from the Acceptable Bidder that (1) it is prepared to enter into and consummate the transactions contemplated



in the form purchase agreement, no later than ten days after the conclusion of the Auction, (or, if no Auction is held, the Bid Deadline (as defined below)), or if a later date is required, the reasons that such a later date is required; and (2) that the Bid will be irrevocable (whether or not such Qualified Bid is selected as the Successful Bid or next highest or otherwise best bid (the “**Back-Up Bid**”)) until the consummation of the Sale Transaction;

- v. **No Qualified Bidder Bid Protections:** Each Bid, other than a Bid that has been designated as a Stalking Horse Bid (as defined herein), must include a statement that the Bid does not entitle such bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment or reimbursement and a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to bidding for the applicable Assets;
- vi. **Employee Obligations:** Each Bid must indicate whether the Acceptable Bidder intends to hire ~~all~~ employees of the Debtor (or if applicable, ~~all~~ employees that are primarily employed in connection with the applicable Assets included in such Bid). ~~If the Acceptable Bidder does not intend to hire all employees, the Acceptable Bidder must include a description of the Acceptable Bidder's intentions with respect to any employee that is not to be hired under the terms of the Bid;~~ The employees must be explicitly identified in an accompanying Schedule;
- vii. **Sources of Financing:** To the extent that the Bid is not accompanied by evidence of the Acceptable Bidder's capacity to consummate the Sale Transaction set forth in its Bid with cash on hand, the Bid must include committed financing, documented to the Debtors' satisfaction, in consultation with the Consultation Parties, that demonstrates that the Acceptable Bidder has received sufficient debt and equity funding commitments to satisfy the Acceptable Bidder's obligations under the proposed Sale Transaction and other obligations under its Bid, including providing adequate assurance of future performance under all Contracts proposed to be assumed by such Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors;
- viii. **Contingencies; No Financing or Diligence Outs:** The Bid must not contain any contingencies as to the validity, effectiveness, or binding nature of the Bid, including, without limitation, contingencies for due diligence and inspection or financing of any kind (including any conditions pertaining to financial performance, conditions, or prospects) and all diligence must be completed before the Bid Deadline.
- ix. **Identity:** Each Bid must fully disclose the identity and domicile of each entity and each entity's shareholders, partners, investors, and ultimate controlling entities that will be bidding for or purchasing the applicable Assets or otherwise participating in connection with such Bid, and the complete terms of any such participation, along with sufficient evidence that the Acceptable Bidder is legally empowered to complete the transactions on the terms contemplated by the parties. Each Bid must also include contact information for the specific person(s) whom Moelis and A&O Shearman should contact regarding such Bid;
- x. **As-Is, Where-Is:** Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (a) has had an opportunity to conduct

any and all due diligence prior to making its offer; (b) has relied solely upon its own independent review, investigation, and inspection of any documents and the assets in making its Bid; and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the completeness of any information provided in connection therewith, except as expressly stated in the Acceptable Bidder's proposed purchase agreement;

- xi. **Authorization:** Each Bid must contain evidence that the Acceptable Bidder has obtained all necessary authorizations or approvals from its shareholders or its board of managers or directors, or any other internal and other approvals, as applicable, with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid;
- xii. **Joint Bids:** The Debtors will be authorized to approve joint Bids in their reasonable business judgment, in consultation with the Consultation Parties, on a case-by-case basis, provided that a joint bid meets the Qualified Bid Requirements and the applicable bidders otherwise comply with these Bidding Procedures;
- xiii. **Adequate Assurance of Future Performance:** Each Bid must (a) identify any executory contracts (the "*Executory Contracts*") and any unexpired leases (the "*Unexpired Leases*") to be assumed or assumed and assigned in connection with the proposed Sale Transaction, (b) provide for the payment of all cure amounts (the "*Cure Amounts*") related to such Executory Contracts and Unexpired Leases by the Acceptable Bidder, (c) demonstrate, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties (as defined herein), that the Acceptable Bidder can provide adequate assurance of future performance under all such Executory Contracts and Unexpired Leases sufficient to satisfy the requirements of sections 365(b)(3) and 365(f)(2)(B) of the Bankruptcy Code, and (d) provide the following documentation: (1) the legal name of the proposed assignee of Unexpired Leases (the "*Proposed Assignee*") and any guarantors, as applicable; and (2) financial statements for the calendar years ended 2022 and 2023 for the Proposed Assignee and any guarantors, as applicable, and other financial information about the Proposed Assignee to demonstrate its ability to provide adequate assurance of future performance;
- xiv. **Acknowledgement of Compliance with Bidding Procedures, Bidding Order, Bankruptcy Code, and Non-Bankruptcy Law;** Each Bid must acknowledge its compliance in all respects with these Bidding Procedures, the Bidding Procedures Order, Bankruptcy Code and any applicable non-bankruptcy law;
- xv. **No Collusion:** The Acceptable Bidder must acknowledge in writing (a) that it has not engaged in any collusion with respect to any Bids or the Sale Transaction, specifying that it did not agree with any Acceptable Bidders or Potential Bidders to control price; and (b) agree not to engage in any collusion with respect to any Bids, the Auction, or the Sale Transaction. For the avoidance of doubt, this requirement does not restrict Potential Bidder(s) from working with other Potential Bidder(s) with the Debtors' prior written consent (email shall suffice) following the Debtors' consultation with the Consultation Parties;
- xvi. **Good Faith Offer:** The Bid must constitute a good faith, *bona fide* offer to consummate the Sale Transaction;

- xvii. **Irrevocable:** Each Bid must state that in the event such Bid is chosen as the Back-Up Bid (as defined below), it shall remain irrevocable until the Debtors and the Successful Bidder consummate the applicable Sale Transaction;
- xviii. **Back-Up Bid:** Each Bid shall provide that the Acceptable Bidder will serve as a Back-Up Bidder (as defined below) if their Bid is the next highest or otherwise best bid;
- xix. **Regulatory Approvals and Covenants:** A Bid must set forth each regulatory and third-party approval required for the Acceptable Bidder to consummate the Sale Transaction, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval would not be expected in time to allow a the closing of the Sale Transaction to occur by October 8, 2024, those actions the Acceptable Bidder will take to ensure receipt of such approvals as promptly as possible);
- xx. **Time Frame for Closing:** A Bid by an Acceptable Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame for the Closing set forth above, or on such timeframe as may be acceptable to the Debtors, in consultation with the Consultation Parties; *provided*, that if the Acceptable Bidder expects to be unable to close on its Bid on or before October 7, 2024, its Bid should indicate the date on which it expects to be able to close;
- xxi. **No Fees:** Each Acceptable Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction, and by submitting its Bid, the Acceptable Bidder is agreeing to disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or other similar form of compensation; and that, for the avoidance of doubt, each Acceptable Bidder by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code; *provided* that the Debtors are authorized in their reasonable business judgment, in consultation with the Consultation Parties, to provide the Stalking Horse Bid Protections (as defined below) to one or more stalking horse bidders (each, a “*Stalking Horse Bidder*”) in accordance with these Bidding Procedures;
- xxii. **Adherence to Bidding Procedures:** By submitting its Bid, each Acceptable Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction;
- xxiii. **Consent to Jurisdiction:** The Acceptable Bidder must submit to the jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the Debtors’ qualification of Bids, to the Auction, the Sale, the Sale Transaction and the construction and enforcement of these Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the Bids, the Bid Documents, and any and all other agreements entered into in connection with any proposed Sale Transaction, and the Closing, as applicable; ~~and~~

xxiv. **Conditions to Closing:** Each Bid must identify with particularity each and every condition to closing, including the Executory Contracts and Unexpired Leases for which assumption and assignment is required; and

xxv. **Minimum Bid Requirement:** If there is a Stalking Horse Bid, in order to be a Qualified Bid, each Bid other than the Stalking Horse Bid must set forth a Purchase Price with a value, as determined by the Debtors in their reasonable business judgment, that exceeds in aggregate the sum of (a) the Purchase Price of such Stalking Horse Bid, (ii) the amount of the applicable Stalking Horse Bid Protections, and (iii) \$1,000,000 (collectively, the “**Minimum Bid Requirements**”).

