

**ARRANGEMENT AGREEMENT**

**1131083 B.C. Ltd.**

- and -

**Vulcan Materials Company**

- and -

**Polaris Materials Corporation**

August 25, 2017

## TABLE OF CONTENTS

Article 1 INTERPRETATION .....	2
1.1 Definitions .....	2
1.2 Currency .....	16
1.3 Interpretation Not Affected by Headings .....	16
1.4 Knowledge.....	16
1.5 Extended Meanings, Etc.....	16
1.6 Date of any Action; Computation of Time.....	17
1.7 Schedules.....	17
Article 2 THE ARRANGEMENT .....	17
2.1 The Arrangement .....	17
2.2 Implementation Steps by the Company .....	18
2.3 Implementation Steps by the Purchaser .....	20
2.4 Interim Order .....	21
2.5 Circular.....	22
2.6 Court Proceedings.....	24
2.7 Dissent Rights.....	25
2.8 List of Securityholders .....	25
2.9 Company Options .....	26
2.10 Company DSUs.....	26
2.11 Payment of Consideration.....	26
2.12 Withholding Taxes .....	27
Article 3 REPRESENTATIONS AND WARRANTIES.....	27
3.1 Representations and Warranties of the Company.....	27
3.2 Representations and Warranties of the Purchaser.....	68
3.3 Representations and Warranties of the Purchaser Parent.....	71
3.4 Survival of Representations and Warranties .....	75
Article 4 COVENANTS.....	75
4.1 Covenants of the Company .....	75
4.2 Access to Information .....	83
4.3 Covenants of the Company in respect of the Arrangement.....	84
4.4 Covenants of the Purchaser in respect of the Arrangement .....	85
4.5 Mutual Covenants .....	85

4.6	Covenants Related to Regulatory Approvals .....	86
4.7	Covenants Related to Aboriginal Peoples .....	87
4.8	Resignations of Board .....	87
4.9	Indemnification and Insurance .....	88
4.10	Pre-Acquisition Reorganization .....	88
4.11	Control of Business. ....	89
4.12	Purchaser Parent Guarantee and Indemnification .....	90
4.13	Covenants Related to Regulatory Proceedings .....	90
Article 5	ADDITIONAL AGREEMENTS .....	91
5.1	Acquisition Proposals.....	91
5.2	Termination Fee .....	98
Article 6	TERMINATION .....	100
6.1	Termination .....	100
6.2	Void upon Termination .....	102
6.3	Notice and Cure Provisions .....	103
Article 7	CONDITIONS PRECEDENT .....	104
7.1	Mutual Conditions Precedent .....	104
7.2	Additional Conditions Precedent to the Obligations of the Company.....	105
7.3	Additional Conditions Precedent to the Obligations of the Purchaser .....	106
Article 8	GENERAL .....	107
8.1	Notices.....	107
8.2	Notices deemed given .....	108
8.3	Assignment .....	108
8.4	Benefit of Agreement .....	109
8.5	Third Party Beneficiaries.....	109
8.6	Time of Essence.....	109
8.7	Public Announcements.....	109
8.8	Governing Law; Attornment .....	110
8.9	Entire Agreement .....	110
8.10	Amendment.....	111
8.11	Waiver and Modifications .....	111
8.12	Severability .....	112
8.13	Mutual Interest .....	112
8.14	Injunctive Relief .....	113
8.15	No Personal Liability.....	113

8.16 Counterparts.....113

## ARRANGEMENT AGREEMENT

**THIS AGREEMENT** is made as of August 25, 2017.

BETWEEN

**1131083 B.C. Ltd.**, a corporation incorporated under the laws of the Province of British Columbia

(the “**Purchaser**”)

- and -

**Vulcan Materials Company**, a corporation incorporated under the laws of New Jersey, United States

(the “**Purchaser Parent**”).

- and -

**Polaris Materials Corporation**, a corporation incorporated under the laws of the Province of British Columbia

(the “**Company**”).

**WHEREAS** the Purchaser, which is wholly owned by the Purchaser Parent:

- pursuant to the Arrangement (as defined herein); and
- as provided in this Agreement,

proposes to acquire all of the outstanding common shares of the Company that it does not hold;

**AND WHEREAS** the Company Special Committee (as defined herein) has unanimously determined, after receiving financial and legal advice, that the Arrangement:

- is fair to the Company Shareholders (as defined herein); and
- in the best interests of the Company,

and has recommended to the Company Board (as defined herein) that the Company enter into this Agreement and for the Company Board to take all reasonable action to support and facilitate the Arrangement and to recommend that the Affected Securityholders vote in favour of the Arrangement Resolution (as defined herein);

**AND WHEREAS** the Company Board has unanimously determined, after receiving financial and legal advice and following the receipt and review of recommendations from the Company Special Committee, that:

- the Arrangement is fair to the Company Shareholders;
- the Arrangement is in the best interests of the Company; and
- it would be in the best interests of the Company to enter into this Agreement;

and has resolved, subject to the terms of this Agreement, to recommend that the Affected Securityholders vote in favour of the Arrangement Resolution.

**NOW THEREFORE** in consideration of the premises and the covenants and agreements herein contained, the Parties agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement including the Schedules and recitals hereto, unless otherwise defined or expressly stated herein or something in the subject matter or the context is inconsistent therewith the following terms shall have the following meanings and grammatical variations thereof shall have the respective corresponding meanings:

**“Aboriginal Peoples”** means any aboriginal peoples of Canada, including Indian (First Nation), Inuit and Métis peoples of Canada and includes any group of aboriginal peoples, including Tribal or Métis Councils;

**“Aboriginal Claim”** means any claim, written assertion or demand, whether proven or unproven, made by any Aboriginal Peoples with respect to Aboriginal title, Aboriginal rights, treaty rights or any other Aboriginal interest;

**“Aboriginal Information”** means any and all written documents or electronic and other communications and any oral communications respecting Aboriginal Claims, the issuance of any Permit that involves Aboriginal Claims and the duty to consult Aboriginal Peoples;

**“Acceptable Confidentiality Agreement”** means, with respect to any third party (other than the Purchaser), a confidentiality agreement between the Company and such third party that, taken as a whole, is substantially similar to, and no less favourable to the Company than the Confidentiality Agreement and that contains:

- (a) confidentiality restrictions that are no less favourable to the Company than those set out in the Confidentiality Agreement;
- (b) restrictions on the acquisition of Company Shares or securities convertible into Company Shares that provide that such party may not acquire any of the issued and outstanding Company Shares for a period of not less than one year from the date of such confidentiality agreement;
- (c) a standstill or similar provision that restricts such person from announcing an intention to acquire or acquiring any securities or assets of the Company for a

period of not less than one year from the date of such confidentiality agreement and the making, or amendment, of an Acquisition Proposal, except that such provision may include an exception solely to the extent necessary to allow a person to make a non-public proposal to the Company Board,

and does not restrict the Company from complying with its obligations under Article 5.

“**Acquisition Agreement**” means any letter of intent, memorandum of understanding or other Contract, agreement in principle, acquisition agreement, merger agreement or similar agreement or understanding with respect to any Acquisition Proposal but does not include an Acceptable Confidentiality Agreement;

“**Acquisition Proposal**” means, at any time after the entering into of this Agreement, whether or not in writing and whether in a single transaction or in a series of related transactions, any:

- (a) proposal with respect to:
  - (i) any direct or indirect acquisition, take-over bid, tender offer, exchange offer, treasury issuance or other transaction that, if consummated, would result in any person or group of persons other than the Purchaser (or any affiliate of the Purchaser) beneficially owning Company Shares (or securities convertible into or exchangeable or exercisable for Company Shares) representing 20% or more of the Company Shares then outstanding (assuming, if applicable, the conversion, exchange or exercise of such securities convertible into or exchangeable or exercisable for Company Shares);
  - (ii) any plan of arrangement, amalgamation, merger, share exchange, consolidation, reorganization, recapitalization, liquidation, dissolution, winding up, exclusive license, business combination or other similar transaction in respect of the Company or any of its subsidiaries; or
  - (iii) any direct or indirect acquisition by any person or group of persons of any assets of the Company or any of its subsidiaries, or of voting or equity interests in one or more of the Company’s subsidiaries (including shares or other equity interest of subsidiaries), that:
    - (A) are or hold any of the Material Properties; or
    - (B) individually or in the aggregate constitute or hold 20% or more of the fair market value of the assets of the Company and its subsidiaries (taken as a whole), based on the financial statements of the Company most recently filed prior to such time as part of the Company Public Disclosure Record,

(or any direct or indirect sale, disposition, lease, license, royalty, alliance or joint venture, long-term supply agreement or other arrangement having

a similar economic effect), whether in a single transaction or a series of related transactions;

- (b) inquiry, expression or other indication of interest or offer to, or public announcement of or of an intention to do any of the foregoing;
- (c) modification or proposed modification of any such proposal, inquiry, expression, indication of interest or announcement; or
- (d) any other transaction or agreement, the consummation of which could reasonably be expected to materially impede, prevent or delay the transactions contemplated by this Agreement or completion of the Arrangement,

in each case excluding the Arrangement and the other transactions contemplated by this Agreement;

“**Affected Security**” means the Company Shares, the Company Options and the Company DSUs;

“**Affected Securityholders**” means the Company Shareholders, the Company Optionholders and the Company DSU Holders;

“**affiliate**” and “**associate**” have the meanings respectively ascribed thereto under the Securities Act;

“**Agreement**” means this Agreement (including the Schedules attached hereto) as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms hereof;

“**Annual Financial Statements**” means the audited consolidated financial statements of the Company as at, and for the years ended December 31, 2016 and December 31, 2015 including, in each case, the notes thereto;

“**Arrangement**” means an arrangement under the provisions of Section 288 of the BCBCA, on the terms and conditions set forth in the Plan of Arrangement as amended or varied from time to time in accordance with the terms of this Agreement or the Plan of Arrangement or made at the direction of the Court in the Final Order;

“**Arrangement Filings**” means the records and information provided to the Registrar under Subsection 292(a) of the BCBCA, together with a copy of the entered Final Order, if applicable;

“**Arrangement Resolution**” means the special resolution approving the Arrangement to be considered and, if thought fit, passed by the Affected Securityholders, such resolution to be considered at the Company Meeting and to be substantially in the form and content of Schedule B hereto;

“**BCBCA**” means the *Business Corporations Act* (British Columbia) including all regulations made thereunder, as promulgated or amended from time to time;



“**Black Bear Project**” means the Company’s hard rock deposit located approximately 6 km southwest of Port McNeil, British Columbia known as the Black Bear Project;

“**Business Day**” means a day other than a Saturday, a Sunday or any other day on which commercial banking institutions in Vancouver, British Columbia or Birmingham, Alabama are authorized or required by applicable Law to be closed;

“**Cautionary Statements**” has the meaning ascribed thereto in Section 3.1.

“**Change of Recommendation**” has the meaning ascribed thereto in Section 6.1(c)(i);

“**Circular**” means the notice of meeting and accompanying management information circular (including all schedules, appendices and exhibits thereto) to be sent to applicable Affected Securityholders in connection with the Company Meeting, including any amendments or supplements thereto in accordance with the terms of this Agreement;

“**Code**” means the *United States Internal Revenue Code of 1986*, as amended;

“**Collective Agreement**” means any collective agreement, letters of understanding or letters of intent with any trade union or association that may qualify as a trade union that would cover employees of the Company or its subsidiaries;

“**commercially reasonable efforts**” with respect to any Party means the cooperation of such Party and the use by such Party of its reasonable efforts consistent with reasonable commercial practice;

“**Company**” has the meaning specified in the preamble;

“**Company Board**” means the board of directors of the Company;

“**Company Board Fairness Opinion**” means the opinion of the Company Board Financial Advisor to the effect that, as of the date of such opinion and based upon and subject to the assumptions, limitations and qualifications set forth therein, the Consideration payable to the Company Shareholders under the Arrangement is fair to the Company Shareholders, from a financial point of view, to the Company Shareholders;

“**Company Board Financial Advisor**” means Canaccord Genuity Corp.;

“**Company Diligence Information**” means, collectively, the materials posted to the data site hosted by [Redacted] under the project name “[Redacted]” by 5:00 p.m. (Vancouver time) on August 24, 2017;

“**Company Disclosure Letter**” means the disclosure letter dated the date hereof regarding this Agreement that has been executed by the Company and delivered to and accepted by the Purchaser prior to the execution of this Agreement;

“**Company DSU Plan**” means the Independent Director Deferred Unit Plan of the Company dated as of April 26, 2016;

“**Company DSU**” means a Deferred Unit issued under the Company DSU Plan;

“**Company DSU Holder**” means the holder of one or more Company DSUs;

“**Company Material Adverse Effect**” means any result, fact, change, effect, event, circumstance, occurrence or development that, individually or taken together with all other results, facts, changes, effects, events, circumstances, occurrences or developments, has or would reasonably be expected to have a material and adverse effect on the current or future business, operations, results of operations, capitalization, assets, liabilities (contingent or otherwise including any contingent liabilities that may arise through outstanding pending or threatened litigation), obligations (whether absolute, accrued, conditional or otherwise), condition (financial or otherwise) or privileges of the Company and its subsidiaries, taken as a whole, whether before or after giving effect to the transactions contemplated by this Agreement, but shall not include any result, fact, change, proposed change, effect, event, circumstance, occurrence or development resulting from:

- (a) any change in general political, economic or financial or capital market conditions in Canada or the United States;
- (b) any change in Laws or the interpretation, application or non-application of any Laws by any Governmental Authority;
- (c) any change affecting the global aggregates industry in general;
- (d) any change affecting commodity markets in general;
- (e) any change in the price of aggregates;
- (f) any change relating to currency exchange, interest rates or rates of inflation;
- (g) any change in IFRS and the generally accepted accounting principles in the United States;
- (h) anything that has been disclosed in the Company Public Disclosure Record (other than Cautionary Statements) or in the Company Disclosure Letter;
- (i) any failure by the Company or any of its subsidiaries to meet any public estimates or expectations regarding its revenues, earnings or other financial performance or results of operations (provided, that the underlying cause of any such change may be taken into account in determining whether there has been a Company Material Adverse Effect);
- (j) any change in the market price or trading volume of the Company’s securities (provided, that the underlying cause of any such change may be taken into account in determining whether there has been a Company Material Adverse Effect);
- (k) a change as a result of the announcement of the execution of this Agreement; or

- (l) any securityholder class action or other litigation arising from allegations of a breach of fiduciary duty with respect to this Agreement,

provided, however, the exclusion resulting from operation of each of clauses (a) through (g) above shall not apply to the extent that any of the changes, developments, conditions or occurrences referred to therein disproportionately adversely affect the Company and its subsidiaries, taken as a whole, in comparison to other comparable persons who operate in the industry in which the Company and its subsidiaries operate; and provided further, however, that references in certain sections of this Agreement to dollar amounts are not intended to be, and shall not be deemed to be, illustrative or interpretive for purposes of determining whether a Company Material Adverse Effect has occurred;

**“Company Meeting”** means the special meeting of the Affected Securityholders, including any adjournment or postponement thereof, to be called and held in accordance with the Interim Order for the purpose of considering and, if thought fit, approving the Arrangement Resolution;

**“Company Optionholder”** means a holder of one or more Company Options;

**“Company Options”** means, at any time, options to acquire Company Shares granted pursuant to the Company Stock Option Plans, which are, at such time, outstanding and unexercised, whether or not vested;

**“Company Properties”** means Orca Sand & Gravel Project, Orca Deposits, and the Black Bear Project, each located in Port McNeil, British Columbia, and the Eagle Rock Quarry Project located in Port Alberni, British Columbia including facilities, the receiving and distribution terminal facility in the Port of Richmond, California and the receiving and distribution terminal in the Port of Long Beach, California and other operational facilities, waste rock dumps, camps and administration buildings, roads and other facilities and improvements directly or indirectly involved therein, the whole as listed in Schedule 3.1(r) of the Company Disclosure Letter, and all owned or leased personal property used, useful or held for use by Company or any of the Company’s Subsidiaries, including, without limitation, all owned motor vehicles, trailers, depreciable plant and equipment, and all other production equipment and machinery;

**“Company Public Disclosure Record”** means all documents filed or furnished under applicable Securities Laws by or on behalf of the Company on SEDAR between August 25, 2016 and the date hereof;

**“Company Senior Management”** means Kenneth Palko, President and Chief Executive Officer, Darren McDonald, Vice President Finance, CFO and Company Secretary, Scott Dryden, Vice President, Operations, and Nicholas Van Dyk, Vice President Investor Relations and Corporate Development;

**“Company Shareholder”** means a holder of one or more Company Shares;

**“Company Shares”** means the common shares without par value in the capital of the Company;

**“Company Special Committee”** means the special committee of certain independent members of the Company Board that has been constituted to and has considered the Arrangement and the transactions contemplated by this Agreement;

**“Company Special Committee Fairness Opinion”** means the opinion of the Company Special Committee Financial Advisor to the effect that, as of the date of such opinion and based upon and subject to the assumptions, limitations and qualifications set forth therein, the Consideration to be received by the Company Shareholders under the Arrangement is fair, from a financial point of view, to the Company Shareholders;

**“Company Special Committee Financial Advisor”** means Fort Capital Partners;

**“Company Stock Option Plans”** means, collectively, the Stock Option Plan of the Company dated as of April 26, 2016 and the Stock Option Plan of the Company dated April 23, 2001;

**“Confidentiality Agreement”** means the confidentiality agreement dated as of March 23, 2016 between the Company and the Purchaser Parent;

**“Consideration”** means \$2.79 in cash for each Company Share;

**“Contract”** means any contract, agreement, license, franchise, lease, arrangement, commitment, understanding, joint venture, partnership, note, instrument, purchase order, statement of work or other right or obligation (whether written or oral) to which the Company, or any of its subsidiaries, is a party or by which the Company, or any of its subsidiaries, is bound or affected or to which any of their respective properties or assets is subject;

**“Court”** means the Supreme Court of British Columbia, or other court as applicable;

**“Depositary”** means any trust company, bank or other financial institution agreed to in writing by each of the Parties for the purpose of, among other things, exchanging certificates representing Company Shares for the Consideration in connection with the Arrangement;

**“Directors”** means Terrence Lyons, Herbert Wilson, Eugene Martineau, Marco Romero, and Lenard Boggio;

**“Dissent Rights”** means the rights of dissent in respect of the Arrangement described in the Plan of Arrangement;

**“Eagle Rock Quarry Project”** means the Company’s granite deposit located in the south of Port Alberni, British Columbia;

**“Effective Date”** has the meaning ascribed thereto in Section 1.1 of the Plan of Arrangement;

**“Effective Time”** has the meaning ascribed thereto in Section 1.1 of the Plan of Arrangement;

**“Employee Plans”** means each and every retirement, pension, supplemental pension, savings, retirement savings, bonus, profit sharing, deferred compensation, severance or termination pay (including any redundancy policy), change of control, life insurance, medical, hospital, dental care, vision care, drug, sick leave, short term or long term disability, salary continuation,

unemployment benefits, vacation, incentive, compensation, stock purchase, stock option, phantom stock, share appreciation rights, fringe benefit or other employee benefit plan, program, arrangement, policy or practice whether written or oral, formal or informal, funded or unfunded, registered or unregistered, bargained or unbargained, insured or self-insured that is maintained or otherwise funded or contributed to, or required to be funded or contributed to, by or on behalf of the Company or its subsidiaries, or under which the Company or its subsidiaries pays premiums or benefits, for the benefit of its employees or any of them or the beneficiary of any of them or for the benefit of any consultant or other independent contractor who currently provides or formerly provided services to them or the beneficiary of any such consultant or other independent contractor, provided that an Employee Plan shall not include any statutory benefit plans which the Company or any of its subsidiaries is required to participate in or comply with, including the Canada Pension Plan and plans administered pursuant to applicable health tax, workplace safety insurance and employment insurance legislation;

**“Environment”** means the natural environment (including soil, land surface or subsurface strata, surface water, groundwater, sediment, ambient air (including all layers of the atmosphere), organic and inorganic matter and living organisms, including human health and safety, and any other environmental medium or natural resource);

**“Environmental Authorizations”** means certificates of authorization, authorizations, Permits, consents, agreements (including any sewer surcharge agreement), instructions, directions or registrations issued, granted, conferred or required by a Government Authority with respect to any Environmental Laws.