Only Bids fulfilling all of the preceding requirements contained herein may be deemed to be Qualified Bids; *provided*, that a Bid not otherwise satisfying all of the preceding requirements may be designated a Qualified Bid, in the Debtors’ reasonable business judgment, in consultation with the Consultation Parties. Only those parties submitting Qualified Bids may be deemed to be Qualified Bidders.

For the avoidance of doubt, the Stalking Horse Bidder, if any, shall be deemed to be a Qualified Bidder and the Stalking Horse Bid, if any, shall be considered a Qualified Bid, such that any Stalking Horse Bidder shall be entitled to participate in the Auction.

Neither the Debtors nor any of their advisors are making or have at any time made any warranties or representations of any kind or character, express or implied, with respect to the Assets, including, but not limited to, any warranties or representations as to operating history or projections, valuation, governmental approvals, the compliance of the Assets with governmental laws, the truth, accuracy, or completeness of any documents related to the Assets, or any other information provided by or on behalf of the Debtors to a bidder, or any other matter or thing regarding the Assets. All bidders must acknowledge and agree that upon closing the Debtors shall sell and transfer to the Successful Bidder and the Successful Bidder shall accept the applicable Assets, except to the extent expressly provided in the Bankruptcy Court’s order approving the Sale Transaction. Neither the Debtors nor any of their advisors will be liable for or bound by any express or implied warranties, guaranties, statements, representations, or information pertaining to the Assets or relating thereto that the Debtors, any advisor, or agent representing or purporting to represent the Debtors to whomever might have made or furnished, directly or indirectly, orally or in writing, unless (with respect to the Debtors only) specifically set forth in the Bankruptcy Court’s order approving the Sale Transaction.

Within one business day after the Bid Deadline (the “**Qualified Bid Designation Date**”), the Debtors, in consultation with the Consultation Parties, shall determine which Acceptable Bidders are Qualified Bidders and will notify the Acceptable Bidders whether Bids submitted constitute Qualified Bids, which will enable such Qualified Bidders to participate in the Auction. Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors; *provided* that if the Debtors receive a Bid prior to the Bid Deadline that does not satisfy the requirements of a Qualified Bid, the Debtors may provide the Acceptable Bidder with the opportunity to remedy any deficiencies prior to the Auction.

#### **Right to Credit Bid**

The DIP Lenders, and any other Qualified Bidder who has a valid and perfected lien on any Assets of the Debtors’ estates, each (a “**Secured Creditor**”) shall have the right to credit bid all or a portion of the value of such Secured Creditor’s claims within the meaning of section 363(k) of the Bankruptcy Code; provided that a Secured Creditor shall have the right to credit bid its claim (a “**Credit Bid**”) only with respect to the collateral by which such Secured Creditor



is secured; *provided* that (i) any Credit Bid shall be conditioned on payment in full in cash of the DIP Facility, unless the DIP Lenders consent to a different treatment of such claims ~~and~~; (ii) the rights of any other Secured Creditor to challenge a Credit Bid that does not repay the secured claim of such Secured Creditor are fully preserved; and (iii) any Credit Bid must meet the above requirements for a Qualified Bid, including, if a Stalking Horse Bidder is approved, the Minimum Bid Requirements.

#### **Obtaining Due Diligence Access**

Only Acceptable Bidders shall be eligible to receive due diligence information, access to the Debtors' electronic data room, and additional non-public information regarding the Debtors. Beginning on the date the Debtors determine that a party is an Acceptable Bidder, or as soon as reasonably practicable thereafter, the Debtors will provide such Acceptable Bidder with access to an electronic data room and reasonable due diligence information, as requested by such Acceptable Bidder, as soon as reasonably practicable after such request. The Debtors shall promptly consult with the Consultation Parties (a) with respect to any due diligence disputes that arise concerning any Acceptable Bidder and (b) prior to revoking due diligence access to any such entity. The Debtors shall post substantially all written due diligence provided to any Acceptable Bidder to the Debtors' electronic data room for the benefit of all Acceptable Bidders.

Acceptable Bidders will not, directly or indirectly, contact or initiate or engage in discussions in respect of matters relating to the Debtors or a potential transaction with any customer, supplier, or other contractual counterparty of the Debtors without the prior written consent of the Debtors. The due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Debtors shall have no obligation to furnish any due diligence information.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors shall not furnish any confidential information relating to the Debtors or a potential transaction to any person except an Acceptable Bidder or such Acceptable Bidder's duly authorized representatives to the extent provided in an applicable Confidentiality Agreement.

The Debtors and their advisors, after consultation with the Consultation Parties, shall be permitted to coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; *provided* that the Debtors may decline, after consultation with the Consultation Parties, to provide such information to Acceptable Bidders who, in the Debtors' reasonable business judgment have not established, or who have raised doubt, that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate a Sale Transaction. For any bidder who is a competitor or customer of the Debtors or is affiliated with any competitors or customers of the Debtors, the Debtors reserve the right, in consultation with the Consultation Parties, to withhold or modify any diligence materials that the Debtors determine are business-sensitive or otherwise inappropriate for disclosure to such bidder.

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets (i) to any person or entity who is not an Acceptable Bidder and (ii) if and to the extent doing so would (a) violate any laws to which the Debtors are subject, including any privacy laws; (b) result in the disclosure of any trade secrets of third parties in breach of any contract with such third party; (c) violate any legally-binding obligation of any Debtor with respect to confidentiality, non-disclosure, or privacy; or (d) jeopardize protections afforded to any Debtor under the attorney-client privilege or the attorney work product doctrine (provided, the Debtors shall use commercially reasonable efforts to (1) provide such access as can be provided (or otherwise convey such information regarding the applicable matter as can be conveyed) without violating such privilege, doctrine, contract, obligation, or law; and (2) provide such information in a manner without violating such privilege, doctrine, contract, obligation or law).

The Debtors shall provide the Consultation Parties periodic updates regarding the activity of each Acceptable Bidder in the electronic data room in a form and frequency mutually acceptable to the Debtors and the Consultation Parties; provided that the Debtors shall cooperate in good faith to provide any such information reasonably requested by the Consultation Parties.

#### Communications with Acceptable Bidders (including Qualified Bidders)

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive direct communications, including any diligence requests, from Acceptable Bidders (including any Qualified Bidders) shall be through Moelis.

#### Due Diligence and Indications of Interest from Acceptable Bidders (including Qualified Bidders)

Each Acceptable Bidder (including, as applicable, any Qualified Bidder) shall:

- i. Provide a preliminary indication of interest as requested by the Debtors or their advisors, together with any other information or materials requested in connection therewith (collectively, an “*Indication of Interest*”); and
- ii. Comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors regarding the ability of such Acceptable Bidder (including any Qualified Bidder) to consummate its contemplated transaction.

Failure by an Acceptable Bidder (including, as applicable, any Qualified Bidder, other than the Stalking Horse Bidder, if any) to provide an acceptable Indication of Interest or comply with reasonable requests for additional information and due diligence access may be a basis for the Debtors to determine that such bidder is no longer an Acceptable Bidder or that a Bid made by such bidder is not a Qualified Bid.