**“Environmental Laws”** means Laws relating to reclamation or restoration of property; abatement of pollution; protection of the Environment; protection of wildlife, including endangered species; ensuring public health and safety from environmental hazards; protection of cultural or historic resources; management, treatment, storage, disposal or control of, or exposure to, Hazardous Substances; releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or Hazardous Substances, to air, surface water and groundwater; and all other Laws relating to manufacturing, processing, distribution, use, treatment, storage, disposal, handling or transport of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes;

**“Final Order”** means the order of the Court approving the Arrangement under Section 291 of the BCBCA, in form and substance acceptable to the Company and the Purchaser, each acting reasonably, after a hearing upon the procedural and substantive fairness of the terms and conditions of the Arrangement, as such order may be affirmed, amended, modified, supplemented or varied by the Court (with the consent of both the Company and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, as affirmed or amended (provided that any such amendment, modification, supplement or variation is acceptable to both the Company and the Purchaser, each acting reasonably) on appeal unless such appeal is withdrawn, abandoned or denied;

**“Fundamental Representations”** means the representations and warranties of the Company in Sections 3.1(a)(i), 3.1(b), 3.1(c), 3.1(f), 3.1(l)(ii), 3.1(l)(iii), 3.1(gg), 3.1(hh), and 3.1(ii);

**“Governmental Authority”** means any multinational, federal, provincial, territorial, state, regional, municipal, local or other government or governmental body and any division, agent, official, minister, agency, commission, commissioner, bureau, board or authority of any government, governmental body, quasi-governmental or private body (including the TSX or any other stock exchange) exercising any statutory, regulatory, expropriation or taxing authority under the authority of any of the foregoing and any domestic, foreign or international judicial, quasi-judicial or administrative court, tribunal, commission, board, panel or arbitrator acting under the authority of any of the foregoing;

**“Hazardous Substances”** means any element, waste or other substance, including an odour, a sound or a vibration, whether natural or artificial and whether consisting of gas, liquid, solid or vapour that is prohibited, listed, defined, designated or classified as hazardous, radioactive, corrosive, explosive, infectious, carcinogenic, or toxic or a pollutant or a contaminant under or pursuant to, or that could result in liability under, any applicable Laws pertaining to health and safety or Environmental Laws, including petroleum and all derivatives thereof or synthetic substitutes therefor, hydrogen sulphide, arsenic, cadmium, lead, mercury, equipment and material containing polychlorinated biphenyls, mould, asbestos, asbestos-containing material, urea-formaldehyde and urea-formaldehyde-containing material;

**“IFRS”** means International Financial Reporting Standards as issued by the International Accounting Standards Board;

**“Indemnified Party”** and **“Indemnified Parties”** have the meanings ascribed thereto in Section 4.9(a);

**“Interim Order”** means the interim order of the Court to be issued following the application therefor submitted to the Court as contemplated by Section 2.2(c), in form and substance acceptable to the Company and the Purchaser, each acting reasonably, providing for, among other things, the calling and holding of the Company Meeting, as such order may be affirmed, amended, modified, supplemented or varied by the Court with the consent of both the Company and the Purchaser, each acting reasonably;

**“Investment Canada Act”** means the *Investment Canada Act* (Canada);

**“Joint Venture”** means a joint venture, partnership or other similar arrangement, whether in corporate, partnership, contractual or other legal form, in which the Company directly or indirectly holds voting shares, equity interests or other rights of participation but which is not a subsidiary of the Company, and any subsidiary of any such entity;

**“Key Consents”** means those consents, approvals and notices required from any third party under any Contracts or as otherwise required to proceed with the transactions contemplated by this Agreement, each as set out in Schedule 3.1(d) of the Company Disclosure Letter;

**“Laws”** means all laws, statutes, codes, ordinances (including zoning), decrees, rules, regulations, by-laws, statutory rules, published policies and guidelines, notices, judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, injunctions, orders, decisions, settlements, writs, assessments, arbitration awards, rulings, determinations or awards, decrees or other requirements of any Governmental Authority having the force of law and any legal

requirements arising under the common law or principles of law or equity and the term “*applicable*” with respect to such Laws and, in the context that refers to any person, means such Laws as are applicable at the relevant time or times to such person or its business, undertaking, property or securities and emanate from a Governmental Authority having jurisdiction over such person or its business, undertaking, property or securities;

“**Liens**” means any pledge, claim, lien, charge, option, hypothec, mortgage, security interest, restriction, adverse right, prior assignment, lease, sublease, royalty, levy, right to possession or any other encumbrance, easement, license, right of first refusal, covenant, voting trust or agreement, transfer restriction under any shareholder or similar agreement, right or restriction of any kind or nature whatsoever, whether contingent or absolute, direct or indirect, or any agreement, option, right or privilege (whether by Law, contract or otherwise) capable of becoming any of the foregoing;

“**Litigation**” has the meaning ascribed thereto in Section 4.1(k);

“**Material Contract**” means any Contract that: (a) is material to the operational activities of the Company; (b) if terminated by the other party, would reasonably be expected to have a material effect on the Company and its Subsidiaries taken as a whole; (c) limits or restricts in any material respect the ability of the Company or any subsidiary to engage in any line of business or carry on business in any geographic area or to compete with any person, or the scope of persons to whom the Company or any subsidiary may sell products; (d) is a Contract evidencing outstanding indebtedness, including all loan agreements, notes, mortgages, indentures, security agreements or guarantees of the obligations of a third party; or (e) is a collective bargaining or other Contract with any labor union or other representative of a group of employees or (f) is a Contract listed on Schedule 3.1(v) of the Company Disclosure Letter;

“**Material Properties**” means the Orca Sand & Gravel Project, the Black Bear Project, the receiving and distribution terminal facility in the Port of Richmond, California and the receiving and distribution terminal in the Port of Long Beach, California;

“**MI 61-101**” means Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions*;

“**misrepresentation**” has the meaning attributed to such term under the Securities Act;

“**Money Laundering Laws**” has the meaning ascribed thereto in Section 3.1(n)(vi);

“**NI 43-101**” means National Instrument 43-101 titled “*Standards of Disclosure for Mineral Projects*”, together with the Companion Policy thereto, as issued by the Canadian Securities Administrators and as amended from time to time;

“**NI 52-109**” means National Instrument 52-109 – *Certification of Disclosure in Issuers’ Annual and Interim Filings*;

“**Orca Sand & Gravel Project**” means the Company’s sand and gravel project located approximately 4 km west of Port McNeil, British Columbia known as the Orca Sand and Gravel

Project, consisting of the operating quarry at the sand and gravel deposit known as the East Cluxewe Deposit and any associated facilities, including the ship loading facility;

“**Orca Deposits**” means the Company’s sand and gravel deposits located contiguous to the south and west of the Orca Sand & Gravel Project known as the East Cluxewe Extension Deposit and the West Cluxewe Deposit, respectively;

“**ordinary course of business**” or “**in the ordinary course**”, or any similar reference, means, with respect to an action taken or to be taken by any person, that such action is consistent with the past practices of such person and is taken in the ordinary course of the normal day-to-day business and operations of such person and, in any case, is not unreasonable or unusual in the circumstances when considered in the context of the provisions of this Agreement;

“**Outside Date**” means December 31, 2017, or such later date as may be agreed to in writing by the Parties;

“**Parties**” means the parties to this Agreement and “**Party**” means any one of them;

“**Permit**” means any lease, license, permit, certificate, consent, order, grant, approval, classification (including land use and zoning), registration or other authorization (including an Environmental Authorization) of or from any Governmental Authority;

“**person**” includes an individual, sole proprietorship, corporation, body corporate, incorporated or unincorporated association, syndicate or organization, partnership, limited partnership, limited liability company, unlimited liability company, joint venture, joint stock company, trust, natural person in his or her capacity as trustee, executor, administrator or other legal representative, a government or Governmental Authority or other entity, whether or not having legal status;

“**Plan of Arrangement**” means the plan of arrangement substantially in the form and content set out in Schedule A hereto, as amended, modified or supplemented from time to time:

- (a) in accordance with either:
  - (i) this Agreement; or
  - (ii) Article 6 of the Plan of Arrangement,  
with the consent of the Company and the Purchaser, each acting reasonably; or
- (b) at the direction of the Court in the Final Order;

“**Proceedings**” has the meaning ascribed thereto in Section 3.1(p);

“**Purchaser**” has the meaning specified in the preamble;

“**Purchaser Parent**” has the meaning specified in the preamble;

“**Registrar**” means the person appointed as the Registrar of Companies under section 400 of the BCBCA;



**“Regulatory Approvals”** means sanctions, rulings, consents, orders, exemptions, permits, waivers, early termination authorizations, clearances, written confirmations of no intention to initiate legal proceedings and other approvals (including the lapse, without objection, of a prescribed time under a statute or regulation that states that a transaction may be implemented if a prescribed time lapses following the giving of notice without an objection being made) of Governmental Authorities and relating to the Arrangement;

**“Release”** means any sudden, intermittent or gradual release, spill, leak, pumping, addition, pouring, emission, emptying, discharge, migration, injection, escape, leaching, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage, placement or introduction of a Hazardous Substance, whether accidental or intentional, into the Environment;

**“Remedial Action”** shall mean any investigation, feasibility study, monitoring, testing, sampling, removal (including removal of underground storage tanks), restoration, clean-up, remediation, closure, site restoration, remedial response or remedial work, in each case in relation to environmental matters;

**“Representatives”** means, collectively, with respect to a Party, that Party’s officers, directors, employees, consultants, advisors, agents or other representatives (including lawyers, accountants, investment bankers and financial advisors) and includes, in the case of the Company, the Company Board Financial Advisor and the Company Special Committee Financial Advisor;

**“Returns”** means all returns, reports, declarations, elections, notices, filings, forms, statements and other documents (whether in tangible, electronic or other form) and including any amendments, schedules, attachments, supplements, appendices and exhibits thereto, made, prepared, filed or required to be made, prepared or filed by Law in respect of Taxes;

**“Securities Act”** means the *Securities Act* (British Columbia) and the rules, regulations and published policies made thereunder;

**“Securities Laws”** means:

- (a) the Securities Act and all other applicable Canadian provincial and territorial securities Laws; and
- (b) the rules and regulations of the TSX;

**“SEDAR”** means the Canadian Securities Administrators’ System for Electronic Document Analysis Retrieval;

**“subsidiary”** means, with respect to a specified entity, any:

- (a) corporation of which issued and outstanding voting securities of such corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation (whether or not shares of any other class or classes will or might be entitled to vote upon the happening of any event or contingency) are owned by such specified entity and the votes attached to those voting

securities are sufficient, if exercised, to elect a majority of the directors of such corporation;

- (b) partnership, unlimited liability company, joint venture or other similar entity in which such specified entity has more than 50% of the equity interests and the power to direct the policies, management and affairs thereof; and
- (c) a subsidiary (as defined in clauses (a) and (b) above) of any subsidiary (as so defined) of such specified entity;

**“Superior Proposal”** means a *bona fide* unsolicited Acquisition Proposal made in writing on or after the date of this Agreement by a person or persons acting jointly (other than the Purchaser and its affiliates) that:

- (a) is to acquire:
  - (i) not less than all of the outstanding Company Shares (on a fully diluted basis), other than Company Shares beneficially owned by the person making such Acquisition Proposal; or
  - (ii) all or substantially all of the assets of the Company on a consolidated basis;
- (b) is not subject to any financing condition and in respect of which it has been demonstrated to the satisfaction of the Company Board, acting in good faith and after consulting with outside legal counsel and financial advisors, that the funds required to complete such Acquisition Proposal are available;
- (c) is not subject to any due diligence and/or access condition;
- (d) if it relates to the acquisition of the outstanding Company Shares, is made available to all Company Shareholders on the same terms and conditions;
- (e) did not arise out of or relate to a breach of Section 5.1;
- (f) the Company Board has determined in good faith, upon the recommendation from the Company Special Committee and after consultation with its financial advisors and outside legal counsel, that such Acquisition Proposal would, if consummated in accordance with its terms (but not assuming away any risk of non-completion), result in a transaction which is more favourable to the Company Shareholders from a financial point of view than the Arrangement (taking into account any amendment proposed to be made to this Agreement by the Purchaser in accordance with the terms of Article 5) and the failure to recommend such Acquisition Proposal to the Company Shareholders would be inconsistent with its fiduciary duties under applicable law; and
- (g) the Company Board has determined, in good faith, after consultation with its financial advisors and outside legal counsel, is reasonably capable of being completed in accordance with its terms, without undue delay, taking into account

all legal, financial, regulatory and other aspects of such Acquisition Proposal and the person making such Acquisition Proposal.

“**Superior Proposal Notice Period**” has the meaning ascribed thereto in Section 5.1(f)(iv);

“**Support Agreements**” means the voting and support agreements, dated effective on or before the date hereof between the Purchaser and each of the Directors and Company Senior Management in substantially the form attached hereto as Schedule C, which agreements provide that such director and/or officer shall, among other things:

- (a) vote all Affected Securities of which they are the registered or beneficial holder or over which they have control or direction, in favour of the Arrangement; and
- (b) not dispose of their Affected Securities;

“**Surviving Corporation**” means any corporation or other entity continuing following the amalgamation, merger, consolidation or winding up of the Company with or into one or more other entities (pursuant to a statutory procedure or otherwise);

“**Tax**” or “**Taxes**” means any and all taxes, duties, imposts, levies, premiums, assessments, tariffs, or obligations of the same or similar nature, however denominated, imposed, assessed or collected by any Governmental Authority, including any federal, provincial, state, territorial, county, municipal, local or foreign taxes, income taxes, state profit share taxes, windfall or excess profit taxes, capital taxes, royalty taxes, production taxes, payroll taxes, health taxes, employment taxes, employment or unemployment insurance premiums, Canada Pension Plan and any other Governmental Authority pension plan premiums, withholding taxes, sales taxes, use taxes, goods and services taxes, custom duties, value added taxes, ad valorem taxes, excise taxes, alternative or add-on minimum taxes, franchise taxes, gross receipts taxes, licence taxes, occupation taxes, real and personal property taxes, stamp taxes, anti-dumping taxes, countervailing taxes, environment taxes, and transfer taxes, together with any interest, penalties (including transfer pricing penalties), and additions payable in respect thereof, whether disputed or not;

“**Tax Act**” means the *Income Tax Act* (Canada) and the regulations promulgated thereunder, as amended;

“**Technical Reports**” mean, collectively, the technical report titled “NI 31-101 Technical Report on the Orca Sand & Gravel Quarry” with an effective date of November 27, 2008 and revised on December 23, 2008 prepared by Greg Kulla, P. Geo., Ryan Ulansky, P. Eng., and Vladimir Solodkin, P. Eng., of AMEC and the technical report titled “Technical Report on the Black Bear Project” with an effective date of November 16 2016 prepared by Wm. John Beck, P. Eng. of Beck and Associates Geoconsultants Inc., and Gary Nordin, P. Geo;

“**Termination Fee**” has the meaning ascribed thereto in Section 5.2(b);

“**Termination Fee Event**” has the meaning ascribed thereto in Section 5.2(a);

“**TSX**” means the Toronto Stock Exchange;

“**U.S. Securities Act**” means the United States *Securities Act of 1933*, as amended, and the rules and regulations promulgated thereunder; and

“**U.S. Exchange Act**” means the United States *Securities Exchange Act of 1934*, as amended, and the rules and regulations promulgated thereunder.

## **1.2 Currency**

Except where otherwise specified, all references to currency herein are to lawful money of Canada and “\$” refers to Canadian dollars.

## **1.3 Interpretation Not Affected by Headings**

- (a) The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (b) The terms “*this Agreement*”, “*hereof*”, “*herein*”, “*hereunder*” and similar expressions refer to this Agreement, including the Schedules hereto, and not to any particular Article, Section or other portion hereof.
- (c) Unless something in the subject matter or context is inconsistent therewith, references herein to an Article, Section or Schedule by number or letter or both are to that Article, Section or Schedule in or to this Agreement.

## **1.4 Knowledge**

Any reference in this Agreement to the “*knowledge*” of the Company, means to the actual knowledge and information of the Company Senior Management and Herbert Wilson, Director, after making due inquiry regarding the relevant matter.

## **1.5 Extended Meanings, Etc.**

- (a) Unless the context otherwise requires, words importing the singular number also include the plural and vice versa; words importing any gender include all genders.
- (b) The terms “*including*” or “*includes*” and similar terms of inclusion, unless expressly modified by the words “*only*” or “*solely*”, mean “*including without limiting the generality of the foregoing*” and “*includes without limiting the generality of the foregoing*”.
- (c) All accounting terms are to be interpreted in accordance with IFRS.
- (d) All determinations of an accounting nature in respect of the Company required to be made shall be made in a manner consistent with IFRS.
- (e) Any reference to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended or re-enacted, unless stated or otherwise.

## **1.6 Date of any Action; Computation of Time**

- (a) If any date on which any action is required to be taken hereunder by any of the Parties is not a Business Day, then such action will be required to be taken on the next succeeding day which is a Business Day.
- (b) A period of time is to be computed as beginning on the day following the event that began the period and ending, if the last day of the period is:
  - (i) a Business Day, then at 4:30 p.m. (Vancouver time) on the last day of the period; and
  - (ii) is not a Business Day, then at 4:30 p.m. (Vancouver time) on the next Business Day.

## **1.7 Schedules**

The following Schedules to this Agreement are an integral part of this Agreement:

Schedule A - Form of Plan of Arrangement

Schedule B - Arrangement Resolution

Schedule C – Form of Support Agreement

## **ARTICLE 2 THE ARRANGEMENT**

### **2.1 The Arrangement**

- (a) The Company and the Purchaser agree that the Arrangement will be implemented in accordance with and subject to the terms and conditions contained in this Agreement and the Plan of Arrangement.
- (b) The Arrangement Filings, if required, shall implement the Plan of Arrangement.
- (c) From and after the Effective Time, the steps to be carried out pursuant to the Arrangement shall become effective in accordance with the Plan of Arrangement.
- (d) The closing of the transactions contemplated hereby and by the Plan of Arrangement will take place at the offices in Vancouver, British Columbia of Fasken Martineau DuMoulin LLP, or at such other time or such other place as may be agreed to by the Parties.
- (e) The Effective Date shall occur:
  - (i) on the date that is three Business Days following satisfaction or waiver (subject to applicable Laws) of the last of the conditions set forth in Article 7 (excluding conditions that by their terms cannot be satisfied

until the Effective Date, but subject to the satisfaction or, when permitted, waiver of those conditions as of the Effective Date); or

- (ii) at such other date as may be agreed to by the Parties.

## **2.2 Implementation Steps by the Company**

The Company covenants in favour of the Purchaser that, subject to the terms of this Agreement, the Company will promptly:

- (a) subject to compliance with applicable Securities Laws:
  - (i) immediately after the execution of this Agreement; or
  - (ii) such later time prior to the next opening of markets in Toronto as is agreed to by the Company and the Purchaser,

issue a news release announcing:

- (iii) the execution of this Agreement;
- (iv) the Company Special Committee has unanimously determined and the Company Board has unanimously determined, that the Arrangement is:
  - (A) fair to the Company Shareholders; and
  - (B) in the best interests of the Company;
- (v) the Company Board has unanimously resolved to recommend that the Affected Securityholders vote in favour of the Arrangement Resolution; and
- (vi) each Director and Company Senior Management has signed a Support Agreement pursuant to which, and subject to the terms thereof, they have agreed to vote all Affected Securities held by him in favour of the Arrangement Resolution,

which news release shall be satisfactory in form and substance to each of the Company and the Purchaser, each acting reasonably;

- (b) file such news release and a corresponding material change report in prescribed form in accordance with applicable Securities Laws;
- (c) as soon as reasonably practicable after the execution of this Agreement and, in any event, within 21 days of the date of this Agreement, make application for a hearing before the Court pursuant to Section 291 of the BCBCA, seeking the Interim Order, in a manner and form acceptable to the Purchaser and the Company, each acting reasonably;

- (d) proceed with such application and diligently pursue obtaining the Interim Order;
- (e) lawfully convene and hold the Company Meeting in accordance with the Interim Order, the Company's notice of articles and articles and applicable Laws, as soon as reasonably practicable after the Interim Order is issued, and in any event, not later than 35 days after the Interim Order is issued, for the purpose of having the Affected Securityholders consider the Arrangement Resolution; provided, however, that, if the Company Meeting is scheduled to occur during a Superior Proposal Notice Period, the Company may, and upon the request of the Purchaser, the Company shall, adjourn or postpone the Company Meeting to (i) a date specified by the Purchaser that is not later than six Business Days after the date on which the Company Meeting was originally scheduled to be held, or (ii) if the Purchaser does not specify such date, the sixth Business Day after the date on which the Company Meeting was originally scheduled to be held;
- (f) solicit, from the Affected Securityholders, proxies in favour of the approval of the Arrangement Resolution including, at the request and expense of the Purchaser, engaging the services of a proxy solicitation agent to solicit proxies in favour of the approval of the Arrangement Resolution provided that the Company shall not be required to continue to solicit proxies in favour of the Arrangement Resolution where there has occurred a Change of Recommendation;
- (g) (i) provide the Purchaser with copies of or access to information regarding the Company Meeting generated by any dealer or proxy solicitation agents, as reasonably requested from time to time by the Purchaser, (ii) consult with, and consider any suggestions from, the Purchaser with regards to the proxy solicitation agent, and (iii) consult with the Purchaser and keep the Purchaser apprised, with respect to such solicitation and other actions;
- (h) consult with the Purchaser in fixing the date of the Company Meeting;
- (i) give notice to the Purchaser of the Company Meeting;
- (j) advise the Purchaser:
  - (i) as reasonably requested; and
  - (ii) on a daily basis commencing 10 Business Days prior to the Company Meeting,as to the aggregate tally of the proxies and votes received in respect of the Company Meeting and all matters to be considered at the Company Meeting;
- (k) allow Representatives of the Purchaser to attend the Company Meeting;
- (l) not change the record date for the Affected Securityholders entitled to vote at the Company Meeting in connection with any adjournment or postponement of the Company Meeting unless required by Law or the Company's articles;

- (m) subject to obtaining such approvals as are required by the Interim Order, as soon as reasonably practicable after the Company Meeting and, in any event, not later than two Business Days thereafter, make application to the Court pursuant to Section 291 of the BCBCA for the Final Order;
- (n) proceed with such application and diligently pursue obtaining the Final Order;
- (o) if at any time after the issuance of the Final Order and on or before the Effective Date, the Company is required by the terms of the Final Order or by Law to return to the Court with respect to the Final Order, then do so after prior notice to, and in consultation and cooperation with, the Purchaser;
- (p) subject to:
  - (i) obtaining the Final Order; and
  - (ii) the satisfaction or waiver (subject to applicable Laws) of each of the conditions set forth in Article 7 (excluding conditions that by their terms cannot be satisfied until the Effective Date, but subject to the satisfaction or, when permitted, waiver of those conditions as of the Effective Date),as soon as reasonably practicable thereafter, if required, file the Arrangement Filings that may be required to be filed prior to the Effective Date with the Registrar; and
- (q) carry out the terms of the Plan of Arrangement applicable to it prior to the Outside Date.

### **2.3 Implementation Steps by the Purchaser**

Subject to the terms of this Agreement, the Purchaser will:

- (a) cooperate with, assist and consent to the Company seeking the Interim Order and the Final Order;
- (b) subject to the Company obtaining the Final Order and to the satisfaction or waiver (subject to applicable Laws) of each of the conditions set forth in Article 7 (excluding conditions that by their terms cannot be satisfied until the Effective Date, but subject to the satisfaction or, when permitted, waiver of those conditions as of the Effective Date), as soon as reasonably practicable thereafter, take all steps and actions including, if applicable, making all filings with Governmental Authorities necessary to give effect to the Arrangement; and
- (c) carry out the terms of the Plan of Arrangement applicable to it prior to the Outside Date.



## 2.4 **Interim Order**

The application referred to in Section 2.2(c) shall, unless the Company and the Purchaser agree otherwise, include a request that the Interim Order provide, among other things:

- (a) for the class of persons to whom notice is to be provided in respect of the Arrangement and the Company Meeting and the manner in which such notice is to be provided;
- (b) for a record date, for the purposes of determining the Affected Securityholders entitled to receive notice of and vote at the Company Meeting, of not later than the date of the issue of the Initial Order, which date shall be fixed and published by the Company in consultation with the Purchaser;
- (c) that the Company Meeting may be adjourned or postponed from time to time by the Company subject to the terms of this Agreement without the need for additional approval by the Court;
- (d) that the requisite approvals of the Arrangement Resolution will be at least:
  - (i) 66 $\frac{2}{3}$ % of the votes cast on the Arrangement Resolution by the Company Shareholders present in person or by proxy at the Company Meeting;
  - (ii) 66 $\frac{2}{3}$ % of the votes cast on the Arrangement Resolution by the Affected Securityholders present in person or by proxy at the Company Meeting voting together as members of a single class; and
  - (iii) 50% of the votes cast on the Arrangement Resolution by the Company Shareholders present in person or by proxy at the Company Meeting, after excluding the votes of the Purchaser and any other persons whose votes must be excluded, all in accordance with MI 61-101, if applicable;
- (e) that in all other respects, the terms, conditions and restrictions of the Company's constating documents, including quorum requirements with respect to meetings of Company Shareholders and other matters, shall apply with respect to the Company Meeting;
- (f) for the grant of Dissent Rights to the Company Shareholders who are registered holders of Company Shares, as contemplated in the Plan of Arrangement; and
- (g) for the notice requirements with respect to the presentation of the application to the Court for the Final Order;

and, subject to the consent of the Company (such consent not to be unreasonably withheld or delayed), the Company shall also request that the Interim Order provide for such other matters as the Purchaser may reasonably require.

## 2.5 Circular

- (a) Subject to the Purchaser complying with Section 2.5(c), the Company will, in consultation with the Purchaser:
  - (i) as soon as reasonably practicable after the execution of this Agreement, promptly prepare the Circular together with any other documents required by the BCBCA or any other applicable Laws in connection with the approval of the Arrangement Resolution by the Affected Securityholders at the Company Meeting; and
  - (ii) as soon as reasonably practicable after the issuance of the Interim Order, cause the Circular to be sent to the Affected Securityholders in compliance with the abridged timing requirements contemplated by National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer* and filed as required by the Interim Order and applicable Laws.
- (b) The Company shall ensure that the Circular complies in all material respects with applicable Laws, and, without limiting the generality of the foregoing, that the Circular (including with respect to any information incorporated therein by reference):
  - (i) will not contain any misrepresentation (other than in each case with respect to any information furnished in writing by the Purchaser); and
  - (ii) provides the Affected Securityholders with information in sufficient detail to permit them to form a reasoned judgment concerning the matters to be placed before them at the Company Meeting.
- (c) The Company and the Purchaser will cooperate in the preparation, filing and mailing of the Circular and the Purchaser will, in a timely manner, furnish the Company with all such information regarding the Purchaser as may reasonably be required to be included in the Circular pursuant to applicable Laws and any other documents related thereto. The Purchaser will ensure all such information will not contain any misrepresentations.
- (d) Prior to filing the Circular with applicable Governmental Authorities and printing and mailing the Circular to the Affected Securityholders, the Company will:
  - (i) provide the Purchaser and legal counsel to the Purchaser with a reasonable opportunity to review and comment on drafts of the Circular and other documents related thereto; and
  - (ii) give reasonable consideration to such comments.
- (e) All information relating solely to the Purchaser included in the Circular shall:
  - (i) be provided by the Purchaser in accordance with Section 2.5(c); and

- (ii) be in form and content satisfactory to the Purchaser, acting reasonably.
- (f) The Circular will include:
  - (i) a copy of the Company Board Fairness Opinion and the Company Special Committee Fairness Opinion;
  - (ii) a statement that the Company Special Committee has unanimously determined and the Company Board has unanimously determined, that the Arrangement is:
    - (A) fair to the Company Shareholders; and
    - (B) in the best interests of the Company;
  - (iii) the unanimous recommendation of the Company Board that the Affected Securityholders vote in favour of the Arrangement Resolution;
  - (iv) the rationale for that recommendation; and
  - (v) a statement that each Director and Company Senior Management has signed a Support Agreement pursuant to which, and subject to the terms thereof, they have agreed to vote all Affected Securities held by him in favour of the Arrangement Resolution.
- (g) The Company and the Purchaser will each promptly notify the other if, at any time before the Effective Date, it becomes aware (in the case of the Company, only with respect to the Company and in the case of the Purchaser only with respect to the Purchaser) that the Circular or any other document referred to in Section 2.5(f):
  - (i) contains any misrepresentation; or
  - (ii) otherwise requires any amendment or supplement,and promptly deliver written notice to the other Party setting out full particulars thereof.
- (h) The Company and the Purchaser will cooperate with each other in the preparation, filing and dissemination of any:
  - (i) required supplement or amendment to the Circular or such other document, as the case may be; and
  - (ii) related news release or other document necessary or desirable in connection therewith.

- (i) The Company shall keep the Purchaser fully informed, in a timely manner, of any requests or comments made by the Canadian regulatory authorities and/or the TSX in connection with the Circular.

## **2.6 Court Proceedings**

- (a) The Company will provide the Purchaser and its counsel with a reasonable opportunity to review and comment upon drafts of all materials to be filed with the Court in connection with the Arrangement prior to the service and filing of such materials and will give reasonable consideration to such comments.
- (b) The Company will ensure that all materials filed with the Court in connection with the Arrangement are consistent in all material respects with the terms of this Agreement and the Plan of Arrangement.
- (c) Subject to applicable Law, the Company will not file any material with the Court in connection with the Arrangement or serve any such material, and will not agree to modify or amend materials so filed or served, except as contemplated by this Section 2.6 or with the Purchaser's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed, provided, however, that nothing herein shall require the Purchaser to agree or consent to any increase or change in the consideration payable under the terms of the Plan of Arrangement or any modification or amendment to such filed or served materials that expands or increases the Purchaser's obligations set forth in any such filed or served materials or under this Agreement or the Arrangement.
- (d) The Company will not object to legal counsel to the Purchaser making such submissions on the hearing of the motion for the Interim Order and the application for the Final Order as such counsel considers appropriate, provided that the Company or its legal counsel is advised of the nature of any submissions prior to the hearing and such submissions are consistent in all material respects with the terms of this Agreement and the Plan of Arrangement.
- (e) The Company will provide the Purchaser, on a timely basis, with:
  - (i) copies of any notice of appearance and evidence or other documents served on the Company or its legal counsel in respect of:
    - (A) the application for the Interim Order or the Final Order; or
    - (B) any appeal therefrom;
  - and
  - (ii) any notice, whether or not in writing, received by the Company or its legal counsel indicating any intention to:
    - (A) oppose the granting of the Interim Order or the Final Order; or

- (B) appeal the Interim Order or the Final Order.

## **2.7 Dissent Rights**

- (a) The Company will give the Purchaser prompt notice of receipt of any:
  - (i) written notice of any dissent or purported exercise by any Company Shareholder of Dissent Rights;
  - (ii) withdrawal of such a notice; and
  - (iii) other instruments served pursuant to Dissent Rights and received by the Company.
- (b) The Company shall not:
  - (i) make any payment or settlement offer;
  - (ii) agree to any such settlement; or
  - (iii) conduct any negotiations,

prior to the Effective Time with respect to any such dissent, notice or instrument, unless the Purchaser, acting reasonably, shall have given its written consent.

## **2.8 List of Securityholders**

- (a) Upon the reasonable request from time to time of the Purchaser, the Company will promptly provide the Purchaser with lists (in electronic form) of the:
  - (i) Registered:
    - (A) Company Shareholders;
    - (B) Company Optionholders; and
    - (C) Company DSU holders,together with their addresses and their respective holdings of Company Shares, Company Options and Company DSUs, as applicable;
  - (ii) names and addresses and respective holdings of all persons having rights (other than the Company Options and Company DSUs) issued or granted by the Company to acquire or otherwise related to Company Shares; and
  - (iii) names of non-objecting beneficial owners of Company Shares and participants in bookbased nominee registers (such as CDS & Co., Cede

& Co. and the Depositary Trust Company), together with their respective addresses and holdings of Company Shares.

- (b) The Company will from time to time require that its registrar and transfer agent furnish the Purchaser with such additional information, including:
  - (i) updated or additional lists of Company Shareholders, Company Optionholders and Company DSU Holders;
  - (ii) information regarding beneficial ownership of Company Shares; and
  - (iii) other assistance as the Purchaser may reasonably request.

## **2.9 Company Options**

Subject to the terms and conditions of this Agreement, pursuant to the Arrangement:

- (a) the vesting of all outstanding Company Options disclosed to the Purchaser in Schedule 2.9 of the Company Disclosure Letter will be accelerated;
- (b) each Company Option will be surrendered by the holder to the Company in consideration for such holder receiving from the Company the difference, if any, between the Consideration and the exercise price of such Company Option, and, for greater certainty, if such amount is zero or negative, no amount shall be payable and each such Company Option in question shall be cancelled,

and the Company shall take all such actions as may be necessary or desirable to give effect to the foregoing.

## **2.10 Company DSUs**

Subject to the terms and conditions of this Agreement, pursuant to the Arrangement:

- (a) the vesting of all outstanding Company DSUs disclosed to the Purchaser in Schedule 2.10 of the Company Disclosure Letter will be accelerated;
- (b) each Company DSU will be redeemed at a value equal to the Consideration,

and the Company shall take all such actions as may be necessary or desirable to give effect to the foregoing.

## **2.11 Payment of Consideration**

The Purchaser will, following receipt by the Company of the Final Order and Regulatory Approvals, ensure that on the Effective Date the Depositary has been provided with sufficient funds in escrow to satisfy the aggregate Consideration payable to Affected Securityholders pursuant to the Plan of Arrangement (such Consideration not to include payments to Company Shareholders exercising Dissent Rights and who have not withdrawn their notice of objection).

## **2.12 Withholding Taxes**

- (a) The Company, the Purchaser and the Depository, as the case may be, will be entitled to deduct and withhold from any amount otherwise payable to any person under the Plan of Arrangement or this Agreement (including any payment to Company Shareholders exercising Dissent Rights) such amounts as the Company, the Purchaser or the Depository is required to deduct and withhold with respect to such payment under the Tax Act, the Code and the rules and regulations promulgated thereunder, or any provision of any provincial, state, local or foreign Tax Law as counsel may advise is required to be so deducted and withheld by the Company, the Purchaser or the Depository, as the case may be.
- (b) For the purposes of such deduction and withholding:
  - (i) all withheld amounts shall be treated as having been paid to the person in respect of which such deduction and withholding was made on account of the obligation to make payment to such person hereunder; and
  - (ii) such deducted or withheld amounts shall be remitted to the appropriate Governmental Authority in the time and manner required by the applicable Law by or on behalf of the Company, the Purchaser or the Depository, as the case may be.

## **ARTICLE 3 REPRESENTATIONS AND WARRANTIES**

### **3.1 Representations and Warranties of the Company**

Except as disclosed in the Company Public Disclosure Record, it being understood and agreed that any disclosure in the Company Public Disclosure Record (but excluding the exhibits and schedules thereto, disclosures in the “Risk Factors” or “Forward Looking Statements” sections thereof or any other disclosure included in such Company Public Disclosure Record that is cautionary, predictive or forward-looking in nature (“Cautionary Statements”)) shall be deemed disclosed with respect to any Section of this Section 3.1 solely to the extent that it is manifestly apparent from a reading of such disclosure that it is applicable to such Section, or as disclosed in the Company Disclosure Letter, it being understood and agreed that any disclosure in the Company Disclosure Letter with respect to one Section shall be deemed disclosed with respect to any Section of this Section 3.1 solely to the extent that it is manifestly apparent from a reading of such disclosure that it is also applicable to such Section, the Company represents and warrants to and in favour of the Purchaser as follows and acknowledges that the Purchaser is relying upon such representations and warranties in entering into this Agreement:

- (a) Organization and Qualification.
  - (i) The Company:
    - (A) has been duly incorporated and validly exists;

- (B) is in good standing under the BCBCA;
  - (C) has the requisite corporate and legal power and capacity to:
    - (I) own its assets as now owned; and
    - (II) carry on its business as it is now being carried on; and
  - (D) is duly registered, licensed, or otherwise qualified to carry on business and is in good standing in each jurisdiction in which the nature or character of its properties and assets, owned, leased or operated by it, or the nature of its business or activities, makes such registration or authorization and qualification necessary.
- (ii) The Company Diligence Information includes complete and correct copies of the:
- (A) constating documents of the Company, as amended to the date of this Agreement; and
  - (B) the resolutions or minutes of all meetings (other than meetings for which resolutions or minutes have not been finalized) of:
    - (I) the Company Shareholders;
    - (II) the Company Board (excluding any minutes, or portion thereof of the Company Board in relation to this Agreement); and
    - (III) each committee of the Company Board,and the Company has not taken any action to amend or supersede such documents.
- (b) Subsidiaries.
- (i) All of the Company's direct or indirect subsidiaries, the Company's ownership interest therein, and the U.S. federal income tax classification of each such subsidiary are listed in Schedule 3.1(b) of the Company Disclosure Letter.
  - (ii) Each of the Company's subsidiaries:
    - (A) is a corporation validly subsisting under the Laws of its jurisdiction of incorporation;
    - (B) has all requisite corporate power and authority to:



- (I) carry on its business as now conducted; and
  - (II) own or lease and to operate its properties and assets,
- (C) is duly registered, licensed, or otherwise qualified to carry on business and is in good standing in each jurisdiction in which:
- (I) the nature or character of its properties and assets, owned, leased or operated by it; or
  - (II) the nature of its business or activities, makes such registration or authorization and qualification necessary,

except where the failure to be so qualified has not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect

- (iii) Except as set forth in Schedule 3.1(b) of the Company Disclosure Letter, the Company is the direct registered and beneficial owner of all of the outstanding common shares or other equity or ownership interests of its subsidiaries, free and clear of any Liens and all such shares or other equity interests so owned by the Company have been validly issued and are fully paid and non-assessable, as the case may be, and no such shares or other equity or ownership interests have been issued in violation of any pre-emptive or similar rights.
- (iv) Except as disclosed in Schedule 3.1(b) of the Company Disclosure Letter, except for the shares or other equity or ownership interests owned by the Company in any subsidiary, the Company does not own, beneficially or of record, any equity or ownership interests of any kind in any other person.

(c) Authority Relative to this Agreement.

- (i) The Company has the requisite corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by the Company as contemplated by this Agreement, and (subject to obtaining the approval of the Affected Securityholders of the Arrangement Resolution and the Final Order as contemplated in Section 2.2) to perform its obligations hereunder and under all such agreements and instruments and to complete the transactions contemplated by this Agreement.
- (ii) The execution and delivery of this Agreement and the completion by the Company of the transactions contemplated by this Agreement have been duly authorized by the Company Board and no other corporate proceedings on the part of the Company are necessary to authorize:

- (A) the execution and delivery by it of this Agreement;
  - (B) the performance by the Company of its obligations under the Agreement; or
  - (C) subject to obtaining the approval of the Affected Securityholders of the Arrangement Resolution and the Final Order as contemplated in Section 2.2, the completion by the Company of the transactions contemplated hereby, including the completion of the Arrangement..
- (iii) This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to:
- (A) bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium and other Laws relating to or affecting the availability of equitable remedies and the enforcement of creditors' rights generally;
  - (B) general principles of equity and public policy; and
  - (C) the qualification that equitable remedies such as specific performance and injunction may be granted only in the discretion of a court of competent jurisdiction.
- (d) Required Approvals.
- (i) No material authorization, licence, permit, certificate, registration, consent or approval of, or filing with, or notification to, any Governmental Authority is required to be obtained or made by or with respect to the Company or any of its subsidiaries in connection with the execution and delivery of this Agreement or, the performance by the Company of its obligations hereunder, the completion by the Company of the Arrangement and the other transactions contemplated hereby or the ability of the Purchaser to conduct its material operations, other than the following:
    - (A) the Interim Order and any filings required in order to obtain, and approvals required under, the Interim Order;
    - (B) the Final Order, and any filings required in order to obtain the Final Order; and
    - (C) such filings and other actions required under applicable Securities Laws and the rules and policies of the TSX as are contemplated by this Agreement.

- (ii) The Key Consents disclosed in Schedule 3.1(d) of the Company Disclosure Letter are the only material consents, approvals and notices required from any third party in order for the Company to proceed with the execution and delivery of this Agreement or the completion by it of the transactions contemplated by this Agreement.
- (e) No Violation. Subject to obtaining the authorizations, consents and approvals and making the filings referred to in Section 3.1(d), the execution and delivery by the Company of this Agreement and the performance by it of its covenants hereunder and the completion of the Arrangement do not and will not violate, conflict with or result in a breach of any provision of the constating documents of the Company or those of any of its subsidiaries or affiliates, and will not:
  - (i) Materially violate, conflict with or result in a breach of:
    - (A) any Material Contract, or any material authorization, note, bond, mortgage, indenture, instrument, agreement, lease, or Permit to which the Company or any of its subsidiaries or affiliates is a party, or by which the Company or any of its subsidiaries or affiliates is bound;
    - (B) any Law to which the Company or any of its subsidiaries or affiliates is subject or by which the Company or any of its subsidiaries or affiliates is bound; or
    - (C) any judgment, decree, order, or award of any Governmental Authority or arbitrator;
  - (ii) except as disclosed in Schedule 3.1(e) of the Company Disclosure Letter, give rise to any right of termination, cancellation, change of any right or obligation, loss of any benefit to which the Company or any of its subsidiaries are entitled or acceleration of any indebtedness under any such Material Contract, or such material authorization, note, bond, mortgage, indenture, instrument, agreement, lease or Permit;
  - (iii) result in the creation or imposition of any Liens upon any of the properties or assets of the Company or any of its subsidiaries or affiliates or restrict, hinder, impair or limit the ability of the Company or any of its subsidiaries or affiliates to conduct its business as and where it is now being conducted; or
  - (iv) give rise to any rights of first refusal or rights of first offer, trigger any change in control or influence provisions or any restriction or limitation under any such Material Contract, or material authorization, note, bond, mortgage, indenture, instrument, agreement, lease or Permit.

(f) Capitalization.

- (i) The authorized capital of the Company consists of an unlimited number of Company Shares.
- (ii) As at August 24, 2017, there were:
  - (A) 88,454,686 Company Shares issued and outstanding all of which have been duly authorized and validly issued and are fully paid and non-assessable;
  - (B) 5,238,833 Company Options outstanding under the Company Stock Option Plans providing for the issuance of 5,238,833 Company Shares upon the exercise thereof; and
  - (C) 260,000 Company DSUs outstanding providing for the issuance of 260,000 Company Shares upon the exercise thereof.
- (iii) All securities of the Company have been issued in compliance with all applicable Laws, including Securities Laws.
- (iv) No Company Shares have been issued and no Company Options have been granted in violation of any pre-emptive right or similar rights applicable to them.
- (v) There are no outstanding obligations of the Company or any of its subsidiaries to repurchase, redeem or otherwise acquire any outstanding Company Shares.
- (vi) Except as disclosed in Schedule 3.1(f) of the Company Disclosure Letter and except for the Company Options and Company DSUs described in Section 3.1(f)(ii), neither the Company nor any of its subsidiaries has:
  - (A) any other outstanding agreement, rights plan, subscription, warrant, option, right or commitment or other right or privilege (whether by law, pre-emptive or contractual) of any character whatsoever; nor
  - (B) granted any right or privilege capable of becoming an agreement, subscription, warrant, option, right or commitment, obligating it,to issue, or sell, any Company Shares or other securities of the Company, including any security or obligation of any kind convertible into or exchangeable or exercisable for, or otherwise evidencing a right or obligation to acquire, any Company Shares or other security of the Company or any of its subsidiaries.

- (vii) Except as disclosed in Schedule 3.1(f) of the Company Disclosure Letter, the Company Shares are listed on the TSX and trade on the TSX, except for such listings and trading, no securities of the Company are listed or quoted for trading on any other stock or securities exchange or market.
  - (viii) Schedule 3.1(f) of the Company Disclosure Letter sets out:
    - (A) a complete and correct list of all outstanding Company Options and Company DSUs;
    - (B) the number of Company Shares subject to such Company Options and Company DSUs;
    - (C) the grant date, exercise price, vesting schedule and expiration date, as applicable, and the names of the holders of such Company Options and Company DSUs; and
    - (D) whether each such holder is a current director of the Company or current officer, employee or consultant of the Company.
  - (ix) All Company Shares that may be issued pursuant to the exercise of outstanding Company Options or the vesting of Company DSUs:
    - (A) will, when issued in accordance with the terms thereof, be duly authorized, validly issued, fully-paid and non-assessable;
    - (B) are not and will not be subject to or issued in violation of any Law or any pre-emptive rights; and
    - (C) have been recorded on the Company's financial statements in accordance with IFRS.
  - (x) All dividends and distributions on securities of the Company that have been declared or authorized have been paid in full.
  - (xi) Other than the Company Options and Company DSUs described in Section 3.1(f)(ii), there are no outstanding securities, bonds, debentures or other evidences of indebtedness of the Company or its subsidiaries that have the right to vote (or that are convertible into or exercisable for securities having the right to vote) with the holders of the Company Shares on any matter. No holder of securities issued by the Company or its subsidiaries has any right to compel the Company or its subsidiaries to register or otherwise qualify securities for public sale in Canada, the United States, or elsewhere.
- (g) Shareholder and Similar Agreements. Except as disclosed in Schedule 3.1(g) of the Company Disclosure Letter, the Company is not party to any shareholder,

pooling, voting trust or other similar agreement relating to the issued and outstanding shares in the capital of the Company or any of its subsidiaries.

(h) Reporting Issuer Status and Securities Laws Matters.

(i) The Company is:

(A) a “*reporting issuer*” within the meaning of applicable Securities Laws in each of the provinces of Canada; and

(B) not on the list of reporting issuers in default under applicable Securities Laws,

and no securities commission or similar regulatory authority has issued any order preventing or suspending trading of any securities of the Company

(ii) The Company:

(A) is not in default of any material provision of applicable Securities Laws or the rules and regulations of the TSX;

(B) has not taken any action to cease to be a reporting issuer in any province of Canada; and

(C) has not received notification from any securities commission or similar regulatory authority seeking to revoke the reporting issuer status of the Company.

(iii) The Company:

(A) is a Foreign Private Issuer (as defined in Rule 3b-4 under the U.S. Exchange Act);

(B) has no class of securities outstanding that is or is required to be registered under section 12 of the U.S. Exchange Act or that is subject to the reporting requirements of section 13 or 15(d) of the U.S. Exchange Act; and

(C) is not, and is not required to be, registered as an “*investment company*” pursuant to the United States Investment Company Act of 1940, as amended.

(iv) There are no current, pending, or, to the knowledge of the Company, threatened proceedings before any Governmental Authority relating to any alleged non-compliance with any applicable Securities Laws.

(v) Trading in the Company Shares on the TSX is not currently halted or suspended.

- (vi) No delisting, suspension of trading, cease trading or similar order or restriction with respect to any securities of the Company is pending, in effect, or, to the knowledge of the Company, threatened or is expected to be implemented or undertaken.
- (vii) The Company is not subject to any formal or, to the knowledge of the Company, informal review, enquiry, investigation or other proceeding relating to any order or restriction.
- (viii) Except as set forth above in this Section 3.1(h), the Company is not subject to continuous disclosure or other public reporting requirements under any Securities Laws outside of Canada.
- (ix) None of the Company's subsidiaries are subject to continuous disclosure or other disclosure requirements under any Securities Laws.
- (x) Since January 1, 2015, the Company has timely filed or furnished to all applicable Governmental Authorities all material forms, reports, schedules, statements and other documents required to be filed or furnished by the Company under applicable Securities Laws.
- (xi) Except as disclosed in Schedule 3.1(h) of the Company Disclosure Letter, the documents comprising the Company Public Disclosure Record
  - (A) as filed, complied in all material respects with Law; and
  - (B) did not, as of the date filed (or, if amended or superseded by a subsequent filing prior to the date of this Agreement, on the date of such filing), contain any misrepresentation.
- (xii) The Company has not filed or furnished any:
  - (A) confidential material change report (which at the date of this Agreement remains confidential); or
  - (B) other confidential filings (including redacted filings other than material contracts which required redaction),with or to any securities commission or similar regulatory authority.
- (xiii) There are no outstanding or unresolved comments in comments letters from any securities commission or similar regulatory authority with respect to any of the Company Public Disclosure Record.
- (xiv) Neither the Company nor any of the Company Public Disclosure Record is the subject of an ongoing audit, review, comment or investigation by any securities commission or similar regulatory authority or the TSX.

(i) Financial Statements and Internal Control over Financial Reporting.