#### **Bid Deadline**

An Acceptable Bidder that desires to make a bid on one or more of the Assets shall deliver Binding Bids to the Bid Notice Parties no later than **September 6, 2024, at 5:00 p.m. (prevailing Pacific Time)** (the “*Bid Deadline*”); provided that the Debtors may, in consultation with the Consultation Parties, extend the Bid Deadline for any reason whatsoever, in their reasonable business judgment, for all or certain Potential Bidders, without further order of the Court, subject to providing notice to all Potential Bidders and the Consultation Parties.

#### **Evaluation of Qualified Bids**

The Debtors shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors’ business judgment, and in consultation with the Consultation Parties, the highest or otherwise best Qualified Bid or combination of Qualified Bids for any Assets (the “*Starting Bid*”). ~~The As stated above, the~~ Debtors shall promptly provide to the Consultation Parties copies of all Bids received by the Debtors, including the Starting Bid, but in no event later than the next business day following receipt; *provided* that the Consultation Parties and the U.S. Trustee must treat such Bids and any related information as confidential and shall not publicly disclose such information without the prior written consent of the Debtors ~~and the applicable bidder.~~

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors, in addition to any other factors

that the Debtors deem appropriate: (i) the amount and nature of the total consideration; (ii) the Qualified Bidder's ability to close a transaction and the timing thereof; (iii) the net economic effect of any changes to the value to be received by each of the Debtors' estates from the transaction contemplated by the Bid Documents; (iv) the tax consequences of such Qualified Bid; ~~and (v) the treatment of employee liabilities; and (vi)~~ the liabilities and obligations to be assumed pursuant to such Qualified Bid. Prior to commencing the Auction, the Debtors shall notify the Stalking Horse Bidder, if any, and all Qualified Bidders as to which Qualified Bid is the Starting Bid for the Auction with respect to the applicable assets. At such time, the Debtors shall also distribute copies of the Starting Bid to the Stalking Horse Bidder, if any, and each Qualified Bidder.

### **Stalking Horse Protections**

At any time until 20 days prior to the Bid Deadline, the Debtors shall be authorized, but not obligated, in an exercise of their reasonable business judgment, (i) in consultation with the Consultation Parties and (ii) with the consent of the DIP Lenders, to (a) select one or more Acceptable Bidders to act as the Stalking Horse Bidder in connection with the Auction for such assets, and (b) in connection with any stalking horse agreement with a Stalking Horse Bidder, and subject ~~in all respects to approval of the Court,~~ terms set forth below, (x) provide a break-up fee and (y) agree to reimburse the reasonable and documented out of pocket fees and expenses the ("***Stalking Horse Bid Protections***") in an aggregate amount of break-up fee and reimbursement of expenses not to exceed three percent of the Purchase Price; *provided, however*, that if a DIP Lender, or any affiliate of a DIP Lender, has expressly indicated to the Debtors that it is considering submitting, or has actually submitted, a Bid for any Assets, it shall not have consent rights with respect to the selection of the Stalking Horse Bidder or any protections to be afforded to such Stalking Horse Bidder.

In the event that the Debtors enter into a Stalking Horse Agreement with one or more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice and proposed form of order with the Court (the "***Stalking Horse Notice***") and serve the Stalking Horse Notice on the Stalking Horse Bidder and the U.S. Trustee. The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder's parent company or sponsor); (ii) set forth the amount of the Stalking Horse Bidder's bid (the "***Stalking Horse Bid***") and what portion (if any) is cash; (iii) state whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid; (iv) specify any proposed Bid Protections (including the amount and calculation thereof); (v) specify the Assets included in the Stalking Horse Bid; (vi) attach the Stalking Horse Agreement, including all exhibits, schedules and attachments thereto; and (vii) set forth the deadline to object to the Stalking Horse Bidder designation and any Bid Protections. If there are no objections to the Stalking Horse Notice within five business days of filing with the Court, (the "Notice Period"), the Debtors may submit ~~an~~ a revised proposed form of order to the Court that incorporates any comments received during the Notice Period that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement, which the Court may enter without the need for further hearing. If a party timely files an objection to the Stalking Horse Notice, the Court shall hold a hearing after the expiration of the Notice Period or as soon thereafter as the Court is available.

Except as otherwise set forth herein, no person or entity, other than a Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fees, "topping," termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

### No Qualified Bids

If no Qualified Bids other than the ~~Bid submitted by the Stalking Horse Bidder (the “Stalking Horse Bid”)~~, if any, are received for the Assets included in the Stalking Horse Bid by the Bid Deadline, then the Debtors may cancel the Auction with respect to such Assets. If ~~any~~a Stalking Horse Bid is the only Qualified Bid received by the Bid Deadline, the Debtors may decide, in their reasonable business judgment, after consultation with the Consultation Parties, to designate the Stalking Horse Bid as the Successful Bid (as defined below) as to the applicable Assets and pursue entry of an order approving a Sale Transaction with respect to such Assets to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement. The Debtors promptly shall file notice of any cancellation of the Auction with the Court.

### Auction

Other than as expressly set forth herein, if the Debtors receive more than one Qualified Bid for the Assets (or, if applicable, any portion of Assets) by the Bid Deadline, the Debtors shall conduct the Auction to determine the Successful Bidder in their reasonable business judgment, in consultation with the Consultation Parties, with respect to such Assets or portion of Assets in accordance with the Auction Procedures (as defined below). If the Debtors do not receive a Qualified Bid for any particular Asset by the Bid Deadline, the Debtors will not conduct the Auction with respect to such Asset. ~~If one or more Qualified Bids (other than the Stalking Horse Bid, if any) are received by the Bid Deadline with respect to the applicable Assets, then the Debtors shall conduct the Auction with respect to such Assets in accordance with the Auction Procedures (as defined below) and shall consult with the Consultation Parties throughout the Auction process (to the extent such Consultation Parties have not submitted a Qualified Bid).~~

The Auction shall commence on **September 10, 2024 at 12:00 p.m. (prevailing Eastern Time) at the New York offices of A&O Shearman** or such later time or other place as the Debtors determine in consultation with the Consultation Parties.

The Auction will be conducted in accordance with the following procedures (the “**Auction Procedures**”):

- i. the Auction will be conducted openly; *provided* that, except as otherwise determined by the Debtors in consultation with the Consultation Parties, only (a) the Debtors, (b) the Consultation Parties, (c) representatives of the Office of the United States Trustee, (d) ~~any statutory committee appointed in these Chapter 11 Cases~~the Creditors’ Committee, (e) any other Qualified Bidders, and (f) the respective representatives and professionals of the foregoing parties shall be entitled to participate in the Auction, however, any party in interest may be permitted to attend the Auction;
- ii. except as otherwise provided herein, only Qualified Bidders shall be entitled to bid at the Auction;
- iii. the Qualified Bidders, including ~~any~~ Stalking Horse Bidders, if any, must appear in person or through duly-authorized representatives at the Auction;
- iv. bidding shall begin with the Starting Bid;
- v. subsequent bids (each, an “**Overbid**”) may only be made at the Auction and shall be at least ~~(a)~~ a 2% increase in cash, cash equivalents, or other such consideration that the Debtors, in their reasonable business judgment, in consultation with the Consultation Parties, deem equivalent over the previous bid ~~plus (b) in the event~~



that the Debtors have entered into a Stalking Horse Agreement with respect to the Assets to which the Overbid relates, the aggregate amount of Bid Protections (including, for the avoidance of doubt, any break-up fees and expense reimbursements) under such Stalking Horse Agreement (a "**Minimum Overbid**"), and each successive Overbid shall exceed the then-existing Overbid by an incremental amount that is not less than the Minimum Overbid. The Debtors may, in their reasonable business judgment, in consultation with the Consultation Parties, announce increases or reductions to the Minimum Overbid at any time during the Auction. For the avoidance of doubt, each successive Bid that a Qualified Bidder may submit at the Auction must contain a Purchase Price in cash, cash equivalents, or such other consideration that the Debtors, in their reasonable business judgment, in consultation with the Consultation Parties, deem equivalent that exceeds the then existing highest Bid by at least the amount of the Minimum Overbid