- (i) The Annual Financial Statements and the Company's interim financial statements for the period ended June 30, 2017, have been prepared in accordance with IFRS and all applicable Laws and present fairly, in all material respects, as applicable, the assets, liabilities (whether accrued, absolute, contentment or otherwise), consolidated financial position, results of operations or financial performance and cash flows of the Company and its subsidiaries as at December 31, 2016 and June 30, 2017, respectively, for the periods covered thereby applied on a basis consistent with the immediately prior period and throughout the periods indicated (except as may be indicated expressly in the notes thereto or Schedule 3.1(i) of the Company Disclosure Letter).
- (ii) The Company does not intend to correct or restate, nor, to the knowledge of the Company is there any basis for any correction or restatement of, any aspect of any of the financial statements referred to in this Section 3.1(i).
- (iii) There are no, nor are there any commitments to become a party to, any:
  - (A) off-balance sheet transaction;or
  - (B) arrangement, obligation (including contingent obligations) or other relationship of the Company or of any of its subsidiaries, with unconsolidated entities or other persons.
- (iv) The financial books, records and accounts of the Company and each of its subsidiaries:
  - (A) have been maintained, in all material respects, in accordance with IFRS;
  - (B) are stated in reasonable detail;
  - (C) accurately and fairly reflect all the material transactions, acquisitions and dispositions of the Company and its subsidiaries; and
  - (D) accurately and fairly reflect the basis of the Company's consolidated financial statements.
- (v) None of the Company, nor any of its subsidiaries, nor, to the knowledge of the Company, any director, officer, employee, auditor, accountant or representative of the Company or any of its subsidiaries has received or otherwise obtained knowledge of any complaint,



allegation, assertion, or claim, whether written or oral, regarding accounting, internal accounting controls or auditing matters, including:

- (A) any complaint, allegation, assertion, or claim that the Company or any of its subsidiaries has engaged in questionable accounting or auditing practices; or
  - (B) any expression of concern from its employees regarding questionable accounting or auditing matters.
- (vi) Except as disclosed in Schedule 3.1(i) of the Company Disclosure Letter, the Annual Financial Statements and the Company's interim financial statements reflect appropriate and adequate reserves in accordance with IFRS in respect of all contingent liabilities, if any, of the Company and its subsidiaries on a consolidated basis.
  - (vii) There has been no material change in the Company's accounting policies, except as described in the notes to the Annual Financial Statements and the Company's interim financial statements.
  - (viii) The Company maintains a system of internal control over financial reporting (as such term is defined in NI 52-109) designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with IFRS and has otherwise complied with NI 52-109.
  - (ix) There is no material weakness (as such term is defined in NI 52-109) relating to the design, implementation or maintenance of its internal control over financial reporting and, to the knowledge of the Company, there has been no fraud involving management or any other employees who have a significant role in the internal control over financial reporting of the Company.
- (j) Undisclosed Liabilities. Except the liabilities and obligations:
- (i) that are specifically presented on the audited consolidated statement of financial position of the Company as of December 31, 2016 or disclosed in the notes thereto; and
  - (ii) incurred in the ordinary course of business consistent with past practice since December 31, 2016,

neither the Company nor any of its subsidiaries has incurred any material liabilities or obligations of any nature, (whether or not accrued, contingent, determined, determinable or otherwise) or otherwise become responsible for, the obligations of any other person, other than pursuant to the terms of this Agreement, except as disclosed in Schedule 3.1(j) of the Company Disclosure Letter.

- (k) Auditors. The auditors of the Company are independent public accountants as required by applicable Laws and there is not now, and there has not been, any reportable event (within the meaning of Section 4.11 of National Instrument 51-102 – Continuous Disclosure Obligations) with the Company’s auditors.
- (l) Absence of Certain Changes. Since December 31, 2016, except as disclosed in Schedule 3.1(l) of the Company Disclosure Letter, and other than for the purposes of the transactions contemplated herein:
- (i) the Company and each of its subsidiaries has conducted its business only in the ordinary course;
  - (ii) there has not occurred one or more results, facts, changes, effects, events, circumstances, occurrences or developments which has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect;
  - (iii) neither the Company nor any of its subsidiaries has incurred any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) which has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect;
  - (iv) there has not been a material change in the level of accounts receivable or payable, inventories or employees, other than those changes in the ordinary course;
  - (v) there has not been any satisfaction or settlement of any material claims or material liabilities that were not reflected in the Company’s audited financial statements, other than the settlement of claims or liabilities incurred in the ordinary course of business;
  - (vi) except:
    - (A) ordinary course adjustments to employees (other than directors or officers); or
    - (B) pursuant to contractual obligations under a Collective Agreement,neither the Company nor any of its subsidiaries has increased the compensation paid or payable to its employees or changed any benefit to which its employees or former employees are entitled under any employee benefit plan or arrangement or created any new employee benefit plan or arrangement or modified, amended, or terminated any employee benefit plan for any such employees;

- (vii) except as set out in Schedule 3.1(l) of the Company Disclosure Letter, there has not been any:
    - (A) increase in the salary, bonus, or other remuneration payable to any officers of the Company or its subsidiaries; or
    - (B) amendment or modification to the vesting or exercisability schedule or criteria, including any acceleration, right to accelerate or acceleration event or other entitlement under any stock option, restricted stock, deferred compensation or other compensation award of any officer of the Company or any of its subsidiaries;
  - (viii) there has not been any entering into, or an amendment of, any Material Contract other than in the ordinary course of business;
  - (ix) the Company has not effected or passed any resolution to approve a split, consolidation, or reclassification of any of the outstanding Company Shares;
  - (x) except as disclosed in Schedule 3.1(l) of the Company Disclosure Letter, there has not been any:
    - (A) incurrence, assumption or guarantee by the Company or any of its subsidiaries of any debt for borrowed money;
    - (B) any creation or assumption by the Company or any of its subsidiaries of any Liens; or
    - (C) making, by the Company or any of its subsidiaries, of any loan, advance or capital contribution to or investment in any other person;and
  - (xi) the Company has not effected any change in its accounting methods, principles or practices, except as required by applicable Laws.
- (m) Derivative Transactions. Except as disclosed in Schedule 3.1(m) of the Company Disclosure Letter, neither the Company nor any of its subsidiaries have any material obligations or liabilities, direct or indirect, vested or contingent in respect of any rate swap transactions, basis swaps, forward rate- transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions or currency options or any other similar transactions (including any option with respect to any of such transactions) or any combination of such transactions.

(n) Compliance with Laws.

- (i) The business of the Company and each of its subsidiaries has been and is currently being conducted in material compliance with all applicable Laws.
- (ii) Neither the Company nor any of its subsidiaries are or have been under any investigation with respect to, are or have been charged or threatened to be charged with, or have received any notice, written or oral, of, any alleged material violation of or non-compliance with any applicable Laws or disqualification by a Governmental Authority.
- (iii) Except as disclosed in Schedule 3.1(n) of the Company Disclosure Letter, the Company and its subsidiaries do not have any knowledge of any future or potential changes in any Law that may materially impact the business, operations, financial condition, prospects or otherwise of the Company or any of its subsidiaries.
- (iv) Without limiting the generality of the foregoing, all issued and outstanding Company Shares have been issued in compliance with all applicable Securities Laws.
- (v) Neither the Company nor any of its subsidiaries and, to the Company's knowledge, none of their respective directors, officers, supervisors, managers, or employees or agents has:
  - (A) violated or is in violation of any applicable anti-bribery, export control, and economic sanctions Laws, including the *Corruption of Foreign Public Officials Act* (Canada) and the *United States Foreign Corrupt Practice Act*;
  - (B) made or authorized any direct or indirect contribution, payment or gift of funds, property or anything else of value to any official, employee or agent of any Governmental Authority, authority or instrumentality in Canada, other jurisdictions in which the Company or any of its subsidiaries has assets other than in accordance with applicable Laws;
  - (C) used any corporate funds, or made any direct or indirect unlawful payment from corporate funds, to any foreign or domestic government official or employee or any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; or
  - (D) violated or is in violation of any provision of the *Criminal Code* (Canada) relating to foreign corrupt practices, including making any contribution to any candidate for public office, in either case, where either the payment or gift or the purpose of such

contribution payment or gift was or is prohibited under the foregoing.

- (vi) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with:
  - (A) applicable financial recordkeeping and reporting requirements of the money laundering statutes of all applicable jurisdictions;
  - (B) the rules and regulations thereunder; and
  - (C) any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Authority,(collectively, the “**Money Laundering Laws**”).
- (vii) No action, claim, notice of assessment, suit or proceeding by or before any commission, court, Governmental Authority, arbitrator or non-Governmental Authority involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.
- (o) Permits. Except as disclosed in Schedule 3.1(o) of the Company Disclosure Letter:
  - (i) Each of the Company and its subsidiaries has obtained, acquired or entered into, and is in material compliance with all material Permits required by applicable Laws necessary to conduct their respective businesses as they are now being conducted (as described in the Company Public Disclosure Record) as disclosed in any material Permit.
  - (ii) Any and all of the material Permits pursuant to which the Company or its subsidiaries holds or will hold an interest in its properties and assets (including any interest in, or right to earn an interest in, any mineral property) are:
    - (A) valid and subsisting Permits in full force and effect; and
    - (B) renewable by their terms or in the ordinary course of business without the need for the Company or its subsidiaries to:
      - (I) comply with any special rules or procedures;
      - (II) agree to any materially different terms or conditions; or
      - (III) pay any amounts other than routine filing fees.
  - (iii) All material Permits are in good standing and:

- (A) there has been no material default under any such Permit; and
  - (B) all material fees and other amounts required to be paid with respect to such Permits to the date hereof have been paid.
- (iv) There are no actions, proceedings or investigations, pending or, to the knowledge of the Company, threatened, whether written or oral, against the Company or any of its subsidiaries that could reasonably be expected to result in the suspension, loss or revocation of any such Permits.
- (p) Litigation.
- (i) Except as disclosed in Schedule 3.1(p) of the Company Disclosure Letter, since December 31, 2014, there has not been, and there is not currently any ongoing or, to the knowledge of the Company, threatened, court, administrative, regulatory or similar proceeding (whether civil, quasi-criminal or criminal), arbitration or other dispute settlement procedure, investigation or inquiry before or by any Governmental Authority, or any claim, action, suit, demand, arbitration, charge, indictment, hearing, demand letter or other similar civil, quasi-criminal or criminal, administrative or investigative matter or proceeding, including by any third party whatsoever (collectively, “**Proceedings**”) against or involving the Company or any of its subsidiaries, or affecting the Material Properties.
  - (ii) Since December 31, 2014, there has not been, and there is not currently any judgment, writ, decree, injunction, rule, award or order of any Governmental Authority outstanding against the Company or its subsidiaries, or in respect of their respective businesses, properties or assets
- (q) Insolvency.
- (i) No act or proceeding has been taken by or against the Company or any of its subsidiaries in connection with the:
    - (A) dissolution, liquidation, winding up, bankruptcy or reorganization of the Company or any of its subsidiaries; or
    - (B) appointment of a trustee, receiver, manager or other administrator of the Company or any of its subsidiaries or any of its properties or assets,

nor, to the knowledge of the Company, is any such act or proceeding threatened.

- (ii) Neither the Company nor any of its subsidiaries has sought protection under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or similar legislation.
- (iii) Neither the Company nor any of its subsidiaries nor any of their respective properties or assets is subject to any outstanding judgment, order, writ, injunction or decree that involves or may involve, or restricts or may restrict, the right or ability of the Company or its subsidiaries to conduct its business in all material respects as it has been carried on prior to the date hereof.
- (r) Interest in Company Properties. Schedule 3.1(r) of the Company Disclosure Letter provides a listing of all Company Properties, which constitute all of the assets necessary to perform the operation of its business as presently conducted, and:
  - (i) except as disclosed in Schedule 3.1(r) of the Company Disclosure Letter, each of the Company and its subsidiaries is the sole legal and registered owner, and has valid and sufficient right, title and interest, free and clear of any title defect or Lien in all material respects to the Company Properties, in each case, as are necessary to perform the operation of its business as presently owned and conducted;
  - (ii) except as disclosed in Schedule 3.1(r) of the Company Disclosure Letter, each of the Company and its subsidiaries is entitled to the material benefits of all of its:
    - (A) material properties and assets of any nature whatsoever;
    - (B) all mineral rights forming part of the Company Properties; and
    - (C) assets reflected in the statement of financial position forming part of the Company Public Disclosure Record,except as indicated in the notes thereto;
  - (iii) all material mineral tenures and mining claims in which the Company or any of its subsidiaries has an interest or right, forming part of the Company Properties:
    - (A) have been validly located, recorded and issued, as applicable, in accordance with applicable Laws in all material respects; and
    - (B) are valid and subsisting in all material respects;
  - (iv) each of the Company and its subsidiaries has all necessary material surface rights, access rights and other rights and interests relating to:
    - (A) its mineral tenures and mining claims; and

- (B) any fixed assets or personal property of the Company or its subsidiaries situate thereon or relating thereto,

granting the Company or its subsidiaries the right and ability to conduct its business as currently conducted as disclosed in the Company Public Disclosure Record, with only such exceptions as do not materially interfere with the use made by the Company or its subsidiaries of the rights or interests so held;

- (v) each of the:
  - (A) material mineral tenures and mining claims in which the Company or any of its subsidiaries has an interest or right; and
  - (B) material documents, agreements, instruments and obligations relating thereto and referred to above,

is currently in good standing in the name of the Company or its subsidiaries and free and clear of all material encumbrances, except as disclosed in Schedule 3.1(r) of the Company Disclosure Letter;

- (vi) except as disclosed in Schedule 3.1(r) of the Company Disclosure Letter, no person or entity of any nature whatsoever other than the Company or its subsidiaries has any material interest in the Company Properties or any right to acquire or otherwise obtain any such interest;
- (vii) except as disclosed in Schedule 3.1(r) of the Company Disclosure Letter, there are no back-in rights, earn-in rights, rights of first refusal, off-take rights or obligations, royalty rights, streaming rights, or other rights of any nature whatsoever which would materially affect the Company's or its subsidiaries' interests in the Company Properties, and no such rights are threatened;
- (viii) neither the Company nor any of its subsidiaries has received any notice, whether written or oral, from any Governmental Authority or any other person of any revocation or intention to revoke, diminish or challenge its interest in the Company Properties;
- (ix) the Company Properties are in good standing under and comply, in all material respects, with all applicable Laws and all:
  - (A) work required to be performed has been performed;
  - (B) taxes, fees, expenditures and all other payments in respect thereof have been paid or incurred; and
  - (C) filings in respect thereof have been made,



with only such exceptions as do not materially interfere with the use made by the Company or its subsidiaries of the rights or interests so held;

- (x) except as disclosed in Schedule 3.1(r) of the Company Disclosure Letter, there are no material adverse claims, demands, actions, suits or proceedings that have been commenced or are pending or, to the knowledge of the Company, that are threatened, affecting or which could affect the Company's or any of the subsidiaries':
  - (A) right, title or interest in the Company Properties; or
  - (B) which might involve the possibility of any judgement or liability affecting the Company Properties; and
- (xi) any of the Company Properties that is personal property is in satisfactory operating condition, subject to normal wear and tear, and adequate and sufficient for the uses to which it is put in the ordinary course of business, as conducted by the Company and its subsidiaries;
- (xii) except as disclosed in Schedule 3.1(r) of the Company Disclosure Letter, to the knowledge of the Company:
  - (A) none of the directors or officers of the Company holds any right, title or interest in; nor
  - (B) has taken no action to obtain, directly or indirectly, any right, title and interest in,

any of Company Properties or in any permit, concession, claim, lease, licence or other right to explore for, exploit, develop, mine or produce minerals from or in any manner in relation to the Company Properties and any other properties located within 20 kilometres of any of the Company Properties.

(s) Expropriation and Aboriginal Matters.

Except as disclosed in Schedule 3.1(s) of the Company Disclosure Letter:

- (i) no Company Property or any other property or asset of the Company or any of its subsidiaries has been taken or expropriated by any Governmental Authority and no notice or proceeding in respect thereof been given or commenced nor, to the knowledge of the Company, is there any intent or proposal to give any such notice or to commence any such proceeding;
- (ii) neither the Company nor any of its subsidiaries has received any written or oral, notice of any Aboriginal Claim made by any Aboriginal Peoples which relates to, affects, or could reasonably be

expected to affect or impair the Company's or any of the subsidiaries' right, title or interest in the Company Properties or the validity of any Permits;

- (iii) to the knowledge of the Company, no Aboriginal Claim has been threatened by any Aboriginal Peoples which relates to, affects, or could reasonably be expected to affect or impair, the Company's or any of the subsidiaries' right, title or interest in the Company Properties or the validity of any Permits;
  - (iv) there are no current, pending or threatened Aboriginal Claims that could reasonably be expected to prevent or materially impair, the exploration, development, construction and operation of the Company's or any of the subsidiaries' right, title or interest in the Company Properties or the validity of any Permits;
  - (v) no Aboriginal blockade, occupation, illegal action or on-site protest has occurred in connection with the activities on the Company Properties;
  - (vi) there is no memorandum of agreement, exploration, impact and benefit or any other written or oral agreement between the Company or any of its subsidiaries and any Aboriginal Peoples respecting the Company Properties; and
  - (vii) no Aboriginal Information has been received by the Company or any of its subsidiaries which could reasonably be expected to have a Company Material Adverse Effect.
- (t) Technical Report.
- (i) The Material Properties, together, constitute the only material properties of the Company, including in respect of Orca Sand & Gravel Project and the Black Bear Project, for the purposes of NI 43-101.
  - (ii) The Technical Reports complied in all material respects with the requirements of NI 43-101 at the time of filing thereof and reasonably presented the quantity of mineral resources and mineral reserves attributable to the properties evaluated therein as at the date stated therein based upon information available at the time the report was prepared.
  - (iii) The Company made available to the authors of the Technical Reports, prior to the issuance thereof, for the purpose of preparing such report, all information requested by them, and none of such information contained any misrepresentation at the time such information was so provided.

- (iv) Except as disclosed in Schedule 3.1(t) of the Company Disclosure Letter, the Company does not have knowledge of any material change in the facts and assumptions underlying the estimates in the Technical Reports, as updated through the Company Public Disclosure Record, that would reasonably be expected to result in a material change in any production, cost, price, reserves, resources or other relevant information provided in the Technical Reports as updated through the Company Public Disclosure Record.
  - (v) All of the material assumptions underlying the mineral resource and mineral reserve estimates in the Company Public Disclosure Record are reasonable and appropriate.
  - (vi) The estimates of mineral resources and mineral reserves as described in the Company Public Disclosure Record comply in all material respects with NI 43-101.
  - (vii) The information set forth in the Company Public Disclosure Record relating to mineral resources and mineral reserves required to be disclosed therein pursuant to NI 43-101 has been prepared by the Company and its consultants in accordance with methods generally applied in the mining industry and conforms to the requirements of NI 43-101 and, in all material respects, to applicable Securities Laws.
  - (viii) The Company is in compliance in all material respects with the provisions of NI 43-101 and has filed all technical reports required thereby.
  - (ix) Except as disclosed in Schedule 3.1(t) of the Company Disclosure Letter, there has been no material change of which the Company is or should be aware that would materially disaffirm or materially change any aspect of the Technical Report or that would require the filing of a new technical report under NI 43-101.
- (u) Taxes.

Except as disclosed in Schedule 3.1(u) of the Company Disclosure Letter:

- (i) Each of the Company and its subsidiaries has filed all income and other material Returns required to be filed by it with any Governmental Authority and each such Return was:
  - (A) filed on or before the applicable due date; and
  - (B) complete and correct in all material respects at the time of filing and have not been amended.

- (ii) Each of the Company and its subsidiaries has duly paid or caused to be paid to the appropriate Governmental Authority all Taxes which are due and payable by it, including pursuant to all assessments and reassessments, and all other Taxes due and payable by it, whether or not assessed by the appropriate Governmental Authority or shown on a Return, on or before the date hereof, other than those which are being or have been contested in good faith by appropriate proceedings and in respect of which reserves have been provided in the most recently published consolidated financial statements of the Company in accordance with IFRS. Neither the Company nor any of its subsidiaries has received any refund of Taxes to which it is not entitled.
- (iii) The Company and its subsidiaries have provided adequate accruals in accordance with applicable accounting rules in the Annual Financial Statements and the Company's interim financial statements for the period ended June 30, 2017 for any Taxes of the Company and each of its subsidiaries for the period covered by each such financial statements that have not been paid whether or not shown as being due on any Returns.
- (iv) Since the publication date of the most recently published consolidated financial statements of the Company, no material liability in respect of Taxes not reflected in such statements or otherwise provided for has been assessed, proposed to be assessed, incurred or accrued, other than in the ordinary course of business.
- (v) No material audit, action, proceeding, investigation, deficiency, litigation, or proposed adjustment is pending or, to the knowledge of the Company, has been threatened with respect to Taxes or interest thereon or Returns of the Company or any of its subsidiaries.
- (vi) No written claim has been made by any Governmental Authority in a jurisdiction where the Company and any of its subsidiaries does not file Returns that the Company or any of its subsidiaries is or may be subject to Tax by that jurisdiction.
- (vii) No Lien for Taxes has been filed or exists with respect to any assets or properties of the Company or any of its subsidiaries other than for Taxes not yet due and payable.
- (viii) The Company and each of its subsidiaries has withheld or collected all amounts required to be withheld or collected by it on account of Taxes and has remitted all such amounts to the appropriate Governmental Authority when required by Law to do so.
- (ix) The Company and each of its subsidiaries has made available to the Purchaser true, correct and complete copies of all Returns,

examination reports and statements of deficiencies for taxable periods, or transactions consummated, for which the applicable statutory periods of limitations have not expired.

- (x) Neither the Company nor any of its subsidiaries has ever directly or indirectly transferred any property to or supplied any services (including financial transactions such as loans and indebtedness) to or acquired any property or services from a person with whom it was not dealing at arm's length (for the purposes of the Tax Act) for consideration other than consideration equal to the fair market value of the property or services (including, in the case of a financial transaction such as a loan or indebtedness, an arm's-length rate of interest) at the time of the transfer, supply or acquisition of the property or services.
- (xi) The Company is not and has never been a "United States person" within the meaning of Section 7701(a)(30) of the Code. Neither the Company nor any of its non-U.S. subsidiaries is a "surrogate foreign corporation" within the meaning of Section 7874(a)(2)(B) of the Code or is treated as a U.S. corporation under Section 7874(b) of the Code.
- (xii) Neither the Company nor any of its subsidiaries has (A) been the "distributing corporation" or a "controlled corporation" (within the meaning of Section 355 of the Code) with respect to a transaction that was purported to be governed in whole or in part by Section 355 of the Code, or (B) to the knowledge of the Company, made or revoked any election under Treas. Reg. § 301.7701-3 or any similar provision of Tax Law regarding classification as a corporation, as a partnership, or as a disregarded entity.
- (xiii) There are no currently effective elections, arrangements, agreements, waivers or objections extending the statutory period or providing for an extension of time with respect to the assessment or reassessment of any Taxes, the filing of any Return or any payment of Taxes by the Company or any of its subsidiaries, and neither the Company nor any of its subsidiaries has received a ruling from any Governmental Authority in respect of Taxes or signed an agreement in respect of Taxes with any Governmental Authority, and the Company and its subsidiaries have complied with the terms and conditions of each such ruling or agreement disclosed in Schedule 3.1(u) of the Company Disclosure Letter.
- (xiv) There are no circumstances existing which could result in the application of Sections 17, 78, 79 80 to 80.04, or 212.3 or Subsection 90(6) of the Tax Act, or any equivalent provision under provincial Law, to the Company or any of its subsidiaries.