- vi. at the commencement of the Auction, the Debtors, in consultation with the Consultation Parties, may announce procedural and related rules governing the Auction, including time periods available to all Qualified Bidders to submit successive bid(s);
- vii. each Qualified Bidder will be permitted a reasonable time to respond to previous bids at the Auction, as determined by the Debtors in consultation with the Consultation Parties;
- viii. during the course of the Auction, the Debtors shall, after submission of each Overbid and consultation with the Consultation Parties ~~(to the extent such Consultation Parties have not submitted a Qualified Bid)~~, promptly inform each Qualified Bidder of the terms of the previous bids and inform each Qualified Bidder which Overbid(s) reflect, in the Debtors' view, in consultation with the Consultation Parties, the highest or otherwise best bid(s) for the applicable Assets (the "**Prevailing Highest Bid**");
- ix. to remain eligible to participate in the Auction, in each round of bidding, each Qualified Bidder, except the Qualified Bidder(s) that submitted the Prevailing Highest Bid, must submit an Overbid with respect to such round of bidding. To the extent a Qualified Bidder that did not submit the Prevailing Highest Bid fails to submit an ~~overbid~~ Overbid with respect to such round of bidding, such Qualified Bidder shall be disqualified from continuing to participate in the Auction; provided, however, that the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties (to the extent such Consultation Parties have not submitted a Qualified Bid), may permit ~~a bidder that has been disqualified to take part in the Auction solely to the extent a Qualified Bidder that has not been disqualified has agreed (after receiving express permission from the Debtors upon consultation with the Consultation Parties) to permit such disqualified bidder to join such~~ any such bidder to (a) re-join the Auction after submitting an Overbid or (b) join another Qualified Bidder in ~~its next round Bid~~ the Auction as an additional purchaser party or debt or equity financing source;
- x. the Auction will be transcribed to ensure an accurate recording of the bidding at the Auction;
- xi. each Qualified Bidder will be required to confirm on the record that it has not engaged, and will not engage, in any collusion with respect to the bidding or any

Sale Transaction. For the avoidance of doubt, this requirement does not restrict Qualified Bidder(s) from working with other Qualified Bidder(s) with the Debtors' prior written consent;

- xii. each Qualified Bidder will be required to confirm that its bid is a good faith, *bona fide* offer and it intends to consummate the Sale Transaction if selected as the Successful Bid in accordance with these Bidding Procedures (as may be modified in accordance herewith at the Auction);
- xiii. the Court and the Debtors will not consider bids made after the Auction has been closed;
- xiv. the Debtors, in their reasonable business judgment, in consultation with the Consultation Parties, may reject, at any time before entry of an order of the Court approving a Successful Bid, any Bid that the Debtors determine is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale Transaction, or (c) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders;
- xv. the Debtors have the right to request any additional information that will allow the Debtors to make a reasonable determination as to a Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by their proposal and any further information that the Debtors believe is reasonably necessary to clarify and evaluate any Bid made by a Qualified Bidder during the Auction;
- xvi. the Debtors reserve the right, in their reasonable business judgment, and in consultation with the Consultation Parties, to adjourn the Auction one or more times to, among other things, (a) facilitate discussions between the Debtors and Qualified Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, and in consultation with the Consultation Parties, may require in order to determine that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and equity funding commitments to consummate the proposed transaction at the prevailing amount; and
- xvii. notwithstanding anything herein to the contrary, the Debtors may, in consultation with the Consultation Parties, at any time choose to adjourn the Auction by announcement at the Auction; *provided*, that in the event of an adjournment of the Auction, the Debtors promptly shall file notice thereof with the Court.

Any Auction rules adopted by the Debtors will not modify any of the terms of the Stalking Horse purchase agreement, if any, or the rights of the Stalking Horse Bidder, if any, without the consent of the Stalking Horse Bidder, if any.

#### **Acceptance of the Successful Bidder**

The Auction shall continue until (i) there is only one Qualified Bid or a combination of Qualified Bids that the Debtors determine, in their reasonable business judgment and in a manner consistent with the exercise of their fiduciary duties and outlined below in further detail, and in consultation with the Consultation Parties, is the highest or otherwise best bid to purchase the applicable Assets (each, a "***Successful Bid***"), and (ii) the Debtors determine, in their

reasonable business judgment, in consultation with the Consultation Parties, that further bidding is unlikely to result in a different Successful Bid or Successful Bids that would be reasonably acceptable to the Debtors, at which point, the Auction will be closed.

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors, in consultation with the Consultation Parties, may consider the following factors in addition to any other factors that the Debtors deem appropriate: (i) the amount and nature of the total consideration, which includes but is not limited to, assumed liabilities (administrative liabilities, cure payments), and the amount of executory contracts and leased locations being assumed; (ii) the Qualified Bidder's ability to close a transaction and the timing thereof; (iii) the net economic effect of any changes to the value to be received by each of the Debtors' estates from the transaction contemplated by the Bid Documents; (iv) the tax consequences of such Qualified Bid; and (v) ~~the treatment of employee liabilities; and (vi)~~ any other consideration that may impact the Debtors' estates or stakeholders.

Any Qualified Bidder that submits a Successful Bid will be deemed a "Successful Bidder" with respect to the Assets contemplated for the purchase pursuant to such Successful Bid. The Debtors shall file notice of the Successful Bid and the Successful Bidder with the Court as soon as reasonably practicable after conclusion of the Auction. Following conclusion of the Auction and selection of a Successful Bidder, the Debtors shall present the results of the Auction at a hearing (the "***Sale Hearing***") at which the Debtors shall seek Court approval to enter into a binding purchase agreement with the Successful Bidder on the terms of the Successful Bid (the order approving such entry, the "***Definitive Purchase Agreement Order***"). For the avoidance of doubt, the Definitive Purchase Agreement Order shall deem the Debtors' selection of the Successful Bid final; *provided* that, notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures shall require the board of directors, board of managers, or such similar governing body of any Debtor to take or refrain from taking any action that it determined in good faith, in consultation with counsel, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

Within one business day of the selection of the Successful Bidder, such Successful Bidder (including both the Stalking Horse Bidder, if any, and Back-Up Bidder, if applicable) shall make a cash deposit, in addition to its Good Faith Deposit, in an amount calculated on the basis of the increased aggregate purchase price, submitted by wire transfer of immediately available funds to an escrow account to be identified and established by the Debtors pursuant to a customary and reasonable escrow agreement. Each Successful Bidder and the Debtors shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which each such Successful Bid was made.

#### **Designation of Back-Up Bidder**

The Back-Up Bid to purchase any applicable Assets (the "***Back-Up Bidder***") will be determined by the Debtors at the conclusion of the Auction, in consultation with the Consultation Parties, and will be announced at that time to all the Qualified Bidders participating in the Auction. Following consultation with the Consultation Parties, the Debtors' selection of a Back-Up Bid shall be deemed final, and the Debtors shall not accept any further bids or offers to submit a bid after such selection. The Debtors will be authorized, but not required, to consummate the Transaction with the Backup Bidder without further order of the Bankruptcy Court, so long as such Backup Bid shall have been approved in connection with the Bankruptcy Court's approval of the Successful Bid, or subject to Bankruptcy Court approval if not.