- (xv) There is no material dispute or claim, including any material audit, investigation, or examination by any Governmental Authority, actual, pending, or to the knowledge of the Company, threatened, concerning any Tax liability of the Company or any of its subsidiaries, and no written notice of such an audit, investigation, examination, material dispute, or claim has been received by the Company or any of its subsidiaries.
- (xvi) The Company and its subsidiaries have not claimed nor will they claim any reserve under any provision of the Tax Act or any equivalent provincial provision, if any amount could be included in the income of the Company or its subsidiaries for any period ending after the Effective Time.
- (xvii) Neither the Company nor any of its subsidiaries is a party to any agreement, understanding or arrangement relating to allocating or sharing any amount of Taxes, nor does the Company or any of its subsidiaries owe any amount under any such agreement.

(v) Contracts.

Except as disclosed in Schedule 3.1(v) of the Company Disclosure Letter:

- (i) All of the Material Contracts to which the Company or any of its subsidiaries or their respective assets are bound are listed in Schedule 3.1(v) of the Company Disclosure Letter,
- (ii) True and complete copies of all Material Contracts have been provided to the Purchaser as part of Company Diligence Materials, except those subject to confidentiality and which by their terms cannot be provided or which were redacted, and no such Material Contract has been modified, rescinded or terminated.
- (iii) Each Material Contract is legal, valid, binding and in full force and effect and is enforceable by the Company or the applicable subsidiary, as applicable, in accordance with its terms (subject to bankruptcy, insolvency and other Laws affecting creditors' rights generally, and to general principles of equity).
- (iv) The Company or the applicable subsidiary of the Company has performed in all material respects all respective obligations required to be performed by it to date under the Material Contracts and is not, and is not to the knowledge of the Company alleged to be (with or without the lapse of time or the giving of notice, or both) in breach or default in any material respect thereunder.
- (v) None of the Company or any of its subsidiaries knows of, or has received any notice (whether written or oral) of, any breach or default

under nor, to the knowledge of the Company, does there exist any condition which with the passage of time or the giving of notice or both would result in such a breach or default under any Material Contract by any other party to such Material Contract.

- (vi) None of the Company or any of its subsidiaries has received any notice (whether written or oral), that any party to a Material Contract intends to cancel, terminate or otherwise modify or not renew its relationship with the Company or with any of its subsidiaries, and, to the knowledge of the Company, no such action has been threatened.

(w) Employees.

- (i) Schedule 3.1(w) of the Company Disclosure Letter sets out a true and complete list of all employees of the Company and its subsidiaries by employee number, whether actively at work or not, including their respective:

- (A) location;
- (B) hire date;
- (C) cumulative length of service;
- (D) position;
- (E) compensation (including but not limited to salary, bonus and commissions);
- (F) eligibility to participate in short-term and long-term incentive plans (and grants received under these plans, if any);
- (G) benefits;
- (H) vacation entitlement in days;
- (I) current status (full time or part-time, active or non-active, and if non-active, the reason for leave); and
- (J) whether they are subject to a written employment Contract,

as well as a list of all former employees of the Company to whom the Company or any of its subsidiaries has or may have any outstanding obligations, indicating the nature and the value of such obligations.

- (ii) Except as disclosed in Schedule 3.1(w) of the Company Disclosure Letter, no employee of the Company or its subsidiaries is a party to any agreement, arrangement, plan, obligation, or understanding as to length of notice or severance payment required to terminate his or her

employment, other than such as results by Law from the employment of an employee without an agreement as to notice or severance.

- (iii) Schedule 3.1(w) of the Company Disclosure Letter contains:
  - (A) a correct and complete list of each independent contractor engaged by the Company or any subsidiary;
  - (B) their respective consulting fees;
  - (C) any other forms of compensation or benefits to which they are entitled; and
  - (D) whether they are subject to a written Contract.
- (iv) Current and complete copies of all such independent contractor Contracts that provide for base fees in excess of \$100,000 per annum have been provided to the Purchaser as part of Diligence Information.
- (v) Each independent contractor of the Company and its subsidiaries has been properly classified as an independent contractor and neither the Company nor any subsidiary has received any notice from any Governmental Authority disputing such classification.
- (x) Employment Agreements.
  - (i) All written Contracts in relation to the employees listed in Schedule 3.1(x) of the Company Disclosure Letter have been provided as part of Company Diligence Information.
  - (ii) Except as set out in Schedule 3.1(x) of the Company Disclosure Letter, neither the Company nor any of its subsidiaries is a party to or bound or governed by, or subject to:
    - (A) any employment, consulting, retention or change of control agreement with, or any written or oral agreement, arrangement or understanding providing for retention, severance or termination payments (including, without limitation, bonus, golden parachute, retirement, retiring allowance or similar payment, or any other benefit or enhanced benefit) to, any officer, employee or consultant of the Company or any of its subsidiaries in connection with the termination of their position or their employment as a direct result of a change in control of the Company (including as a result of the Arrangement);
    - (B) any collective bargaining or union agreement, or any actual or, to the knowledge of the Company, threatened application for certification or bargaining rights in respect of the Company or any of its subsidiaries;



- (C) any labour dispute, strike or lock-out relating to or involving any employees of the Company or any of its subsidiaries; or
  - (D) any actual or, to the knowledge of the Company, threatened material claim against the Company or any of its subsidiaries arising out of or in connection with employment or consulting relationship or the termination thereof.
- (iii) Schedule 3.1(x) of the Company Disclosure Letter sets forth a complete list of all Collective Agreements.
  - (iv) The Company and its subsidiaries are in compliance in all material respects with the terms and conditions of the Collective Agreements listed in Schedule 3.1(x) of the Company Disclosure Letter.
  - (v) Other than the Collective Agreements disclosed in Schedule 3.1(x) of the Company Disclosure Letter, no Collective Agreement is currently being negotiated in respect of employees of the Company or any subsidiary.
  - (vi) Neither the Company nor any of its subsidiaries has any:
    - (A) material unresolved grievances;
    - (B) notice of default;
    - (C) statement of offence; or
    - (D) material pending Proceedings,  
outstanding under any Collective Agreement or decree.
  - (vii) Neither the Company nor any of its subsidiaries is a party, either directly or indirectly, or by operation of law to any collective agreement other than the Collective Agreements listed in Schedule 3.1(x) of the Company Disclosure Letter.
  - (viii) There are no outstanding labour tribunal proceedings of any kind, including any proceedings which could result in certification of a trade union as bargaining agent for any employees of the Company or any subsidiary, not already covered by a Collective Agreement.
  - (ix) Except as disclosed in Schedule 3.1(x) of the Company Disclosure Letter, none of the Company or any of its subsidiaries has engaged in any lay-off activities within the past two years that would violate or in any way subject the Company or any of its subsidiaries to the group termination or lay-off requirements of the applicable provincial employment standards Law, the U.S. Workers Adjustment and Retraining Notification Act, or other Law.

- (x) Except as disclosed in Schedule 3.1(x) of the Company Disclosure Letter, the Company has not and is not engaged in any unfair labour practice.
  - (xi) There is no current, pending, threatened or, to the knowledge of the Company, potential:
    - (A) union organizing activities involving any employees of the Company or any subsidiary;
    - (B) labour strike, dispute, work slowdown or stoppage involving or against the Company or any subsidiary; or
    - (C) unfair labour practice complaint, grievance or arbitration proceeding against the Company or any subsidiary.
  - (xii) There has been no labour strike, dispute, work slowdown or stoppage involving or against the Company or any subsidiary within the last five (5) years.
  - (xiii) No trade union has applied to have the Company or any of its subsidiaries declared a common, related or successor employer pursuant to applicable Law in any jurisdiction in which the Company or any of its subsidiaries carries on business.
- (y) Health and Safety.
- (i) Each of the Company and its subsidiaries have operated in all material respects in accordance with all applicable Laws with respect to employment and labour, including:
    - (A) employment and labour standards;
    - (B) occupational health and safety;
    - (C) employment equity;
    - (D) pay equity, workers' compensation;
    - (E) human rights;
    - (F) labour relations; and
    - (G) privacy.
  - (ii) There are no current, pending, threatened or, to the knowledge of the Company, potential proceedings before any Governmental Authority with respect to any of the matters described in Section 3.1(y).

- (iii) There are no outstanding assessments, reassessments, penalties, fines, liens, charges, surcharges, or other amounts due or owing under any occupational health and safety legislation (“**AROHS**”) or any workers’ compensation or industrial, accident and occupational disease legislation (“**ARIAOD**”) by the Company or any subsidiary.
  - (iv) Neither the Company nor any subsidiary has been reassessed in any respect under any safety and insurance legislation during the past three years.
  - (v) To the knowledge of the Company, no audit of the Company or any subsidiary is currently being performed pursuant to any applicable workplace safety and insurance legislation.
  - (vi) As of the date of this Agreement, there are no claims or potential claims which may adversely affect the Company or any subsidiary’s accident cost expense.
  - (vii) The Company has provided as part of the Company Diligence Information, all orders and inspection reports under applicable AROHS and/or ARIAOD.
  - (viii) There are no charges pending under AROHS and/or ARIAOD.
  - (ix) The Company has complied in all material respects with any orders issued under AROHS and/or ARIAOD and there are no appeals of any orders under AROHS and/or ARIAOD currently outstanding.
  - (x) The Company and its subsidiaries are in compliance with all terms and conditions of any work permits and Labour Market Impact Assessments received in respect of the engagement of foreign workers.
  - (xi) No audit by any Governmental Authority is being conducted, or to the knowledge of the Company pending, in respect of any foreign workers and no such prior audit has resulted in the revocation of any work permit or Labour Market Impact Assessment.
- (z) Acceleration of Benefits. Except as set out in Schedule 3.1(z) of the Company Disclosure Letter, no person will, as a result of any of the transactions contemplated herein or in the Plan of Arrangement, become entitled to:
- (i) any retirement, severance, bonus or other similar payment from the Company or any of its subsidiaries;
  - (ii) the acceleration of the vesting or the time to exercise of any outstanding stock option or employee or director awards (including the Company Options and Company DSUs) of the Company or any of its subsidiaries;

- (iii) the forgiveness or postponement of payment of any indebtedness owing by such person to the Company or any of its subsidiaries; or
  - (iv) receive any additional payments or compensation under or in respect of any:
    - (A) employee or director benefit plan;
    - (B) incentive plan; or
    - (C) other compensation plan,or arrangements from the Company or any of its subsidiaries.
- (aa) Pension and Employee Benefits. Except as set out in Schedule 3.1(aa) of the Company Disclosure Letter:
- (i) Each of the Company and its subsidiaries has complied in all material respects with terms of, and applicable Law in respect of, employee compensation and benefit obligations of the Company and its subsidiaries.
  - (ii) Neither the Company nor any of its subsidiaries has any:
    - (A) pension or retirement income plans; or
    - (B) other material employee compensation or benefit plans, agreements, policies, programs, arrangements or practices,whether written or oral, which are maintained by or binding upon the Company.
  - (iii) The Company is in material compliance with the terms of the Company Stock Option Plans and Company DSU Plan and all applicable Laws related thereto.
  - (iv) All amounts due or accrued due for all salary, wages, bonuses, commissions, vacation with pay, sick days and benefits under Employee Plans and other similar accruals have either:
    - (A) been paid; or
    - (B) are accurately reflected in the books and records of the Company or of the applicable subsidiary.
  - (v) The Company does not have any stock option plan or similar arrangement, other than the:
    - (A) Company Stock Option Plans; and

- (B) Company DSU Plan,  
copies of which have been provided to the Purchaser as part of the Company Diligence Information.
- (vi) All Employees Plans are set out in Schedule 3.1(aa) of the Company Disclosure Letter.
- (vii) The Company has provided as part of Diligence Information true, correct and complete copies of all the Employee Plans as amended as of the date hereof, together with all related documentation including:
  - (A) funding and investment management agreements;
  - (B) summary plan descriptions;
  - (C) the most recent:
    - (I) actuarial reports (including, for greater certainty, actuarial valuations in respect of any multi-employer pension plan);
    - (II) financial statements; and
    - (III) asset statements;and
  - (D) all material:
    - (I) opinions and memoranda (whether externally or internally prepared); and
    - (II) correspondence with all regulatory authorities or other relevant persons.
- (viii) No changes have occurred or are expected to occur which would materially affect the information contained in the actuarial reports, financial statements or asset statements required to be provided to the Purchaser.
- (ix) Each of the Company and its subsidiaries has complied in all material respects with all the terms of, and all applicable Laws in respect of, the Employee Plans.
- (x) No fact or circumstance exists which could adversely affect the registered status of any Employee Plan.

- (xi) Neither the Company, nor any of its agents or delegates, has breached any fiduciary obligation with respect to the administration or investment of any Employee Plan.
- (xii) All contributions, premiums and taxes owing under the Employee Plans have been paid when due in accordance with the terms of the Employees Plans and applicable Laws.
- (xiii) The Company and/or its subsidiaries, as the case may be, have either:
  - (A) paid in full all contributions for the period up to the closing of the Arrangement even though not otherwise required to be paid until a later date; or
  - (B) made full and adequate disclosure of and provision for such contributions and premiums in their books and records.
- (xiv) All Employee Plans that provide group benefits are established through a contract of insurance and no retroactive increase in premiums is permitted thereunder.
- (xv) The level of insurance reserves under each insured Employee Plan is reasonable and sufficient to provide for all incurred but unreported claims.
- (xvi) Other than the Company's registered pension plan covering all Canadian employees, no Employee Plan is a "*registered pension plan*" as such term is defined in the Tax Act or provides benefits following:
  - (A) the retirement; or
  - (B) except where required by statute, the termination of employment,of any employee of the Company or its subsidiaries.
- (xvii) No Employee Plan, no administrator of any Employee Plan, and no member of any body which administers any Employee Plan, nor the Company nor any of its subsidiaries, is subject to any pending investigation, examination, action, claim (including claims for income taxes, interest, penalties, fines or excise taxes) or any other proceeding initiated by any person (other than routine claims for benefits) and there exists no state of facts which could reasonably be expected to give rise to any such investigation, examination, action, claim or other proceeding.
- (xviii) None of the Employee Plans (other than pension plans and life insurance plans) provide for:

- (A) retiree benefits;
  - (B) post-termination benefits; or
  - (C) benefits to the beneficiaries or dependants of retired or terminated employees,  
except as required by Law.
- (xix) Subject to the requirements of Laws:
- (A) no provision of any Employee Plan or of any agreement; and
  - (B) no act or omission of the Company or its subsidiaries,  
in any way limits, impairs, modifies or otherwise affects the right of the Company or its subsidiaries to unilaterally amend or terminate any Employee Plan, and no commitments to improve or otherwise amend any Employee Plan have been made.
- (xx) No advance tax rulings have been sought or received in respect of any Employee Plan.
- (xxi) All employee data necessary to administer each Employee Plan in accordance with its terms and conditions and Law is in possession of the Company and such data is:
- (A) complete;
  - (B) correct; and
  - (C) in a form which is sufficient for the proper administration of each Employee Plan.
- (xxii) No Employee Plan is a funded and/or defined benefit plan.
- (xxiii) With respect to each Employee Plan that is a registered pension plan:
- (A) the Company may take contribution holidays under or withdraw surplus from the Employee Plan, subject only to approvals required by Laws;
  - (B) no Employee Plan has received a transfer of assets from or been merged with another registered pension plan;
  - (C) no Employee Plan has been subject to a partial wind-up in respect of which surplus assets relating to the partial wind-up group were not dealt with at the time of partial windup;

- (D) no assets have been applied other than for proper payments of:
    - (I) benefits;
    - (II) refunds of over-contributions; and
    - (III) permitted payments of reasonable expenses incurred,by or in respect of the Employee Plan; and
  - (E) no conditions have been imposed by any person and no undertakings or commitments have been given to any:
    - (I) employee;
    - (II) union; or
    - (III) any other person,concerning the use of assets relating to any Employee Plan or any related funding medium.
- (xxiv) With respect to any Employee Plan that is a multi-employer pension plan, no current or former:
- (I) employee;
  - (II) officer; or
  - (III) director,
- of the Company is or was ever a member of the administrative body of any such Employee Plan.
- (xxv) Other than as contemplated in this Agreement, the execution and delivery of, and performance by the Company of, this Agreement and the consummation of the transactions contemplated by it will not: (I) accelerate the time of payment or vesting under any Employee Plan; (II) result in an obligation to fund (through a trust or otherwise) any compensation or benefits under any Employee Plan; (III) increase any amount payable under any Employee Plan; or (IV) result in the acceleration of any other material obligation pursuant to any Employee Plan.
- (bb) Intellectual Property. Except as set out in Schedule 3.1(bb) of the Company Disclosure Letter, neither the Company nor any of its subsidiaries owns or possesses any registered intellectual property rights including any patents, copyrights, trade secrets, trademarks, service marks or trade names.



(cc) Environmental. Except as set out in Schedule 3.1(cc) of the Company Disclosure Letter:

- (i) The Company and its subsidiaries have carried on since the commencement of their operations and are currently carrying on their operations in material compliance with all applicable Environmental Laws.
- (ii) The Company Properties and assets of the Company and its subsidiaries have materially complied and currently materially comply with all applicable Environmental Laws.
- (iii) The Company and its subsidiaries have obtained from the relevant Governmental Authorities, and are in material compliance with, any Environmental Authorizations required to conduct their previous and current businesses and such Environmental Authorizations remain valid and in good standing on the date hereof and will be valid and in good standing on the Effective Date.
- (iv) Other than as reflected in the Company Public Disclosure Record, neither the Company nor any of its subsidiaries is subject to any material contingent or other liability relating to:
  - (A) the restoration, remediation or rehabilitation of land, water or any other part of the Environment;
  - (B) mine closure, reclamation, remediation or other post-operational requirements; or
  - (C) non-compliance with Environmental Laws.
- (v) The Company Properties have not been used to generate, manufacture, refine, treat, recycle, transport, store, handle, dispose of, transfer, produce or process Hazardous Substances, except in compliance in all material respects with all Environmental Laws.
- (vi) Neither of the Company nor any of its subsidiaries has caused or permitted a Release at, in, on, under or from any Company Properties, or any other properties, except in material compliance with all Environmental Laws.
- (vii) All Hazardous Substances handled, recycled, disposed of, treated or stored on or off site of the Company Properties or any other properties by the Company or its subsidiaries have been and are currently being handled, recycled, disposed of, treated and stored in material compliance with all Environmental Laws.

- (viii) There are no Hazardous Substances at, in, on, under or migrating from any Company Property, except in material compliance with all Environmental Laws.
- (ix) Neither the Company nor its subsidiaries has treated or disposed of, or arranged for the treatment or disposal of, any Hazardous Substances at any location except in compliance with all Environmental Laws and all Environmental Authorizations, and no such location is:
  - (A) listed on any list of hazardous sites or sites requiring Remedial Action issued by any Governmental Authority;
  - (B) to the knowledge of the Company, proposed for listing on any list issued by any Governmental Authority of hazardous sites or sites requiring Remedial Action, or any similar federal, state or provincial lists; or
  - (C) the subject of enforcement actions by any Governmental Authority that creates the reasonable potential for any proceeding, action, or other claim against the Company or its subsidiaries.
- (x) No site or facility now or previously owned, operated or leased by the Company or its subsidiaries:
  - (A) is either:
    - (I) listed; or
    - (II) to the knowledge of the Company, is proposed for listing, on any list issued by any Governmental Authority of hazardous sites or sites requiring Remedial Action; or
  - (B) is the subject of Remedial Action.
- (xi) Neither the Company nor any of its subsidiaries has caused or permitted a Release on or to any Company Properties, or any other properties, in such a manner as would reasonably be expected to:
  - (A) impose liability for:
    - (I) cleanup;
    - (II) natural resource damages;
    - (III) loss of life;
    - (IV) personal injury;

- (V) nuisance; or
  - (VI) damage to other property,
- or

(B) result in:

- (I) imposition of a lien, charge or other encumbrance on; or
- (II) the expropriation of,

any Company Properties or any of the assets of the Company or its subsidiaries.

(xii) Neither the Company nor any of its subsidiaries has received from any Person or Governmental Authority any notice, formal or informal, of any proceeding, action or other claim, liability or potential liability arising under any Environmental Law that is pending or to the knowledge of the Company, threatened against the Company as of the date of this Agreement.

(xiii) The Company is not aware of any facts or circumstances that reasonably could be expected to give rise to any such notice, action or other claim, liability or potential liability.

(dd) Insurance.

(i) Each of the Company and each of its subsidiaries has in place reasonable and prudent insurance policies appropriate for its size, nature and stage of development.

(ii) All insurance policies of the Company and its subsidiaries are:

(A) disclosed in Schedule 3.1(dd) of the Company Disclosure Letter; and

(B) valid and binding and in full force and effect as of the date hereof.

(iii) All premiums due and payable under all such policies have been paid and the Company and its subsidiaries are otherwise in compliance in all material respects with the terms of such policies.

(iv) Each of the Company and each of its subsidiaries has not received any notice of cancellation or termination with respect to any such policy.

- (v) There has been no denial, rejection, or dispute of material claims by the Company's or its subsidiaries' insurers or as to which any such insurer has either:
    - (A) made any reservation of rights; or
    - (B) refused to cover all or any material portion of such claims.
  - (vi) All material proceedings covered by any insurance policy of the Company or its subsidiaries have been properly reported to and accepted by the applicable insurer.
- (ee) Books and Records.
- (i) The corporate records and minute books of the Company and each of its subsidiaries, copies of which have been provided to the Purchaser as part of the Company Diligence Information:
    - (A) have been maintained in accordance with all applicable Laws in all material respects; and
    - (B) are complete and accurate in all material respects.
  - (ii) The financial books and records and accounts of the Company and each of its subsidiaries in all material respects have been maintained in accordance with
    - (A) good business practices and applicable Laws; and
    - (B) in accordance with IFRS or the accounting principles generally accepted in the country of domicile of each such entity on a basis consistent with prior years.
    - (C) Neither the Company nor any of its subsidiaries has maintained or maintains any slush fund, off-book account, or unrecorded transactions.
- (ff) Non-Arm's Length Transactions. Except as disclosed in Schedule 3.1(ff) of the Company Disclosure Letter, there are no current contracts, commitments, agreements, arrangements or other transactions between the Company or any of its subsidiaries, on the one hand, and any:
- (i) officer or director of the Company or its subsidiaries;
  - (ii) holder of record or, to the knowledge of the Company, beneficial owner or 5% or more of the outstanding Company Shares; or
  - (iii) affiliate or associate of any such officer, director or Company Shareholder,

on the other hand.

(gg) Financial Advisors and Brokers.

- (i) Except as disclosed in Schedule 3.1(gg) of the Company Disclosure Letter, the Company has not:
  - (A) incurred any obligation or liability, contingent or otherwise in respect of; or
  - (B) retained or agreed to pay or reimburse any broker, finder, financial adviser, investment banker for,  
  
any brokerage, finder's, advisory or other fee or commission or for the reimbursement of expenses, in connection with this Agreement, the transactions contemplated hereby or any alternative transaction in relation to the Company.
- (ii) Schedule 3.1(gg) of the Company Disclosure Letter sets out the dollar amount payable or the manner in which such amount is to be calculated under such agreements if the Arrangement is completed.

(hh) Opinions of Financial Advisor.

- (i) The Board has received the Company Board Fairness Opinion and the Company Special Committee has received the Company Special Committee Fairness Opinion.
- (ii) The Company has made true and complete disclosure to the Purchaser of all fees, commissions or other payments that may:
  - (A) be incurred pursuant to the engagement of the Company Board Financial Advisor and the Company Special Committee Financial Advisor; or
  - (B) otherwise be payable to the Company Board Financial Advisor and Company Special Committee Financial Advisor.

(ii) Company Special Committee and Company Board Approval.

- (i) Each of the Company Special Committee and the Company Board, at a meeting duly called and held, upon consultation with legal and financial advisors, has unanimously determined that the Arrangement is:
  - (A) fair to the Company Shareholders; and
  - (B) in the best interests of the Company.

- (ii) The Company Board has unanimously:
    - (A) approved the:
      - (I) execution and delivery of this Agreement; and
      - (II) transactions contemplated by this Agreementand
    - (B) resolved to recommend that the Affected Securityholders vote in favour of the Arrangement Resolution.
  - (iii) No action has been taken to amend, or supersede such determinations, resolutions or authorizations of the Company Special Committee or the Company Board.
  - (iv) Each Director and Company Senior Management intend to vote all Affected Securities held by him or her in favour of the Arrangement Resolution and references to such intention may be made in any press release disclosing the Arrangement and this Agreement, the Circular and other documents relating to the Arrangement.
- (jj) Arrangements with Securityholders. Other than the Support Agreements and this Agreement and except as disclosed in Schedule 3.1(jj) of the Company Disclosure Letter, the Company does not have any material agreement, arrangement or understanding (whether written or oral) with any:
- (i) shareholder of the Purchaser;
  - (ii) interested party of the Purchaser;
  - (iii) related party of any interested party of the Purchaser; or
  - (iv) any joint actor with any such persons,
- (and for this purpose, the terms “*interested party*”, “*related party*” and “*joint actor*” shall each have the meaning ascribed to such terms in MI 61-101), in respect of the Purchaser or any of its securities, businesses or operations.
- (kk) No Collateral Benefit. To the knowledge of the Company, no related party of the Company (within the meaning of MI 61-101) together with its associated entities, beneficially owns or exercises control or direction over 1% or more of the outstanding Company Shares, except for related parties who will not receive a “collateral benefit” (within the meaning of MI 61-101) as a consequence of the transactions contemplated by this Agreement.
- (ll) Confidentiality Agreements. All agreements entered into by the Company or any of its subsidiaries with persons regarding the confidentiality of information

provided to such person or reviewed by such persons with respect to any transaction in the nature described in the definition of Acquisition Proposal each contain customary provisions, including standstill provisions, which have not been waived or released with respect to the applicability of any such “*standstill*” or other provisions of such confidentiality agreements, except to the extent such agreements contain provisions that provide for automatic exceptions to such standstill or other provisions resulting from the Arrangement.

(mm) Disclosure Controls and Procedures. The Company maintains a system of disclosure controls and procedures (as such term is defined in NI 52-109) designed to provide reasonable assurance that: (i) the information disclosed by the Company under applicable Securities Laws is recorded, processed, summarized, and reported within the time periods specified in the applicable Securities Laws; and (ii) material information required to be included in the Company’s periodic reports required under applicable Securities Laws is provided to the Chief Executive Officer and Chief Financial Officer of the Company.

(nn) Inventory.

- (i) All inventory of the Company, whether or not reflected in the Annual Financial Statements or the Company’s interim financial statements (i) was acquired and has been maintained in the ordinary course of business consistent with past practice and (ii) consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established.
- (ii) Except as disclosed in Schedule 3.1(nn) of the Company Disclosure Schedule, all such inventory is owned by the Company free and clear of any and all Liens, and no inventory is held on a consignment basis. The quantities of each item of inventory (whether raw materials, work-in-progress or finished goods) are not excessive, but are reasonable in the present circumstances of the Company. Except as disclosed in Schedule 3.1(mm) of the Company Disclosure Schedule, all inventory of the Company is located at the Company Properties and there is no inventory of the Company with customers, distributors, representatives or other persons on consignment or otherwise that could be returned to the Company for a refund of all or part of the purchase price therefor.
- (iii) All specification material included in the inventory of the Company conforms to all applicable specifications or standards and to the knowledge of the Company, since January 1, 2016, there has been no claim, written or oral, that the material produced by the Company has failed to meet applicable specifications or has been materially defective in any manner.

- (oo) Customers. Set forth on Schedule 3.1(oo) of the Company Disclosure Letter are the Company's largest customers comprising 80% of the revenue of the Company by dollar volume, for each of the following periods: (i) the fiscal year ended December 31, 2016 and (ii) the period beginning on January 1, 2017, and ending on June 30, 2017, and set forth opposite the name of each such customer is the approximate dollar amount of sales attributable to such customer for such periods (any customer listed on, or required to be listed on, Schedule 3.1(oo) of the Company Disclosure Letter, collectively, the "**Specified Customers**"). Except as set forth on Schedule 3.1(oo) of the Company Disclosure Letter, none of the Specified Customers has (i) provided written notice to the Company that it intends to materially reduce the dollar amount of sales attributable to such Specified Customer, or (ii) either provided written notice or, to the knowledge of the Company, otherwise notified the Company that it intends to terminate its business relations with the Company. Except as set forth on Schedule 3.1(oo) of the Company Disclosure Letter, there are no material disputes pending or threatened between any Specified Customer and the Company.
- (pp) Funds Available on Termination. The Company has sufficient funds or will have sufficient funds available to pay the Termination Fee, or if the Company does not or will not have sufficient funds to pay the Termination Fee, the maker of the applicable Superior Proposal or consummated Acquisition Proposal will provide the cash required in order to pay the Termination Fee.
- (qq) Regulatory Matters. As calculated in accordance with the *Competition Act* (Canada) and the regulations thereto, the aggregate value of the assets in Canada that are owned by the Company or by corporations controlled by the Company does not exceed \$88 million and the gross revenues from sales in or from Canada generated from such assets do not exceed \$88 million.

### **3.2 Representations and Warranties of the Purchaser**

The Purchaser represents and warrants to and in favour of the Company as follows and acknowledges that the Company is relying upon such representations and warranties in entering into this Agreement:

- (a) Organization and Corporate Capacity.
  - (i) The Purchaser:
    - (A) has been duly incorporated and validly exists;
    - (B) is in good standing under the Laws governing its formation; and
    - (C) has the requisite corporate and legal power and capacity to:
      - (I) own its assets as now owned; and
      - (II) carry on its business as it is now being carried on.



- (b) Authority Relative to this Agreement.
- (i) The Purchaser has the requisite corporate power, authority and capacity to enter into and perform its obligations under this Agreement and to complete the transactions contemplated hereby.
  - (ii) The execution and delivery of this Agreement and the completion by the Purchaser of the transactions contemplated by this Agreement have been duly authorized by the directors of the Purchaser and no other corporate proceedings on the part of the Purchaser, including approval of the shareholders of the Purchaser, are necessary to authorize the:
    - (A) execution and delivery by it of this Agreement; or
    - (B) completion by the Purchaser of the transactions contemplated hereby.
  - (iii) This Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms, subject to:
    - (A) bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium and other Laws relating to or affecting the availability of equitable remedies and the enforcement of creditors' rights generally;
    - (B) general principles of equity and public policy; and
    - (C) the qualification that equitable remedies such as specific performance and injunction may be granted only in the discretion of a court of competent jurisdiction.
- (c) Purchaser Board Approval. The board of directors of the Purchaser has approved the execution and delivery of this Agreement and no action has been taken to amend, or supersede such approval.
- (d) Required Approvals. No material authorization, licence, permit, certificate, registration, consent or approval of, or filing with, or notification to, any Governmental Authority is necessary for the execution and delivery by the Purchaser of this Agreement, the performance by the Purchaser of its obligations hereunder and the completion by the Purchaser of the Arrangement, other than:
- (i) the Interim Order and any filings required in order to obtain, and approvals required under, the Interim Order;
  - (ii) the Final Order, and any filings required in order to obtain the Final Order;

(e) No Violation. Subject to obtaining the authorizations, consents and approvals and making the filings referred to in Section 3.2(d), the:

- (i) execution and delivery by the Purchaser of this Agreement;
- (ii) performance by the Purchaser of its obligations hereunder; and
- (iii) completion of the transactions contemplated hereby,

do not and will not result in a contravention, conflict, violation, breach or default under its constating documents or any Law applicable to it, except as would not reasonably be expected to prevent or significantly impede or materially delay the completion of the Arrangement.

(f) Share Ownership. The Purchaser and its affiliates and persons acting jointly and in concert with the Purchaser and its affiliates do not beneficially own or exercise control or direction over any Company Shares or other securities of the Company.

(g) Investment Canada Act. The Purchaser is a “WTO Investor” as defined under the Investment Canada Act.

(h) Sufficient Funds. The Purchaser Parent’s cash on hand is sufficient for the Purchaser to fund the Consideration.

(i) Control. The Purchaser is a direct or indirect wholly owned subsidiary of the Purchaser Parent.

(j) AML.

- (i) The funds representing the Consideration which will be advanced by the Purchaser hereunder will not represent proceeds of crime for the purposes of *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), the *USA Patriot Act* and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” Laws, whether within Canada, in the United States or, to the extent applicable to the Company or its subsidiaries, elsewhere, including any regulations, guidelines or orders thereunder and the Purchaser acknowledges that the Company may in the future be required by law to disclose the name of the Purchaser and other information relating to this Agreement, on a confidential basis, pursuant to the such legislation. To the Purchaser’s knowledge, none of the funds representing the Consideration to be provided by the Purchaser: (i) have been or will be derived from or related to any activity that is deemed criminal under Laws of Canada, the United States or any other jurisdiction; or (ii) are being tendered on behalf of a Person or entity who has not been identified to the Purchaser; and the Purchaser shall promptly notify the Company if it discovers that any of

such representations ceases to be true, and will provide the Company with appropriate information in connection therewith

- (ii) Neither the Purchaser nor any of its subsidiaries and, to the Purchaser's knowledge, none of their respective directors, officers, supervisors, managers, employees, or agents has:
  - (A) violated or is in violation of any applicable anti-bribery, export control, and economic sanctions Laws, including the *Corruption of Foreign Public Officials Act* (Canada) and the *United States Foreign Corrupt Practice Act*;
  - (B) made or authorized any direct or indirect contribution, payment or gift of funds, property or anything else of value to any official, employee or agent of any Governmental Authority, authority or instrumentality in Canada, other jurisdictions in which the Purchaser or any of its subsidiaries has assets other than in accordance with applicable Laws;
  - (C) used any corporate funds, or made any direct or indirect unlawful payment from corporate funds, to any foreign or domestic government official or employee or any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; or
  - (D) violated or is in violation of any provision of the *Criminal Code* (Canada) relating to foreign corrupt practices, including making any contribution to any candidate for public office, in either case, where either the payment or gift or the purpose of such contribution payment or gift was or is prohibited under the foregoing.
- (iii) The operations of the Purchaser and its subsidiaries are and have been conducted at all times in compliance with the Money Laundering Laws.
- (iv) No action, claim, notice of assessment, suit or proceeding by or before any commission, court, Governmental Authority, arbitrator or non-Governmental Authority involving the Purchaser or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Purchaser, threatened.

### **3.3 Representations and Warranties of the Purchaser Parent**

The Purchaser Parent represents and warrants to and in favour of the Company as follows and acknowledges that the Company is relying upon such representations and warranties in entering into this Agreement:

(a) Organization and Corporate Capacity.

- (i) The Purchaser Parent:
  - (A) has been duly organized and is validly existing;
  - (B) is in good standing under the Laws governing its formation; and
  - (C) has the requisite corporate and legal power and capacity to:
    - (I) own its assets as now owned; and
    - (II) carry on its business as it is now being carried on.

(b) Authority Relative to this Agreement.

- (i) The Purchaser Parent has the requisite corporate power, authority and capacity to enter into and perform its obligations under this Agreement and to complete the transactions contemplated hereby.
- (ii) The execution and delivery of this Agreement and the completion by the Purchaser Parent of the transactions contemplated by this Agreement have been duly authorized by the directors of the Purchaser Parent and no other corporate proceedings on the part of the Purchaser Parent, including approval of the shareholders of the Purchaser Parent, are necessary to authorize the:
  - (A) execution and delivery by it of this Agreement; or
  - (B) completion by the Purchaser Parent of the transactions contemplated hereby.
- (iii) This Agreement has been duly executed and delivered by the Purchaser Parent and constitutes a legal, valid and binding obligation of the Purchaser Parent enforceable against the Purchaser Parent in accordance with its terms, subject to:
  - (A) bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium and other Laws relating to or affecting the availability of equitable remedies and the enforcement of creditors' rights generally;
  - (B) general principles of equity and public policy; and
  - (C) the qualification that equitable remedies such as specific performance and injunction may be granted only in the discretion of a court of competent jurisdiction.

- (c) Purchaser Parent Board Approval. The board of directors of the Purchaser Parent has approved the execution and delivery of this Agreement and no action has been taken to amend, or supersede such approval.
- (d) Required Approvals. No material authorization, licence, permit, certificate, registration, consent or approval of, or filing with, or notification to, any Governmental Authority is necessary for the execution and delivery by the Purchaser Parent of this Agreement, and the performance by the Purchaser Parent of its obligations hereunder and the completion of the Arrangement, other than:
  - (i) the Interim Order and any filings required in order to obtain, and approvals required under, the Interim Order; and
  - (ii) the Final Order, and any filings required in order to obtain the Final Order.
- (e) No Violation. Subject to obtaining the authorizations, consents and approvals and making the filings referred to in Section 3.3(d), the:
  - (i) execution and delivery by the Purchaser Parent of this Agreement;
  - (ii) performance by the Purchaser Parent of its obligations hereunder; and
  - (iii) completion of the transactions contemplated hereby,do not and will not result in a contravention, conflict, violation, breach or default under its constating documents or any Law applicable to it, except as would not reasonably be expected to prevent or significantly impede or materially delay the completion of the Arrangement.
- (f) Sufficient Funds. The Purchaser Parent's cash on hand is sufficient to fund the Consideration.
- (g) Control. The Purchaser is a direct or indirect wholly owned subsidiary of the Purchaser Parent.
- (h) AML.
  - (i) The funds representing the Consideration which may be advanced by the Purchaser Parent hereunder will not represent proceeds of crime for the purposes of *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), the *USA Patriot Act* and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" Laws, whether within Canada, in the United States or, to the extent applicable to the Company or its subsidiaries, elsewhere, including any regulations, guidelines or orders thereunder and the Purchaser Parent acknowledges that the Company may in the future be required by law to disclose the name of the Purchaser Parent and other information relating to this Agreement, on

a confidential basis, pursuant to the such legislation. To the Purchaser Parent's knowledge, none of the funds representing the Consideration to be provided by the Purchaser Parent: (i) have been or will be derived from or related to any activity that is deemed criminal under Laws of Canada, the United States or any other jurisdiction; or (ii) are being tendered on behalf of a Person or entity who has not been identified to the Purchaser Parent and the Purchaser Parent shall promptly notify the Company if it discovers that any of such representations ceases to be true, and will provide the Company with appropriate information in connection therewith

- (ii) Neither the Purchaser Parent nor any of its subsidiaries and, to the Purchaser Parent's knowledge, none of their respective directors, officers, supervisors, managers, employees, or agents has:
  - (A) violated or is in violation of any applicable anti-bribery, export control, and economic sanctions Laws, including the *Corruption of Foreign Public Officials Act* (Canada) and the *United States Foreign Corrupt Practice Act*;
  - (B) made or authorized any direct or indirect contribution, payment or gift of funds, property or anything else of value to any official, employee or agent of any Governmental Authority, authority or instrumentality in Canada, other jurisdictions in which the Purchaser Parent or any of its subsidiaries has assets other than in accordance with applicable Laws;
  - (C) used any corporate funds, or made any direct or indirect unlawful payment from corporate funds, to any foreign or domestic government official or employee or any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; or
  - (D) violated or is in violation of any provision of the *Criminal Code* (Canada) relating to foreign corrupt practices, including making any contribution to any candidate for public office, in either case, where either the payment or gift or the purpose of such contribution payment or gift was or is prohibited under the foregoing.
- (iii) The operations of the Purchaser Parent and its subsidiaries are and have been conducted at all times in compliance with the Money Laundering Laws.
- (iv) No action, claim, notice of assessment, suit or proceeding by or before any commission, court, Governmental Authority, arbitrator or non-Governmental Authority involving the Purchaser Parent or any of its

subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Purchaser Parent, threatened.

- (i) HSR Act. Purchaser Parent represents that the conditions for exemption set forth in 16 C.F.R. § 802.51 are satisfied and that no person is required to file notification of the Arrangement under the Hart-Scott-Rodino Act, 15 U.S.C. § 18a. (the “**HSR Act**”).

### **3.4 Survival of Representations and Warranties**

- (a) No investigation by or on behalf of any Party prior to the execution of this Agreement will mitigate, diminish or affect the representations and warranties made by the other Parties.
- (b) The representations and warranties of the Parties contained in this Agreement will not survive the completion of the Arrangement and will expire and be terminated on the earlier of the Effective Time and the date on which this Agreement is terminated in accordance with its terms.
- (c) This Section 3.4 will not limit any covenant or agreement of any of the Parties, which, by its terms, contemplates performance after the Effective Time or the date on which this Agreement is terminated, as the case may be.

## **ARTICLE 4** **COVENANTS**

### **4.1 Covenants of the Company**

The Company covenants and agrees that, during the period from the date of this Agreement until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms, except as disclosed in the Company Disclosure Letter, unless the Purchaser otherwise consents in writing (to the extent that such consent is permitted by applicable Law), or as expressly permitted by this Agreement or as is otherwise required by applicable Law:

- (a) the Company will:
  - (i) conduct the businesses of the Company and its subsidiaries only in the ordinary course, and in compliance with applicable Law;
  - (ii) comply in all material respects with the terms of all Material Contracts of the Company and its subsidiaries;
  - (iii) use commercially reasonable efforts to maintain and preserve intact its and its subsidiaries’ business organizations, assets, properties, rights and goodwill;
  - (iv) maintain satisfactory business relationships with suppliers, customers, distributors, contractual counterparties, contractors, employees,

Governmental Authorities, Aboriginal Peoples and others having business relationships with it and its subsidiaries;

- (v) keep available the services of the officers, employees and consultants of it and its subsidiaries; and
  - (vi) duly and timely file all forms, reports, schedules, statements, and other documents required to be filed pursuant to any applicable Laws or Securities Laws;
- (b) the Company will immediately notify the Purchaser orally and then promptly notify the Purchaser in writing of any:
- (i) “*material change*” (as defined in the Securities Act) in relation to the Company or its subsidiaries;
  - (ii) event, circumstance or development that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;
  - (iii) material notice or other communication from any person alleging that the consent (or waiver, permit, exemption, order, approval, agreement, amendment or confirmation) of such person (or another person) is or may be required in connection with this Agreement or the Arrangement;
  - (iv) material notice or other communication from any Governmental Authority in connection with this Agreement (and contemporaneously provide a copy of any such written notice or communication to the Purchaser);
  - (v) material filings, actions suits, claims, investigations or proceedings commenced or, to its knowledge, threatened against, relating to or involving or otherwise affecting the Company and its subsidiaries or their respective material assets;
  - (vi) material breach of this Agreement by the Company; or
  - (vii) event occurring after the date of this Agreement that would:
    - (A) render a representation or warranty, if made on that date or the Effective Date, untrue or inaccurate such that any of the conditions in Section 7.3(b) would not be satisfied; or
    - (B) result in the failure in any material respect of the Company to comply with or satisfy any covenant, condition or agreement (without giving effect to, applying or taking into consideration any qualification already contained in such covenant, condition



or agreement) to be complied with or satisfied prior to the Effective Time;

- (c) the Company will use its commercially reasonable efforts to cause the current insurance (or re-insurance) policies maintained by the Company, including directors' and officers' insurance, not to be cancelled or terminated and to prevent any of the coverage thereunder from lapsing, unless at the time of such termination, cancellation or lapse, replacement policies underwritten by insurance or re-insurance companies of nationally recognized standing having comparable deductions and providing coverage comparable to or greater than the coverage under the cancelled, terminated or lapsed policies for substantially similar premiums are in full force and effect, provided, however, that, except as contemplated by Section 4.9(b), the Company will not obtain or renew any insurance (or re-insurance) policy for a term exceeding 12 months, except that renewal steps may be taken in advance of expiry;
- (d) the Company will:
  - (i) use commercially reasonable efforts to retain the services of its and its subsidiaries' existing employees and consultants (including the Company Senior Management) until the Effective Time; and
  - (ii) promptly provide written notice to the Purchaser of the resignation or termination of any of its key employees or consultants;
- (e) except as set forth in Schedule 4.1(e) of the Company Disclosure Letter, the Company will not, directly or indirectly:
  - (i) alter or amend the notice of articles, articles, charter, by-laws or other constating documents of the Company or its subsidiaries;
  - (ii) declare, set aside or pay any dividend on or make any distribution or payment or return of capital in respect of the Company Shares (other than dividends, distributions, payments or return of capital made to the Company by any of its subsidiaries);
  - (iii) split, divide, consolidate, combine, reclassify, nor undertake any other capital reorganization in respect of the Company Shares or any other securities of the Company or its subsidiaries;
  - (iv) reduce the stated capital of the Company Shares or any other securities of the Company or its subsidiaries;
  - (v) issue, grant, sell, pledge or otherwise encumber, or authorize or approve or agree to issue, grant, sell, pledge or otherwise encumber any Company Shares or other securities of the Company or its subsidiaries, or securities convertible into or exchangeable or exercisable for, or otherwise evidencing a right to acquire, Company

Shares or other securities of the Company or its subsidiaries, including but not limited to the issue or award of any Company Options or Company DSUs, other than the issuance of Company Shares issuable pursuant to the terms of any Company Options or Company DSUs;