If for any reason a Successful Bidder fails to consummate the purchase of such assets within the time permitted, then the Back-Up Bidder will automatically be deemed to have

submitted the Successful Bid for such assets, and the Back-Up Bidder shall be deemed a Successful Bidder for such assets and shall be required to consummate any Sale Transaction with the Debtors as soon as is reasonably practicable without further order of the Court in accordance with the terms and conditions of such Back-Up Bidder's Bid, following a notice being filed with the Court; provided, however, that the Debtors shall first provide notice to Contract counterparties implicated by any Back-Up Bidder's Bid and an opportunity to object to the assignment to the Back-Up Bidder within 5 days of receiving such notice. To the extent any objections are raised and remain unresolved, the Court may schedule a hearing on an expedited basis to adjudicate such objection.

The Back-Up Bid shall remain open and irrevocable until the earliest to occur of (i) 45 days after completion of the Auction, (ii) consummation of a Sale Transaction with one or more Successful Bidders at an Auction, and (iii) the release of such Back-Up Bid by the Debtors in writing (the "Back-Up Termination Date"). The Debtors shall return the Back-Up Bidder's deposit owed within five business days of the Back-Up Termination Date.

### Approval of the Sale Transaction

A hearing to consider approval of each Sale Transaction (the "Sale Hearing"), currently is scheduled to take place on **September 25, 2024, at 10:00 a.m.** (prevailing Pacific Time), before the Honorable Hilary L. Barnes at the United States Bankruptcy Court for the District of Nevada, C. Clifton Young Federal Building, 300 Booth Street, Reno, NV 89509 (Courtroom 2) and telephonically.

At the Sale Hearing certain findings will be sought from the Court regarding the Auction, including, among other things, that: (1) the Auction was conducted, and the Successful Bidder was selected, in accordance with the Bidding Procedures; (2) the Auction was fair in substance and procedure; (3) the Successful Bid was a Qualified Bid as defined in the Bidding Procedures; and (4) consummation of any Sale Transaction as contemplated by the Successful Bid in the Auction will provide the highest or otherwise best offer for the applicable Assets and is in the best interests of the Debtors and their estates. **The Sale Hearing may be continued to a later date by the Debtors, in consultation with the Consultation Parties, by sending notice to creditors or other parties in interest prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party (including the Stalking Horse Bidder, if any).**

Objections to the Sale Transaction(s), and entry of any order approving the sale (the "**Sale Order**") must (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and all orders of the Court; and (iii) be filed with the Court and served so as to be **actually received** by the Debtors, the Consultation Parties, the Bid Notice Parties, and the foregoing parties' respective counsel by September 19, 2024, at 12:00 p.m. (prevailing Pacific Time).<sup>4</sup>

<sup>4</sup> In the event that the Debtors, in consultation with the Consultation Parties, reasonably determine in their business judgment to pursue a Sale Transaction pursuant to a Plan, a separate deadline to object to such Sale Transaction shall be set by order of the Court.

### **Return of Good Faith Deposit**

The Good Faith Deposit of the Successful Bidder or Successful Bidders, if any, will, upon consummation of the Successful Bid or Successful Bids, become property of the Debtors' estates and be credited to the portion of such Successful Bidder's or Successful Bidders' applicable Purchase Price.

If the Successful Bidder or Successful Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable), if any, fails to consummate the Successful Bid (or Back-Up Bid, if applicable), then the Good Faith Deposit of such Successful Bidder (or Back-Up Bidder, if applicable) irrevocably will be forfeited to the Debtors and may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors.

The Good Faith Deposit of any unsuccessful Qualified Bidders will be returned within five business days after consummation of the applicable Sale Transaction.

The return of any Good Faith Deposits of any Stalking Horse Bidders will be subject to the terms of such Stalking Horse Bidders' ~~Plan~~plan or purchase agreement, as applicable. All such deposits shall be held in escrow and at no time shall be deemed property of the Debtors' estates absent further order of the Court.

### **Commissions**

Other than with respect to (i) any Stalking Horse Bid Protections that become payable pursuant to the terms of a Stalking Horse Agreement, if any, and (ii) any payment obligations with respect to the Debtors' investment banker, Moelis & Company, (a) the Debtors shall be under no obligation to pay any commissions, fees, or expenses to any bidder's agent, advisor or broker; (b) all commissions, fees, or expenses for any such agents, advisors, or brokers shall be paid by the applicable bidder at such bidder's discretion; and (c) in no case shall any commissions, fees, or expenses for any bidder's agent, advisor, or broker be deducted from any proceeds derived from any sale of the Assets.

### **Reservation of Rights**

The Debtors, in consultation with the Consultation Parties, reserve their rights to modify these Bidding Procedures in their reasonable business judgment and in a manner consistent with the exercise of their fiduciary duties in any manner that will best promote the goals of the bidding process, or impose, at or before the Auction, additional customary terms and conditions on the sale of the applicable Assets, including, without limitation: (1) extending the deadlines set forth in the Bidding Procedures; (2) adjourning the Auction without further notice; (3) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (4) canceling the Auction; (5) rejecting any or all Bids or Qualified Bids; and (6) adjusting the applicable minimum overbid increment; *provided, however*, that the Debtors may not amend these Bidding Procedures, the Bidding Procedures Order or the bidding process to reduce or otherwise modify their obligations to consult with any Consultation Party without the consent of such Consultation Party or further order of the Court. All such modifications and additional rules will be communicated in advance to each of the Consultation Parties and the U.S. Trustee, Acceptable Bidders and Qualified Bidders; *provided, further*, that, to the extent such modifications occur at the Auction, disclosure of such modifications shall be limited to those in attendance at the Auction. If any of the DIP Lenders, the Office of the U.S. Trustee or any official committee of unsecured creditors appointed in these cases determines in good faith that any modification to these Bidding Procedures or the Bidding Procedures Order, or any adoption of new rules, procedures or deadlines, would not be consistent with this paragraph



1 or these Bidding Procedures or the Bidding Procedures Order, such DIP Lender, U.S. Trustee, or  
 2 Committee may file an objection with the Bankruptcy Court, and no such modification or  
 3 adoption shall become effective until such objection is resolved. The Debtors shall provide  
 4 advance notice in writing of any such modification to the Consultation Parties and the U.S.  
 5 Trustee and any Qualified Bidder, including ~~any~~the Stalking Horse Bidder, if any.

6 All parties expressly reserve all of their rights (and do not waive any such rights) to seek  
 7 Court relief with regard to the Auction, the Bidding Procedures, the Sale Transaction, and any  
 8 related items (including, if necessary, to seek an extension of the Bid Deadline).

9 Each reference in these Bidding Procedures and the Bidding Procedures Order to  
 10 “consultation” (or similar phrase) with the Consultation Parties shall mean consultation in good  
 11 faith. All Consultation Parties will be permitted to seek relief from the Bankruptcy Court on an  
 12 expedited basis if they disagree with any actions or decisions made by the Debtors as part of  
 13 these Bidding Procedures. The rights of all Consultation Parties with respect to the outcome of  
 14 the Auction are reserved.

### 15 Consent to Jurisdiction

16 All Qualified Bidders at the Auction will be deemed to have consented to the core  
 17 jurisdiction of the Court and waived any right to a jury trial in connection with any disputes  
 18 relating to the Auction, the Sale, the Sale Transaction(s) and the construction and enforcement of  
 19 these Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the  
 20 Bids, the Bid Documents, and any and all other agreements entered into in connection with any  
 21 proposed Sale Transaction, as applicable, and consented to the entry of a final order or judgment  
 22 in any way related to these Bidding Procedures, the bid process, the Auction, the Sale Hearing,  
 23 or the construction and enforcement of any agreement or any other document relating to the Sale  
 24 any Sale Transaction if it is determined that the Court would lack Article III jurisdiction to enter  
 25 such a final order or judgment absent the consent of the parties.

26 Any parties raising a dispute relating to these Bidding Procedures must request that such  
 27 dispute be heard by the Court on an expedited basis.

### 28 Fiduciary Matters

29 Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these  
 30 Bidding Procedures or the Bidding Procedures Order shall require a Debtor or the board of  
 31 directors, board of managers, or similar governing body of a Debtor to take any action or to  
 32 refrain from taking any action related to any sale transaction or with respect to these Bidding  
 33 Procedures, to the extent such Debtor, board of director, board of managers, or such similar  
 34 governing body reasonably determines in good faith, in consultation with counsel, that taking or  
 35 failing to take such action, as applicable, would be inconsistent with applicable law or its  
 36 fiduciary obligations under applicable law.

**EXHIBIT B**

**Form of Sale Notice**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: 24-50566-hlb  
Chapter 11

Jointly Administered with:  
Case No. 24-50567-hlb  
Case No. 24-50568-hlb  
Case No. 24-50569-hlb  
Case No. 24-50570-hlb  
Case No. 24-50571-hlb

Hearing Date:  
Hearing Time:

**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION, AND  
SALE HEARING FOR THE SALE OF SUBSTANTIALLY ALL ASSETS**

PLEASE TAKE NOTICE that on [ ], ~~2023~~2024, the United States Bankruptcy Court for the District of Nevada (the “Court”) entered the [*Order (I)(A) Approving ~~the~~ Auction and Bidding Procedures, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Bid Deadlines and an Auction, (D) Approving the Form and Manner of Notice Thereof, (E) Approving the Form APA, and (II)(A) Establishing Notice and Procedures for the, Noticing, and Assumption and Assignment of Contracts and Leases, (B) Authorizing the Assumption and Assignment of Assumed Contracts, (C) Authorizing the Sale of Assets* Procedures; (II) Scheduling Certain Dates and Deadlines with Respect Thereto; (III) Approving Form Notice to Be Provided to Interested Parties; and (D) Granting Related Relief [Docket No. [ ]]] (the “**Bidding Procedures Order**”)<sup>2</sup> in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”).

PLEASE TAKE FURTHER NOTICE that, if the Debtors receive qualified competing bids within the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct an auction (the “**Auction**”) of the Assets **on September 10, 2024, at 12:00 p.m. (prevailing Eastern Time)** at the New York offices of Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022, or such other location announced to the bidders and Consultation Parties.

PLEASE TAKE FURTHER NOTICE that only the Debtors, the Consultation Parties, Qualified Bidders, the U.S. Trustee, and any other parties as the Debtors may determine to include in their reasonable discretion, in consultation with the Consultation Parties, in each case, along with their representatives and advisors, shall be entitled to attend the Auction, and only Qualified Bidders will be entitled to make Overbids at the Auction. **All interested or potentially affected parties should carefully read the Bidding Procedures and the Bidding Procedures Order.**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms used but not defined in this notice have the meanings given to them in the Bidding Procedures Order.



**PLEASE TAKE FURTHER NOTICE** that the Debtors will seek approval of the Sale Transaction(s) at a hearing scheduled to commence on or before **September 25, 2024, at 10:00 a.m. (prevailing Pacific Time)** (the “*Sale Hearing*”) before the Honorable Judge Barnes, at the United States Bankruptcy Court for the District of Nevada, 300 Booth Street, 5th Floor, Courtroom 2, Reno, Nevada 89509, and telephonically.

**PLEASE TAKE FURTHER NOTICE** that, except as otherwise set forth in the Bidding Procedures Order, objections to consummation or approval of the Sale and each Sale Transaction must (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual bases for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be ***actually received on or before September 19, 2024, at 12:00 p.m. (prevailing Pacific Time)*** by the following parties:

- i. the Debtors, c/o Nevada Copper, Inc., 61 E. Pursel Lane, P.O. Box 1640, Yerington, NV 89447 (Attn: Gregory J. Martin (gjmartin@nevadacopper.com));
- ii. the Debtors’ counsel, Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick (fsosnick@aoshearman.com), Sara Coelho (sara.coelho@aoshearman.com), and Cody Wright (cody.wright@aoshearman.com));
- iii. the Debtors’ investment banker, Moelis & Company, 399 Park Ave 4th Floor, New York, NY 10022 (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com));
- iv. the Office of the United States Trustee for Region 17, 300 Booth Street, Suite 3009, Reno, NV 89509 (Attn: Jared Day (Jared.A.Day@usdoj.gov));
- v. proposed counsel to ~~any~~the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases, ~~[•], and [•], and (b) [•], [ADDRESS], Attn: [•] Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 (Attn: Eric S. Chafetz (EChafetz@lowenstein.com) and Jeffrey L. Cohen (JCohen@lowenstein.com));~~
- vi. the DIP Lenders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; and 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley; and
- vii. counsel to ~~any~~the Stalking Horse Bidder, ~~[•], and [•], and (b) [•], [ADDRESS], Attn: [•] if any.~~

**PLEASE TAKE FURTHER NOTICE** Copies of the Bidding Procedures Motion, Bidding Procedures Order, Bidding Procedures, the Form APA, and any other documents filed in the Debtors’ chapter 11 cases are available upon request, by calling the Debtors’ claims and noticing agent, Epiq Corporate Restructuring, LLC (i) for U.S. parties, toll-free at (877) 635-8338, or (ii) for non-U.S. parties, at +1 (971) 306-8096, or by visiting the Debtors’ restructuring website at <https://dm.epiq11.com/case/nevadacopper>.

#### **CONSEQUENCES OF FAILING TO TIMELY MAKE AN OBJECTION**

**ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE OR A SALE TRANSACTION, AS APPLICABLE, ON OR BEFORE THE**

1 **SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING**  
2 **PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY**  
3 **OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF**  
4 **THE APPLICABLE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS,**  
5 **CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS MAY BE SET**  
6 **FORTH IN THE APPLICABLE PURCHASE AGREEMENT OR THE PLAN, AS**  
7 **APPLICABLE.**  
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1 Dated: [●], 2024

Respectfully submitted,

2 /s/ DRAFT

3 **McDONALD CARANO LLP**

Ryan J. Works (Nevada Bar No. 9224)

4 Amanda M. Perach (Nevada Bar No. 12399)

2300 West Sahara Avenue, Suite 1200

5 Las Vegas, Nevada 89102

Telephone: (702) 873-4100

6 Email: rworks@mcdonaldcarano.com

aperach@mcdonaldcarano.com

7 -and-

8 **ALLEN OVERY SHEARMAN**

9 **STERLING US LLP**

Fredric Sosnick (New York Bar No. 2472488)

10 (admitted *pro hac vice*)

Sara Coelho (New York Bar No. 4530267)

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13 Email: fsosnick@aoshearman.com

sara.coelho@aoshearman.com

14 *Proposed Counsel to the Debtors and*  
15 *Debtors in Possession*

**EXHIBIT C**

**Form of Assumption and Assignment Notice**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.  
☒ NEVADA COPPER CORP.  
☒ NC DITCH COMPANY LLC  
☒ NC FARMS LLC  
☒ LION IRON CORP.  
☒ 0607792 B.C. LTD.