- (vi) redeem, purchase or otherwise acquire (or offer to redeem, purchase or otherwise acquire) any of its outstanding Company Shares or other securities or securities convertible into or exchangeable or exercisable for Company Shares or any such other securities or any shares or other securities of its subsidiaries;
  - (vii) amend the terms of any securities of the Company or its subsidiaries, including any outstanding indebtedness;
  - (viii) adopt a plan of liquidation or resolution providing for the liquidation or dissolution of the Company or its subsidiaries;
  - (ix) reorganize, recapitalize, restructure, amalgamate or merge with any other person and will not cause or permit its subsidiaries to reorganize, recapitalize, restructure, amalgamate or merge with any other person;
  - (x) create any subsidiary or enter into any Contracts or other arrangements regarding the control or management of the operations, or the appointment of governing bodies or enter into any Joint Ventures;
  - (xi) engage in any material transaction with any related parties other than with its affiliates in the ordinary course;
  - (xii) make any changes to any of its accounting policies, principles, methods, practices or procedures (including by adopting any material new accounting policies, principles, methods, practices or procedures), except as disclosed in the Company Public Disclosure Record, as required by applicable Laws or under IFRS; or
  - (xiii) enter into, modify or terminate any Contract with respect to any of the foregoing;
- (f) except as set forth in Schedule 4.1(f) of the Company Disclosure Letter, the Company will not, and will not cause or permit its subsidiaries to, directly or indirectly, except in connection with this Agreement:
- (i) sell, pledge, lease, surrender, licence, lose the right to use, mortgage, dispose of or encumber any assets or properties of the Company or its subsidiaries, other than inventory or immaterial personal property in the ordinary course of business;
  - (ii) other than in the ordinary course, acquire or commit to acquire (by merger, amalgamation, consolidation, arrangement or acquisition of

shares or other equity securities or interests or assets or otherwise) any corporation, partnership, association or other business organization or division thereof or any property or assets, or make any investment by the purchase of securities, contribution of capital, property transfer, or purchase of any property or assets of any other person, in each case, directly or indirectly, in one transaction or a series of transactions;

- (iii) incur any indebtedness or create or issue any debt securities, or assume, guarantee, endorse or otherwise become liable or responsible for such obligations or the obligations of any other person, or make any loans or advances (other than intercompany loans or advances);
- (iv) pay, discharge or satisfy any claim, liability, indebtedness or obligation prior to the same being due, other than the payment, discharge or satisfaction, in the ordinary course, in accordance with their terms;
- (v) voluntarily waive, release, assign, settle or compromise any Proceeding; or
- (vi) engage in any new business, enterprise or other activity that is inconsistent with the existing businesses of the Company in the manner such existing businesses generally have been carried on or (as disclosed in the Company Public Disclosure Record) planned or proposed to be carried on prior to the date of this Agreement,

or authorize any of the foregoing, or enter into or modify any Contract to do any of the foregoing;

- (g) the Company will not, and will not cause or permit its subsidiaries to, directly or indirectly:
  - (i) terminate, fail to renew, cancel, waive, release, grant or transfer any rights of material value, including:
    - (A) any existing material contractual rights;
    - (B) any material Permit; or
    - (C) any other material legal rights or claimsin respect of any Company Properties;
  - (ii) except either as disclosed in Schedule 4.1(g) of the Company Disclosure Letter or in connection with matters otherwise permitted under this Section 4.1:
    - (A) enter into any Contract which would be a Material Contract if in existence on the date hereof; or

- (B) terminate, cancel, extend, renew or amend, modify or change any Material Contract;
- (iii) except as disclosed in Schedule 4.1(g) of the Company Disclosure Letter:
  - (A) enter into any material lease or sublease of real property (whether as a lessor, sublessor, lessee or sublessee); or
  - (B) materially modify, amend or exercise any right to renew any lease or sublease of real property or acquire any interest in real property; or
- (iv) enter into any transaction or perform any act which could reasonably be expected to prevent or impede, restrict or delay, or be inconsistent with the successful completion of the transactions contemplated herein;
- (h) Neither the Company nor its subsidiaries will, except either in the ordinary course or pursuant to any existing Contracts or employment, pension, supplemental pension, termination or compensation arrangements or policies or plans in effect on the date hereof and as is necessary to comply with applicable Laws:
  - (i) grant to any officer, director, employee or consultant of the Company or its subsidiaries an increase in compensation in any form;
  - (ii) except as disclosed in Schedule 4.1(h) of the Company Disclosure Letter, grant any general salary increase, fee or pay any other material compensation to the directors, officers, employees or consultants of the Company and its subsidiaries, other than the payment of salaries, fees and benefits in the ordinary course;
  - (iii) take any action with respect to the grant or increase of any severance, change of control, retirement, retention or termination pay;
  - (iv) enter into or modify any employment or consulting agreement with any officer or director of the Company or its subsidiaries;
  - (v) terminate the employment or consulting arrangement of any senior management employees (including the Company Senior Management);
  - (vi) increase any benefits payable under its current severance or termination pay policies;
  - (vii) adopt or amend or make any contribution to or any award under any bonus, profit sharing, pension, retirement, deferred compensation, insurance, incentive compensation, compensation or other similar plan, agreement, trust, fund or arrangement for the benefit of any director,

officer, or employee or any former director, officer, or employee of the Company or its subsidiaries; or

- (viii) take any action to accelerate the time of payment of any compensation or benefits, amend or waive any performance or vesting criteria or accelerate vesting under the Company Stock Option Plans or Company DSU Plan, except as contemplated in Section 3.1 of the Plan of Arrangement;
- (i) the Company will not and will not cause or permit its subsidiaries to make any loan to any officer, director, employee or consultant of the Company or its subsidiaries;
- (j) the Company will not and will not cause or permit its subsidiaries to:
  - (i) make an application to amend, terminate, allow to expire or lapse or otherwise modify any of its material Permits;
  - (ii) take any action or fail to take any action which action or failure to act would:
    - (A) result in the material loss, expiration or surrender of, or the loss of any material benefit; or
    - (B) be reasonably be expected to cause any Governmental Authority to institute proceedings for the suspension, revocation or limitation of rights,under, any material Permit necessary to conduct its businesses as now being conducted;
- (k) the Company will not, and will not cause or permit its subsidiaries to, settle or compromise any material action, claim or other Proceeding:
  - (i) brought against it for damages or providing for the grant of injunctive relief or other non-monetary remedy (“**Litigation**”); or
  - (ii) brought by any present, former or purported holder of its securities,in connection with the transactions contemplated by this Agreement or the Arrangement;
- (l) except as set forth in Schedule 4.1(l) of the Company Disclosure Letter, the Company will not, and will not cause or permit its subsidiaries to, commence any Litigation, other than litigation in connection with:
  - (i) the collection of accounts receivable;

- (ii) the enforcement of the terms of this Agreement or the Confidentiality Agreement;
  - (iii) the enforcement of other obligations of the Purchaser; or
  - (iv) litigation commenced against the Company;
- (m) the Company will not, and will not cause or permit its subsidiaries to, enter into or renew any Contract:
  - (i) containing:
    - (A) any limitation or restriction on the ability of the Company or its subsidiaries or, following completion of the transactions contemplated hereby, the ability of the Purchaser or any of its affiliates, to engage in any type of activity or business;
    - (B) any limitation or restriction on the manner in which, or the localities in which, all or any portion of the business of the Company or its subsidiaries or, following consummation of the transactions contemplated hereby, all or any portion of the business of the Purchaser or any of its affiliates, is or would be conducted; or
    - (C) any limit or restriction on the ability of:
      - (I) the Company or its subsidiaries; or
      - (II) following completion of the transactions contemplated hereby, the ability of the Purchaser or any of its affiliates, to solicit customers or employees;
  - or
  - (ii) that would reasonably be expected to prevent or significantly impede or materially delay the completion of the Arrangement;
- (n) except as set forth in Schedule 4.1(n) of the Company Disclosure Letter, the Company will not, and will not cause or permit any of its subsidiaries to:
  - (i) change in any material respect any of their respective methods of reporting income or deductions for accounting or Tax purposes from those employed in the preparation of their respective Returns for the taxation year ending December 31, 2016 for Returns filed in Canada and December 31, 2015 for Returns filed in the United States, except as may be required by applicable Law;

- (ii) make, revoke, or change any material election relating to Taxes, other than any election that has yet to be made in respect of any event or circumstances occurring prior to the date of the Agreement and which will be made in a manner consistent with the past practice of the Company or, as applicable, its applicable subsidiary;
  - (iii) settle, compromise or agree to the entry of judgment with respect to any proceeding relating to Taxes except for any settlement, compromise or agreement that is not materially detrimental to the Company taking into account any reserves made in relation to such Taxes as reflected on the Annual Financial Statements and the Company's interim financial statements;
  - (iv) enter into or change any Tax sharing, Tax advance pricing agreement, Tax allocation or Tax indemnification agreement;
  - (v) make a request for a Tax ruling to any Governmental Entity;
  - (vi) make any "investment" (within the meaning of subsection 212.3(10) of the Tax Act) in any corporation which is not resident in Canada for purposes of the Tax Act; or
  - (vii) knowingly take any action or knowingly permit any inaction or knowingly enter into any transaction that could reasonably be expected to have the effect of materially reducing or eliminating the amount of the tax cost "bump" pursuant to paragraphs 88(1)(c) and 88(1)(d) of the Tax Act in respect of any nondepreciable capital property owned by the Company or any subsidiary on the date hereof, upon an amalgamation or winding up of the Company or any subsidiary (or any of their respective successors);
- (o) the Company will not, and will not cause or permit any of its subsidiaries to, take any action which would render, or which reasonably may be expected to render, any representation or warranty made by the Company in this Agreement untrue or inaccurate in any material respect (disregarding for this purpose all materiality or Company Material Adverse Effect qualifications contained therein) at any time prior to the Effective Date if then made; and
  - (p) as is applicable, the Company will not, and will not cause or permit its subsidiaries to, agree, announce, resolve, authorize or commit to do any of the matters to which the negative covenants in Sections 4.1(e) to 4.1(n) inclusive pertain.

#### **4.2 Access to Information**

- (a) Subject to compliance with applicable Laws and the terms of any existing Contracts, the Company will afford to the Purchaser and its Representatives, until the earlier of the Effective Time or the termination of this Agreement in

accordance with its terms, continuing access to the Company Diligence Information, as applicable, and reasonable access during normal business hours and upon reasonable notice, to the Company's and its subsidiaries' businesses, properties, books and records (including Returns and Tax work papers) and such other data and information as the Purchaser may reasonably request, as well as to its management personnel, provided, that:

- (i) such access shall not unduly interfere with the ordinary conduct of the businesses of the Company; and
  - (ii) other than in circumstances where access to or disclosure of would not result in the loss of attorney-client privilege, the Company shall not have any obligation in response to a request by the Purchaser to provide access to or otherwise disclose any information or documents subject to attorney-client privilege.
- (b) Subject to compliance with applicable Laws and such requests not materially and unduly interfering with the ordinary conduct of the business of the Company, the Company will also make available to the Purchaser and its Representatives information requested by the Purchaser for the purposes of preparing, considering and implementing plans for the combined businesses of the Company and the Purchaser and its affiliates following completion of the Arrangement, including for the purposes of ascertaining whether the Company or any of its subsidiaries has made an election under Section 897(i) of the Code or has been a U.S. real property holding corporation within the meaning of Section 897 of the Code.
- (c) Without limiting the generality of the provisions of the Confidentiality Agreement, the Purchaser and the Company each acknowledge that all information provided to it under this Section 4.2, or otherwise pursuant to this Agreement or in connection with the transactions contemplated hereby, is subject to the Confidentiality Agreement, which will remain in full force and effect in accordance with their terms notwithstanding any other provision of this Agreement or any termination of this Agreement.
- (d) If any provision of this Agreement otherwise conflicts or is inconsistent with any provision of the Confidentiality Agreement, then the provisions of this Agreement will supersede those of the Confidentiality Agreement, but only to the extent of the conflict or inconsistency and all other provisions of the Confidentiality Agreement will remain in full force and effect.

#### **4.3 Covenants of the Company in respect of the Arrangement**

Subject to the terms and conditions of this Agreement, the Company shall and shall cause its subsidiaries to perform all obligations required to be performed by the Company under this Agreement, cooperate with the Purchaser in connection therewith, and use commercially reasonable efforts to do such other acts and things as may be necessary or desirable in order to complete the Arrangement and the other transactions contemplated hereby, including (without limiting the obligations of the Company in Article 2) using its commercially reasonable efforts to



obtain and maintain all third party or other consents, waivers, permits, exemptions, orders, approvals, agreements, amendments or confirmations that are (i) necessary or advisable under the Material Contracts in connection with the Arrangement; or (ii) required in order to maintain the Material Contracts in full force and effect following completion of the Arrangement.

#### **4.4 Covenants of the Purchaser in respect of the Arrangement**

Subject to the terms and conditions of this Agreement, the Purchaser will perform all obligations required to be performed by it under this Agreement, cooperate with the Company in connection therewith, and use commercially reasonable efforts to do such other acts and things as may be necessary or desirable in order to complete the Arrangement and other transactions contemplated hereby, including:

- (a) cooperating with the Company in connection with, and using its commercially reasonable efforts to assist the Company in obtaining the waivers, consents and approvals referred to in Section 4.3, provided, however, that, notwithstanding anything to the contrary in this Agreement, in connection with obtaining any waiver, consent or approval from any person (other than a Governmental Authority) with respect to any transaction contemplated by this Agreement, the Purchaser will not be required to pay or commit to pay to such person whose waiver, consent or approval is being solicited any cash or other consideration, make any commitment or incur any liability or other obligation;
- (b) using its commercially reasonable efforts to effect all necessary registrations, filings and submissions of information required by Governmental Authorities from the Purchaser relating to the Arrangement required to be completed prior to the Effective Time;
- (c) forthwith carrying out the terms of the Interim Order and Final Order to the extent applicable to it.

#### **4.5 Mutual Covenants**

Other than in respect of obtaining all Regulatory Approvals, which approvals are governed by Section 4.6, each of the Parties covenants and agrees that, subject to the terms and conditions of this Agreement, until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms, it will:

- (a) use commercially reasonable efforts to satisfy (or cause the satisfaction of) the conditions precedent to its obligations hereunder as set forth in Article 7 to the extent the same is within its control;
- (b) use commercially reasonable efforts to take, or cause to be taken, all other action and to do, or cause to be done, all other things necessary and commercially reasonable to permit the completion of the Arrangement in accordance with its obligations under this Agreement, the Plan of Arrangement and applicable Laws and cooperate with the other Parties in connection therewith, including using commercially reasonable efforts to:

- (i) oppose, lift or rescind any injunction or restraining order against it or other order or action against it seeking to stop, or otherwise materially adversely affecting its ability to make and complete, the Arrangement;
  - (ii) defend all lawsuits or other legal, regulatory or other Proceedings against the Purchaser or its directors or officers challenging or affecting this Agreement or the completion of the Arrangement; and
  - (iii) cooperate with the other Party in connection with the performance by it of its obligations hereunder;
- (c) use commercially reasonable efforts to not take or cause to be taken any action which is inconsistent with this Agreement or which would reasonably be expected to prevent or significantly impede or materially delay the completion of the Arrangement; and
  - (d) provide reasonable cooperation in respect of matters relating to communications, introductions and negotiations with all relevant stakeholders, including all relevant Aboriginal Peoples, in respect of the Company Properties.

#### **4.6 Covenants Related to Regulatory Approvals**

With respect to obtaining all Regulatory Approvals required for the completion of the Arrangement, subject to the terms and conditions of this Agreement and until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms, each Party, as applicable to that Party, covenants and agrees to:

- (a) use its commercially reasonable efforts to:
  - (i) obtain all required Regulatory Approvals and cooperate with the other Party in connection with all Regulatory Approvals sought by the other Party; and
  - (ii) as regards any request or notice from any Governmental Authority requiring that Party to supply additional information that is relevant to the review of the transactions contemplated by this Agreement in respect of obtaining or concluding the Regulatory Approvals sought by either Party, to respond promptly; and
    - (A) cooperate with the other Party; and
    - (B) furnish to the other Party such information and assistance as a Party may reasonably request,  
  
in connection with preparing any submission or response to such request or notice from a Governmental Authority;
- (b) as regards any proposed substantive applications, notices, filings, submissions, undertakings, correspondence and communications (including responses to

requests for information and inquiries from any Governmental Authority) in respect of obtaining or concluding all required Regulatory Approvals:

- (i) provide the other Party with drafts thereof in advance;
- (ii) permit the other Party a reasonable opportunity to review in advance and comment thereon;
- (iii) agree to consider those comments in good faith; and
- (iv) provide the other Party with final copies thereof,

provided that any competitively sensitive information included therein may be provided on an “external counsel only” basis; and

- (c) keep the other Party reasonably informed, on a timely basis, of the status of discussions relating to obtaining or concluding the required Regulatory Approvals sought by such Party.

#### **4.7 Covenants Related to Aboriginal Peoples**

The Purchaser acknowledges that the Company and its subsidiaries have existing agreements and commitments with certain Aboriginal Peoples, including the Kwakiutl Band and the 'Namgis First Nation, regarding certain Company Properties and understands and acknowledges the Company's obligations thereunder, and agrees that, following the Closing Date, the Company and its subsidiaries will continue to acknowledge such obligations, agreements and commitments and will abide by the terms and conditions of such agreements and commitments in accordance with past practice and to act fairly towards such Aboriginal Peoples, including in respect of Aboriginal People's rights under applicable Laws, recognizing that such agreements and commitments are intended to allow the Company to operate its business in a commercially expedient manner.

#### **4.8 Resignations of Board**

- (a) Prior to the Effective Time, the Company shall use commercially reasonable efforts to cause, and it shall cause any of its subsidiaries to use commercially reasonable efforts to cause, those directors of the Company and its subsidiaries listed in Schedule 4.8(a) of the Company Disclosure Letter to provide resignations as at the Effective Time.
- (b) The Company will provide releases from liability to such individuals as at the Effective Time in form and substance satisfactory to the Company and the Purchaser, each acting reasonably.
- (c) The Purchaser agrees that the Company, its subsidiaries and any successor to the Company (including any Surviving Corporation) shall honour and comply with the terms of all of the obligations of the Company or its subsidiaries under the existing employment, consulting, change of control and severance agreements of the Company or its subsidiaries.

#### **4.9 Indemnification and Insurance**

- (a) The Parties agree that all rights to indemnification existing in favour of the present and former directors and officers of the Company and its subsidiaries (each such present or former director or officer of the Company or its subsidiaries being herein referred to as an “**Indemnified Party**” and such persons collectively being referred to as the “**Indemnified Parties**”) as provided by contracts or agreements to which the Company is a party and in effect as of the date hereof or the constating documents of the Company or its subsidiaries, as applicable, copies of which are included in the Company Diligence Information, will:
- (i) survive, and continue in full force and effect following, the completion of the transaction contemplated by this Agreement; and
  - (ii) shall not be modified by such completion,
- and the Company, and any successor to the Company (including any Surviving Corporation), and its subsidiaries shall continue to honour such rights of indemnification and indemnify the Indemnified Parties pursuant thereto, with respect to actions or omissions of the Indemnified Parties occurring prior to the Effective Time, for six years following the Effective Date.
- (b) Prior to the Effective Time, notwithstanding any other provision hereof, the Company may purchase prepaid non-cancellable run-off directors’ and officers’ liability insurance providing coverage for a period of six years from the Effective Date with respect to claims arising from or related to facts or events which occur on or prior to the Effective Date; provided that the cost of such insurance does not exceed 200% of the annual aggregate premium for directors’ and officers’ liability insurance currently maintained by the Company.

#### **4.10 Pre-Acquisition Reorganization**

- (a) The Company agrees that, upon request of the Purchaser, the Company shall perform such reorganizations of its corporate structure, capital structure, business, operations and assets or such other transactions as the Purchaser may request, acting reasonably (each a “**Pre-Acquisition Reorganization**”) provided, however, that the Pre-Acquisition Reorganization shall not:
- (i) impede, delay or prevent completion of the Arrangement;
  - (ii) in the opinion of the Company, acting reasonably, prejudice Affected Securityholders in any material respect;
  - (iii) unreasonably interfere in any material operations of the Company or its subsidiaries prior to the Effective Time;
  - (iv) require the Company to acquire the consent of any third parties, including under any applicable Contracts;

- (v) require the Company or any of its subsidiaries to contravene any Laws, their respective organizational documents or any Contract; or
  - (vi) result in any Taxes being imposed on, or any adverse Tax or other adverse consequences to, any Affected Securityholder of the Company incrementally greater (unless *de minimis*) than the Taxes or other adverse consequences to such party in connection with the consummation of the Arrangement in the absence of any Pre-Acquisition Reorganization.
- (b) The Purchaser must provide written notice to the Company of any proposed Pre-Acquisition Reorganization at least fifteen (15) Business Days prior to the Effective Date. Upon receipt of such notice, the Company and the Purchaser shall work cooperatively and use commercially reasonable efforts to prepare prior to the Effective Time all documentation necessary and do such other acts and things as are necessary to give effect to such Pre-Acquisition Reorganization, including any amendment to this Agreement or the Plan of Arrangement, and shall seek to have any such Pre-Acquisition Reorganization made effective as of the last moment of the Business Day ending immediately prior to the Effective Date (but after the Purchaser has irrevocably waived or confirmed that all of the conditions set out in Section 7.1 and Section 7.3 have been satisfied and the Company is satisfied that all of the conditions set forth in Section 7.1 and Section 7.2 are capable of being satisfied prior to the Effective Time). Without limiting the foregoing and other than as set forth in Section 4.10(a) above, the Company shall use commercially reasonable efforts to obtain all necessary consents, approvals or waivers from any persons to effect each Pre-Acquisition Reorganization, and the Company shall cooperate with the Purchaser in structuring, planning and implementing any such Pre-Acquisition Reorganization.
- (c) The Purchaser agrees that it will be responsible for all costs and expenses (including any professional fees and expenses) associated with any Pre-Acquisition Reorganization to be carried out at its request and shall indemnify and save harmless the Company and its affiliates from and against any and all liabilities, losses, damages, claims, costs, taxes, expenses, interest awards, judgements and penalties suffered or incurred by any of them in connection with or as a result of any such Pre-Acquisition Reorganization if after participating in any Pre-Acquisition Reorganization the Arrangement is not completed other than due to a breach by the Company of the terms and conditions of this Agreement.

#### **4.11 Control of Business.**

- (a) Nothing contained in this Agreement shall give either Party, directly or indirectly, the right to control or direct the operations of the other Party prior to the Effective Time.
- (b) Prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and each of its subsidiaries' respective operations.

#### **4.12 Purchaser Parent Guarantee and Indemnification**

The Purchaser Parent:

- (a) hereby absolutely, unconditionally and irrevocably guarantees the prompt and complete observance and performance of all the terms, covenants, conditions and provisions to be observed or performed by the Purchaser pursuant to this Agreement and agrees to perform such terms, covenants, conditions and provisions upon the default or non-performance thereof by the Purchaser;
- (b) agrees to indemnify and save the Company and its affiliates and their directors, officers, employees and agents harmless from and against any and all losses, liabilities, damages (excluding punitive damages), injuries, costs or expenses (including legal costs or expenses) suffered or incurred by the Company that arise out of or relate to any failure of the Purchaser in timely or fully performing or causing to be performed all of the terms, covenants, conditions and provisions to be observed or performed by the Purchaser pursuant to this Agreement;
- (c) shall not transfer or assign all or any part of its obligations set forth in this Section 4.12 without the prior written consent of the Company, which consent may be arbitrarily withheld; and
- (d) acknowledges and agrees that the obligations set forth in Section 4.12 are absolute, unconditional, present and continuing and are in no way conditional or contingent upon any event, circumstance, action or omission which might in any way discharge a guarantor or surety in whole or in part.