Debtors.<sup>1</sup>

Lead Case No.: 24-50566-hlb  
Chapter 11

Jointly Administered with:  
Case No. 24-50567-hlb  
Case No. 24-50568-hlb  
Case No. 24-50569-hlb  
Case No. 24-50570-hlb  
Case No. 24-50571-hlb

Hearing Date:  
Hearing Time:

**NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT  
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU  
OR ONE OF YOUR AFFILIATES ARE A COUNTERPARTY TO AN  
EXECUTORY CONTRACT OR UNEXPIRED LEASE WITH ONE OR MORE  
OF THE DEBTORS AS SET FORTH ON **EXHIBIT A** ATTACHED HERETO.

**PLEASE TAKE NOTICE** that on [ ], 2024, the United States Bankruptcy Court for the District of Nevada (the “Court”) entered the [Order (I) Approving ~~the Auction and Bidding Procedures, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Noticing, and Assumption and Assignment Procedures; (II) Scheduling Certain Dates and Deadlines with Respect Thereto; (III) Approving Form Notice to Be Provided to Interested Parties; and (IV) Granting Related Relief~~ [Docket No. [ ]]] (the “**Bidding Procedures Order**”) in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the “Debtors”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Bidding Procedures and the terms of any Successful Bid, the Debtors **may** assume and assign to the Successful Bidder the contract or agreement listed on **Exhibit A** to which you are a counterparty, upon approval of the Sale Transaction. The Debtors have conducted a review of their books and records and have determined that the Cure Payments for unpaid monetary obligations under ~~such Executory Contract or Unexpired Lease is as~~ the Debtors’ executory contracts and leases, which are set forth on **Exhibit A**. You are receiving this Assumption and Assignment Notice (which has been filed on the docket of the above-captioned chapter 11 cases) because you may be a counterparty to a ~~Contract~~ contract or ~~Lease~~ lease (a “Counterparty”) that is proposed to be assumed and assigned to the Successful Bidder in connection with the Sale.

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion or the Bidding Procedures.

**PLEASE TAKE FURTHER NOTICE** that if you disagree with the proposed Cure Payments, object to a proposed assignment to the Successful Bidder of any ~~Executory Contract or Unexpired Lease~~contract or lease, or dispute the ability of the Successful Bidder to provide adequate assurance of future performance with respect to any ~~Contract~~contract, your objection must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Bankruptcy Rules, and any order governing the administration of these chapter 11 cases; (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Payments, state the correct Cure Payments alleged to be owed to the objecting ~~contract counterparty~~Counterparty, together with any applicable and appropriate documentation in support thereof; and (iv) ~~be filed with the Court and served and actually received no later than [Tuesday, August 20, 2024, at 12:00 p.m. (prevailing Pacific Time)]~~ (the “Assumption and Cure Objection Deadline”) ~~by~~, filed with the Court and served upon the following parties:

- i. ~~viii.~~ the Debtors, c/o Nevada Copper, Inc., 61 E. Pursel Lane, P.O. Box 1640, Yerington, NV 89447 (Attn: Gregory J. Martin (gjmartin@nevadacopper.com));
- ii. ~~ix.~~ the Debtors’ counsel, Allen Overy Shearman Sterling US LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick (fsosnick@aoshearman.com), Sara Coelho (sara.coelho@aoshearman.com), and Cody Wright (cody.wright@aoshearman.com));
- iii. ~~x.~~ the Debtors’ investment banker, Moelis & Company, 399 Park Ave 4th Floor, New York, NY 10022 (Attn: Douglas Pierson (Douglas.Pierson@moelis.com), Zul Jamal (Zul.Jamal@moelis.com), Jay Finney (Jay.Finney@moelis.com), Patrick Loftus-Hills (Patrick.Loftus-Hills@moelis.com));
- iv. ~~xi.~~ the Office of the United States Trustee for Region 17, 300 Booth Street, Suite 3009, Reno, NV 89509 (Attn: Jared Day (Jared.A.Day@usdoj.gov));
- v. ~~xii.~~ proposed counsel to any~~the~~ Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases, ~~[•], and [•], and (b) [•], [ADDRESS], Attn: [•]~~Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 (Attn: Eric S. Chafetz (EChafetz@lowenstein.com) and Jeffrey L. Cohen (JCohen@lowenstein.com));
- vi. ~~xiii.~~ the DIP Lenders, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Brad Kahn; and 2001 K Street NW, Washington D.C. 20006, Attn: Kate Doorley; and
- vii. ~~xiv.~~ counsel to any~~the~~ Stalking Horse Bidder, ~~[•], and [•], and (b) [•], [ADDRESS], Attn: [•]~~if any.

**PLEASE TAKE FURTHER NOTICE** that if no objection to (a) the Cure Payments, (b) the proposed assignment and assumption of any Executory Contract or Unexpired Lease, or (c) adequate assurance of the Successful Bidder’s ability to perform is filed by the Cure Objection Deadline, then (i) you will be deemed to have stipulated that the Cure Payments as determined by the Debtors are correct, (ii) you will be forever barred, estopped, and enjoined from asserting any additional Cure Payments are due under the Executory Contract or Unexpired Lease, and (iii) you will be forever barred, estopped, and enjoined from objecting to such proposed assignment to the Successful Bidder on the grounds that the Successful Bidder has not provided adequate assurance of future performance as of the closing date of the Sale Transaction.

**PLEASE TAKE FURTHER NOTICE** that any objection to the proposed assumption and assignment of an Executory Contract or Unexpired Lease or related Cure Payments in

connection with the Successful Bid that otherwise complies with these procedures yet remains unresolved as of the commencement of the Sale Hearing, shall be heard at a later date as may be fixed by the Court.

PLEASE TAKE FURTHER NOTICE that, notwithstanding anything herein, the mere listing of any ~~Executory Contract or Unexpired Lease~~ contract or lease on the Contract Assumption Notice or any Supplemental Assumption Notice (i) does not require or guarantee that such contract or lease is an Executory Contract or Unexpired Lease, (ii) does not require that such contract or lease can or will be assumed by the Debtors at any time or assumed and assigned, and (iii) does not constitute an admission that any stated Cure Amount constitutes a claim against the Debtors or a right against the Successful Bidder; and all rights of the Debtors and the Successful Bidder with respect to such ~~Executory Contracts and/or Unexpired Leases~~ agreements are reserved. Moreover, the Debtors explicitly reserve the right, in their reasonable discretion, to seek to reject or assume each Executory Contract or Unexpired Lease pursuant to section 365(a) of the Bankruptcy Code and in accordance with the procedures allowing the Debtors and/or the Successful Bidder, as applicable, to designate any Executory Contract or Unexpired Lease as either rejected or assumed on a post-closing basis.

PLEASE TAKE FURTHER NOTICE that, nothing herein (i) alters in any way the prepetition nature of the Executory Contracts or Unexpired Leases or the validity, priority, or amount of any claims of a counterparty to any Contract against the Debtors that may arise under such Executory Contract or Unexpired Lease, (ii) creates a postpetition contract or agreement, or (iii) elevates to administrative expense priority any claims of a counterparty to any Executory Contract or Unexpired Lease against the Debtors that may arise under such Executory Contract or Unexpired Lease.

PLEASE TAKE FURTHER NOTICE that if the Debtors (i) identify additional contracts or leases that may be assumed and assigned to any Successful Bidder, (ii) remove any contracts or leases from the list filed with the court, or (iii) modify the previously stated Cure Amount associated with any contract or lease, then the Debtors promptly will file and serve a supplemental notice of contract assumption (a "Supplemental Assumption and Assignment Notice") on each of the affected Counterparties. Each Supplemental Assumption Notice will include the same information with respect to the applicable contract or lease as was included herein. A Successful Bidder may designate additional contracts or leases to be assumed and assigned up to seven business days prior to closing and may remove contracts or leases from the list of Executory Contracts and Unexpired Leases up to two business days prior to closing.

PLEASE TAKE FURTHER NOTICE that in the event that the Debtors and a Counterparty cannot resolve an objection to a Cure Amount, the contract or lease at issue may be assumed by the Debtors and assigned to the applicable Successful Bidder, provided that the Debtors shall segregate the Cure Amount that the Counterparty asserts is required to be paid, pending a resolution of the dispute by the Court or mutual agreement by the parties. Any objection to the proposed assumption and assignment of a contract or lease or related Cure Amount proposed in connection with the Sale that remained unresolved as of the Sale Hearing, shall be heard at the Sale Hearing (or at a later date as fixed by the Court).

PLEASE TAKE FURTHER NOTICE that no contract or lease shall be deemed assumed and assigned pursuant to section 365 of the Bankruptcy Code until the later of (i) the date the Court has entered an order assuming and assigning such contract or lease or (ii) the date the Sale has closed.

PLEASE TAKE FURTHER NOTICE Copies of the Bidding Procedures Motion, Bidding Procedures Order, Bidding Procedures, the Form APA, and any other documents



1 filed in the Debtors' chapter 11 cases are available upon request, by calling the Debtors'  
2 claims and noticing agent, Epiq Corporate Restructuring, LLC (i) for U.S. parties, toll-free  
3 at (877) 635-8338, or (ii) for non-U.S. parties, at +1 (971) 306-8096, or by visiting the  
4 Debtors' restructuring website at <https://dm.epiq11.com/case/nevadacopper>.  
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Dated: [●], 2024

Respectfully submitted,

/s/ DRAFT

**McDONALD CARANO LLP**

Ryan J. Works (Nevada Bar No. 9224)

Amanda M. Perach (Nevada Bar No. 12399)

2300 West Sahara Avenue, Suite 1200

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Email: rworks@mcdonaldcarano.com

aperach@mcdonaldcarano.com

-and-

**ALLEN OVERY SHEARMAN**

**STERLING US LLP**

Fredric Sosnick (New York Bar No. 2472488)

(admitted *pro hac vice*)

Sara Coelho (New York Bar No. 4530267)

(admitted *pro hac vice*)

599 Lexington Avenue

New York, New York 10022

Telephone: (212) 848-4000

Email: fsosnick@aoshearman.com

sara.coelho@aoshearman.com

*Proposed Counsel to the Debtors and  
Debtors in Possession*

*[Link-to-previous setting changed from on in original to off in modified.]*.

**EXHIBIT D**

**Form APA**

## Appendix “C”

**Information to identify the case:**

Debtor NEVADA COPPER CORP.  
Name

EIN: 98-0631722

United States Bankruptcy Court District of Nevada

Date case filed for chapter: 11 6/10/24

Case number: 24-50567-hlb

**Official Form 309F1 (For Corporations or Partnerships)****Notice of Chapter 11 Bankruptcy Case**

10/20

**For the debtor listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.**

**This notice has important information about the case for creditors and debtors, including information about the meeting of creditors and deadlines. Read both pages carefully.**

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor or the debtor's property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from the debtor by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

Confirmation of a chapter 11 plan may result in a discharge of debt. A creditor who wants to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadline specified in this notice. (See line 11 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at <https://pacer.uscourts.gov>).

**The staff of the bankruptcy clerk's office cannot give legal advice.**

**Do not file this notice with any proof of claim or other filing in the case.**

<b>1. Debtor's full name</b>	NEVADA COPPER CORP.	
<b>2. All other names used in the last 8 years</b>		
<b>3. Address</b>	P.O. BOX 10026 PACIFIC CENTRE SOUTH, 25TH FLOOR 700 W. GEORGIA STREET VANCOUVER, BC V7Y 1B3 CANADA	
<b>4. Debtor's attorney</b> Name and address	RYAN J. WORKS MCDONALD CARANO WILSON LLP 2300 W. SAHARA AVE., SUITE 1200 LAS VEGAS, NV 89102	Contact phone: (702) 873-4100  Email: <a href="mailto:rworks@mcdonaldcarano.com">rworks@mcdonaldcarano.com</a>
<b>5. Bankruptcy clerk's office</b> Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at <a href="https://pacer.uscourts.gov">https://pacer.uscourts.gov</a> .	300 Booth Street Reno, NV 89509	Office Hours: 9:00 AM – 4:00 PM  Contact phone: (775) 326-2100  Date: 6/10/24
<b>6. Meeting of creditors</b> The debtor's representative must attend the meeting to be questioned under oath. Creditors may attend, but are not required to do so.	<b>July 15, 2024 at 02:00 PM</b>  The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.	Location:  <b>Call-in Number: 877-919-3258, Passcode: 4009286</b>

**For more information, see page 2 >**

Debtor **NEVADA COPPER CORP.**Case number **24-50567-hlb**

<b>7. Proof of claim deadline</b>	<p><b>Deadline for filing proof of claim:</b> <b>10/15/24</b> For a governmental unit: <b>12/9/24</b></p> <p>A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at <a href="http://www.uscourts.gov">www.uscourts.gov</a> or any bankruptcy clerk's office.</p> <p>Your claim will be allowed in the amount scheduled unless:</p> <ul style="list-style-type: none"> <li>• your claim is designated as <i>disputed</i>, <i>contingent</i>, or <i>unliquidated</i>;</li> <li>• you file a proof of claim in a different amount; or</li> <li>• you receive another notice.</li> </ul> <p>If your claim is not scheduled or if your claim is designated as <i>disputed</i>, <i>contingent</i>, or <i>unliquidated</i>, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.</p> <p>You may review the schedules at the bankruptcy clerk's office or online at <a href="https://pacer.uscourts.gov">https://pacer.uscourts.gov</a>.</p> <p>Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.</p>
<b>8. Exception to discharge deadline</b> The bankruptcy clerk's office must receive a complaint and any required filing fee by the following deadline.	<p>If § 523(c) applies to your claim and you seek to have it excepted from discharge, you must start a judicial proceeding by filing a complaint by the deadline stated below.</p> <p><b>Deadline for filing the complaint:</b> None</p>
<b>9. Creditors with a foreign address</b>	<p>If you are a creditor receiving notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.</p>
<b>10. Filing a Chapter 11 bankruptcy case</b>	<p>Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the property and may continue to operate its business.</p>
<b>11. Discharge of debts</b>	<p>Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt owed to you excepted from the discharge and § 523(c) applies to your claim, you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk's office by the deadline.</p>

**For inquiries regarding this notice, please contact Epiq Corporate Restructuring, LLC, claims and noticing agent for the Debtors at (877) 635-8338 (for calls originating from the U.S.) and +1 (971) 306-8096 (for calls originating outside of the U.S.).**

**Proof of claim forms and additional information pertaining to this case are available on the case information website at <https://dm.epiq11.com/NevadaCopper>.**

**Claims may be filed with Epiq Corporate Restructuring, LLC on the website by selecting the 'File a Claim' link under 'Case Actions' or by mail at the addresses set forth in the 'Deadline to File Claims' section on the website.**

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

Court File No. CV-24-00722252-00CL

AND IN THE MATTER OF NEVADA COPPER, INC., NEVADA COPPER CORP., 0607792 B.C. LTD.,  
LION IRON CORP., NC FARMS LLC AND NC DITCH COMPANY LLC  
APPLICATION OF NEVADA COPPER, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FIRST REPORT OF THE INFORMATION  
OFFICER**

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Lawyers for the Information Officer