#### **4.13 Covenants Related to Regulatory Proceedings**

- (a) Each Party shall promptly notify the other Parties of any communication it or any of its affiliates receives from any Governmental Authority relating to the matters that are the subject of this Agreement and permit the other Parties to review in advance, to the extent permitted by Law, any proposed communication by such party to any Governmental Authority. No Party shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry relating to the matters that are the subject of this Agreement unless it consults with the other Parties in advance and, to the extent permitted by such Governmental Authority, gives the other Parties the opportunity to attend and participate at such meeting. The Parties will coordinate and cooperate fully and promptly with each other in exchanging such information and providing such assistance as the other Parties may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods.
- (b) The Parties will provide each other with copies of all correspondence, filings or communications between them or any of their representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement and the transactions contemplated by this Agreement. If a Party receives a subpoena or civil investigative demand requesting materials

and information similar to that usually demanded in a “second request”, such Party shall comply with such subpoena or civil investigative demand as promptly as practicable. If the Governmental Authority disputes the adequacy of compliance by a party with respect to a subpoena or civil investigative demand, the party shall endeavor to satisfy the Governmental Authority so as to minimize any delay in the conduct or resolution of the investigation.

- (c) Purchaser agrees to use its commercially reasonable efforts to obtain all Regulatory Approvals so as to enable the implementation of the Arrangement to occur as soon as reasonably practicable, but in no case later than the Outside Date, including (i) providing information, provided that any competitively sensitive information may be provided on an “external counsel only” basis; (ii) proposing, negotiating, committing to and/or effecting, by consent decree, hold separate orders, or otherwise, the sale, divestiture or disposition of, or holding separate (through the establishment of a trust or otherwise) such of either its assets, properties, or businesses or of the assets, properties, or businesses of the Company as are required to be divested in order to avoid the entry of, or to effect the dissolution of, any decree, order, judgment, injunction, temporary restraining order or other order in any suit or proceeding, which would otherwise have the effect of preventing the consummation of the transaction by the Outside Date. In addition, the Purchaser shall defend through litigation on the merits any claim asserted in court by any person in order to avoid entry of, or to have vacated or terminated, any decree, order or judgment (whether temporary, preliminary or permanent) that would restrain or prevent the implementation of the Arrangement by the Outside Date. Notwithstanding the foregoing, nothing in this Agreement (including this Section) shall obligate Purchaser to propose, negotiate, or effect any sale, divestiture, or disposition of any assets, properties, or businesses of Company or Purchaser that would be reasonably expected to have a material adverse effect (i) on Purchaser’s anticipated benefits of the Arrangement or (ii) as measured against the Company’s revenues or profits.

## **ARTICLE 5**

### **ADDITIONAL AGREEMENTS**

#### **5.1 Acquisition Proposals**

- (a) Except permitted in this Article 5, from and after the date of this Agreement and until the earlier of the Effective Time or the date, if any, on which this Agreement is terminated pursuant to Section 6.1, the Company and its subsidiaries shall not, directly or indirectly, through any of their Representatives or otherwise, and shall not permit any such person to:

- (i) make, initiate, solicit or encourage (including by way of furnishing or affording access to information or any site visit), or otherwise take any other action that facilitates, directly or indirectly, any inquiry, proposal or offer that constitutes, or that could reasonably be expected to lead to, an Acquisition Proposal;
  - (ii) enter into or otherwise engage or participate in any discussions or negotiations with, furnish information to, or otherwise co-operate in any way with, any person (other than the Purchaser and its subsidiaries) regarding an Acquisition Proposal or any inquiry, proposal or offer that could reasonably be expected to lead to an Acquisition Proposal provided, however, that the Company or its Representatives may communicate with such person for the sole purpose of advising such person: (a) of the restrictions of this Agreement or (b) that the terms of such Acquisition Proposal do not constitute or are not reasonably likely to result in a Superior Proposal;
  - (iii) take no position or remain neutral with respect to, or agree to, accept, approve, endorse or recommend, or propose publicly to agree to accept, approve, endorse or recommend any publicly announced Acquisition Proposal (it being understood that publicly taking no position or a neutral position with respect to an Acquisition Proposal for a period exceeding three Business Days after such Acquisition Proposal has been publicly announced shall be deemed to constitute a violation of this Section 5.1(a)(iii));
  - (iv) make or propose publicly to make a Change of Recommendation; or
  - (v) accept, enter into, or propose publicly to accept or enter into, any agreement, understanding or arrangement effecting or related to any Acquisition Proposal or potential Acquisition Proposal (other than an Acceptable Confidentiality Agreement permitted by and in accordance with Section 5.1(e)).
- (b) The Company:
- (i) and its Representatives will, and will cause its subsidiaries and their Representatives, to immediately cease and terminate, and cause to be terminated, any solicitation, encouragement, discussion or negotiations with any person (other than the Purchaser and its Representatives) with respect to any Acquisition Proposal or inquiry, proposal or offer that could reasonably be expected to lead to an Acquisition Proposal and, in connection therewith, the Company will:
    - (A) immediately discontinue access of any such person to any confidential information concerning the Company and its subsidiaries, including access to any data room, virtual or otherwise; and



- (B) within five Business Days after the date hereof, to the extent such information has not previously been returned or destroyed, promptly request, and exercise all rights it has to require, the return or destruction of all copies of any confidential information regarding the Company and its subsidiaries provided to any person other than the Purchaser and its Representatives and the return or destruction of all material including or incorporating or otherwise reflecting such confidential information regarding the Company or its subsidiaries, using commercially reasonable efforts to ensure that such requests are fully complied with in accordance with the terms of such rights.
- (c) The Company represents and warrants that since January 1, 2017, neither the Company nor any of its subsidiaries has waived any confidentiality, standstill or similar agreement or restriction to which the Company or any subsidiary is a party and further covenants and agrees:
  - (i) not to release (or allow any of its subsidiaries to release) any person from, grant any permission under or terminate, modify, amend or waive the terms of, any confidentiality agreement or standstill agreement or standstill or similar provisions in any such confidentiality agreement (it being acknowledged and agreed that the automatic termination of any standstill provisions of any such agreement as the result of the entering into an announcement of this Agreement shall not be a violation of this Section 5.1(c)); and
  - (ii) subject to Section 5.1(e), to, and to cause each of its subsidiaries to, take commercially reasonable efforts to enforce on a timely basis each confidentiality, standstill or similar agreement or restriction to which the Company or any subsidiary is a party.
- (d) The Company will:
  - (i) promptly (and, in any event, within 24 hours) notify the Purchaser, at first orally and thereafter in writing, of:
    - (A) any Acquisition Proposal;
    - (B) any inquiry, proposal, or offer (or any amendment or supplement thereto) relating to an Acquisition Proposal; and
    - (C) any request received by the Company or any of its subsidiaries or any of their Representatives for:
      - (I) non-public information relating to the Company (or any of its subsidiaries); or

- (II) access to properties, books, records or the provision of a list of securityholders of the Company (or any of its subsidiaries) by any person,

in connection with, or that could reasonably be expected to result in, an Acquisition Proposal; and

- (ii) include in the written notification contemplated in Section 5.1(d)(i):
  - (A) a copy of the Acquisition Proposal, inquiry, proposal, offer or request and any amendments thereto;
  - (B) a description of its material terms and conditions; and
  - (C) the identity of all persons making such Acquisition Proposal, inquiry, proposal, offer or request.
- (e) Notwithstanding anything to the contrary contained in Section 5.1(a), if the Company receives a *bona fide* written Acquisition Proposal from any person after the date hereof and prior to the Company Meeting that did not result from a breach of this Section 5.1, and subject to the Company's compliance with Section 5.1(d), the Company and its Representatives may contact such person solely to clarify the terms and conditions of such Acquisition Proposal so as to determine whether such Acquisition Proposal is, or could reasonably be expected to lead to, a Superior Proposal, furnish information with respect to it to such person pursuant to an Acceptable Confidentiality Agreement, and participate in discussions or negotiations regarding such Acquisition Proposal (notwithstanding that such person was restricted from making such Acquisition Proposal pursuant to an existing confidentiality agreement, standstill, permitted use, business purpose or similar restriction with the Company or any of its subsidiaries or Representatives), if and only if:
  - (i) the Company Board determines, in good faith, after consultation with its financial advisors and outside legal counsel, that such Acquisition Proposal is or could reasonably be expected to result in a Superior Proposal (disregarding for the purposes of such determination any due diligence access condition) and that the failure to participate in discussions or negotiations with the person making such Acquisition Proposal or to provide them with such information would be inconsistent with its fiduciary duties;
  - (ii) the Company has been, and continues to be, in compliance in all material respects with its obligations under this Article 5; and
  - (iii) prior to or concurrently with providing any such copies, access, or disclosure, the Company:

- (A) enters into and provides a copy of an Acceptable Confidentiality Agreement to the Purchaser (and in any event within 24 hours thereafter) upon its execution; and
  - (B) contemporaneously provides to the Purchaser any non-public information concerning the Company that is provided to such person which was not previously provided to the Purchaser or its Representatives.
- (f) If the Company receives a bona fide Acquisition Proposal that is a Superior Proposal from any person after the date hereof and prior to the Company Meeting, then the Company Board may, prior to the Company Meeting, withdraw, modify, qualify or change in a manner adverse to the Purchaser its approval or recommendation of the Arrangement and/or approve or recommend such Superior Proposal and/or enter into an Acquisition Agreement with respect to such Superior Proposal if and only if:
- (i) the Company did not breach in any material respect any provision of this Section 5.1 in connection with the preparation or making of such Acquisition Proposal and the Company has been and continues to be in compliance in all material respects with this Section 5.1;
  - (ii) the Company has given written notice to the Purchaser that it has received such Superior Proposal and that the Company Board has determined that:
    - (A) such Acquisition Proposal constitutes a Superior Proposal; and
    - (B) the Company Board intends to:
      - (I) withdraw, modify, qualify or change in a manner adverse to the Purchaser its approval or recommendation of the Arrangement (including the recommendation that the Affected Securityholders vote in favour of the Arrangement Resolution); and/or
      - (II) enter into an Acquisition Agreement with respect to such Superior Proposal;
- in each case, within three Business Days following the expiration of the applicable Superior Proposal Notice Period;
- (iii) the Company has provided the Purchaser with:
    - (A) a copy of the proposed Acquisition Agreement; and
    - (B) all supporting materials, including any financing documents supplied to the Company in connection therewith;

- (iv) a period of at least five Business Days (such period being the “**Superior Proposal Notice Period**”) has elapsed from the date the Purchaser received the notice from the Company referred to in Section 5.1(f)(ii);
  - (v) during any Superior Proposal Notice Period, the Purchaser has been provided with the right to propose to amend the terms of this Agreement and the Arrangement in order for such Acquisition Proposal to cease to be a Superior Proposal; and
  - (vi) the Company concurrently terminates this Agreement pursuant to Section 6.1(d)(i).
- (g) During the Superior Proposal Notice Period:
- (i) the Company Board will review promptly, diligently and in good faith any offer made by the Purchaser to amend the terms of this Agreement and the Arrangement in order to determine, in consultation with its financial advisors and outside legal counsel, whether the proposed amendments would, upon acceptance, result in the Acquisition Proposal previously constituting a Superior Proposal ceasing to be a Superior Proposal;
  - (ii) subject to the Company’s disclosure obligations under applicable Securities Laws:
    - (A) the fact of the making of; and
    - (B) each of the terms of, any such proposed amendments,shall be kept strictly confidential and shall not be disclosed to any person (including without limitation, the person having made the Superior Proposal), other than the Company’s Representatives, without the Purchaser’s prior written consent; and
  - (iii) if the Company Board determines that such Acquisition Proposal would cease to be a Superior Proposal as a result of the amendments proposed by the Purchaser, then the Company will:
    - (A) forthwith so advise the Purchaser; and
    - (B) promptly thereafter accept the offer by the Purchaser to amend the terms of this Agreement, and the Arrangement,and the Parties agree to take such actions and execute such documents as are necessary to give effect to the foregoing.
- (h) Each successive modification of any Superior Proposal shall:

- (i) constitute a new Superior Proposal for the purposes of Section 5.1(f); and
  - (ii) require a new three Business Day Superior Proposal Notice Period from the date on which the Purchaser received the notice from the Company referred to in Section 5.1(f)(ii).
- (i) The Company Board shall reaffirm its recommendation in favour of the Arrangement by news release promptly after:
  - (i) the Company Board has determined that any Acquisition Proposal is not a Superior Proposal, if the Acquisition Proposal has been publicly announced or made; or
  - (ii) the Company Board makes the determination referred to in Section 5.1(g)(iii) that an Acquisition Proposal that has been publicly announced or made and which previously constituted a Superior Proposal has ceased to be a Superior Proposal,
- and the Company shall provide the Purchaser and its outside legal counsel a reasonable opportunity to review and comment on the form and content of any such news release, such news release to state that the Company Board has determined that such Acquisition Proposal is not a Superior Proposal.
- (j) The Company and/or any of its subsidiaries will not become a party to any Contract with any person subsequent to the date hereof that limits or prohibits the Company from providing:
  - (i) or making available to the Purchaser and its affiliates and Representatives any information provided or made available to such person or its officers, directors, employees, consultants, advisors, agents or other representatives (including solicitors, accountants, investment bankers and financial advisors) pursuant to any confidentiality agreement described in this Section 5.1; or
  - (ii) the Purchaser and its affiliates and Representatives with any other information required to be given to it by the Company under this Section 5.1.
- (k) Nothing in this Agreement shall prohibit the Company from making a Change in Recommendation or from making any other disclosure to securityholders prior to the approval by the Affected Securityholders of the Arrangement Resolution if, in the good faith judgment of the Company Board, after consultation with outside legal counsel, failure to take such action would be inconsistent with the Company Board's exercise of its fiduciary duties or such action is otherwise required under applicable Law (including by responding to an Acquisition Proposal under a directors' circular or otherwise as required under applicable Securities Laws); provided that:

- (i) No Change in Recommendation may be made in relation to an Acquisition Proposal unless the requirements of Section 5.1(a) to (h), inclusive, have been satisfied; and
  - (ii) Prior to making a Change in Recommendation, the Company shall give to the Purchaser not less than 48 hours' notice of its intention to make such a Change in Recommendation.
- (l) Any violation of the restrictions set forth in this Article 5 by the Company's Representatives, the Company's subsidiaries and/or the Company's subsidiaries' Representatives shall be deemed a breach of this Article 5 by the Company and the Company shall ensure that its subsidiaries and the Company and each of their respective Representatives are aware of the provisions of this Section 5.1.

## 5.2 **Termination Fee**

- (a) **"Termination Fee Event"** means any of the following events:
- (i) this Agreement shall have been terminated by the Company or the Purchaser pursuant to Section 6.1(b)(i) [*Occurrence of Outside Date*] or Section 6.1(b)(ii) [*Arrangement Resolution Not Approved*] or terminated by the Purchaser pursuant to 6.1(c)(ii) [*Breach of Non-Solicitation Covenants*], and:
    - (A) prior to such termination a *bona fide* Acquisition Proposal is publicly announced (other than by the Purchaser or any of its affiliates) and was not withdrawn before the Meeting; and
    - (B) within 365 days following the date of such termination:
      - (I) an Acquisition Proposal is consummated; or
      - (II) the Company or one or more of its subsidiaries, directly or indirectly, in one or more transactions, enters into a definitive agreement in respect of an Acquisition Proposal and such Acquisition Proposal is subsequently consummated at any time thereafter,
- provided, however, that for the purposes of this Section 5.2(a)(i) all references to "20% or more" in the definition of Acquisition Proposal shall be changed to "50% or more"; or
- (ii) this Agreement shall have been terminated by the Purchaser pursuant to Section 6.1(c)(i) [*Change of Recommendation*] unless the Purchaser is in breach of any of its representations, warranties, covenants or Agreements contained in this Agreement and such breach is reasonably likely to prevent, restrict or materially delay completion of the Arrangement; or

- (iii) this Agreement shall have been terminated by the Company pursuant to Section 6.1(d)(i) [*Superior Proposal*].
- (b) In the case of the occurrence of a Termination Fee Event referred to in:
  - (i) Section 5.2(a)(i), upon the consummation of the Acquisition Proposal referred to therein;
  - (ii) Section 5.2(a)(ii), within three Business Days following termination of this Agreement; or
  - (iii) Section 5.2(a)(iii), prior to or concurrent with termination of this Agreement,

the Company shall pay to the Purchaser (or its designated Affiliate) (the “**Fee Recipient**”) a termination fee of \$10,000,000 (the “**Termination Fee**”) by wire transfer in immediately available funds to an account specified by the Purchaser (or its designated Affiliate). The payment of the Termination Fee shall be deemed to be paid upon the confirmation by the Company of the release of such wire transfer by the Company’s wiring financial institution. The Company shall pay the Termination Fee (together with any other payments required to be made pursuant to Section 5.2(c)) free and clear and without withholding or deduction for Taxes unless such withholding or deduction is required by Law.

- (c) Each Party will pay:
  - (i) its respective legal and accounting costs, fees and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement; and
  - (ii) any other costs, fees and expenses whatsoever and howsoever incurred;

and

will indemnify and save harmless the others from and against any claim for any broker’s, finder’s or placement fee or commission alleged to have been incurred as a result of any action by it in connection with the transactions hereunder.

- (d) Each Party acknowledges that all of the payment amounts set out in this Section 5.2 are payments in consideration for the disposition of the Purchaser’s (and its Affiliates’) rights under this Agreement and represent liquidated damages which are a genuine pre-estimate of the damages which the Purchaser or its Affiliates will suffer or incur as a result of the event giving rise to such payment and the resultant termination of this Agreement and are not penalties and each Party irrevocably waives any right that it may have to raise as a defence that any such liquidated damages are excessive or punitive.

- (e) The Parties agree that the payment of an amount pursuant to this Section 5.2 in the manner provided herein is the sole and exclusive remedy of the Purchaser and its Affiliates in respect of the event giving rise to such payment, provided, however, that:
- (i) nothing contained in this Section 5.2, and no payment of any such amount, shall relieve or have the effect of relieving the Company in any way from liability for damages incurred or suffered by the Purchaser or its Affiliates as a result of an intentional or wilful breach of this Agreement, including the intentional or wilful making of a misrepresentation in this Agreement; and
  - (ii) nothing contained in this Section 5.2 shall preclude the Company from seeking:
    - (A) injunctive relief in accordance with Section 8.14 to restrain the breach or threatened breach of the covenants or agreements set forth in this Agreement or the Confidentiality Agreement; or
    - (B) specific performance of any of the acts, covenants or agreements set forth in this Agreement or the Confidentiality Agreement, without the necessity of posting a bond or security in connection therewith.

## **ARTICLE 6**

### **TERMINATION**

#### **6.1 Termination**

- (a) Termination By Mutual Consent. This Agreement may be terminated at any time prior to the Effective Time by mutual written consent of the Company and the Purchaser.
- (b) Termination by either the Company or the Purchaser. This Agreement may be terminated by either the Company or the Purchaser at any time prior to the Effective Time, if:
  - (i) the Effective Time does not occur on or before the Outside Date, provided that the right to terminate this Agreement under this Section 6.1(b)(i) shall not be available to any Party whose failure to fulfil any of its covenants or obligations or breach of any of its representations and warranties under this Agreement has been a principal cause of, or resulted in, the failure of the Effective Time to occur by such date;
  - (ii) the Company Meeting is held and the Arrangement Resolution is not approved by the Affected Securityholders in accordance with applicable Laws and the Interim Order; or



- (iii) any Law is enacted, made, enforced or amended, as applicable, that makes the completion of the Arrangement or the transactions contemplated by this Agreement illegal or otherwise prohibited, and such Law has become final and non-appealable, provided that the right to terminate this Agreement under this Section 6.1(b)(iii) shall not be available to any Party unless such Party has used its commercially reasonable efforts to, as applicable, appeal or overturn such Law or otherwise have it lifted or rendered non-applicable in respect of the Arrangement.
- (c) Termination by the Purchaser. This Agreement may be terminated by the Purchaser at any time prior to the Effective Time, if:
- (i) the Company Board or any committee thereof:
    - (A) fails to publicly make a recommendation that the Affected Securityholders vote in favour of the Arrangement Resolution as contemplated in Section 2.5(f)(iii) and Section 5.1(i);
    - (B) fails to reaffirm its recommendation that the Affected Securityholders vote in favour of the Arrangement Resolution by the fifth Business Day following receipt of a request by the Purchaser to do so (and if the Company Meeting is scheduled to occur within such five Business Day period, then prior to the date of the Company Meeting);
    - (C) withdraws, modifies, qualifies or changes, in a manner adverse to the Purchaser, its approval or recommendation of the Arrangement;
    - (D) takes no position or remains neutral with respect to any publicly announced or otherwise publicly disclosed Acquisition Proposal for a period exceeding three Business Days (or, if the Company Meeting is scheduled to occur within such three Business Day period, then prior to the date of the Company Meeting);
- (each of the foregoing a “**Change of Recommendation**”)
- (E) accepts, approves, endorses or recommends any Acquisition Proposal; or
  - (F) publicly proposes or announces its intention to do any of the foregoing;

provided, however, that any announcement by the Company required by applicable Securities Laws prior to the expiry of any Superior Proposal Notice Period of the receipt by the Company of an

Acquisition Proposal that is a Superior Proposal will not permit the Purchaser to terminate this Agreement;

- (ii) the Company:
    - (A) enters into an Acquisition Agreement in respect of any Acquisition Proposal (other than an Acceptable Confidentiality Agreement permitted by Section 5.1(e)); or
    - (B) materially breaches any of its material obligations or material covenants set forth in Section 5.1;
  - (iii) subject to compliance with Section 6.3, the Company breaches any of its representations, warranties, covenants or agreements contained in this Agreement, which breach would cause any of the conditions set forth in Section 7.1 or Section 7.3 not to be satisfied, and such breach is incapable of being cured or is not cured in accordance with the terms of Section 6.3, provided, however, that the Purchaser is not then in breach of this Agreement so as to cause any of the conditions set forth in Section 7.1 or Section 7.2 not to be satisfied; or
  - (iv) a Company Material Adverse Effect has occurred and is continuing.
- (d) Termination by the Company. This Agreement may be terminated by the Company:
- (i) at any time prior to the approval of the Arrangement Resolution, if the Company Board approves and authorizes the Company to enter into, a definitive agreement providing for the implementation of a Superior Proposal in accordance with Section 5.1(f), subject to the Company:
    - (A) complying with the terms of Section 5.1 in all material respects; and
    - (B) paying the Termination Fee; or
  - (ii) at any time prior to the Effective Time, subject to compliance with Section 6.3, if the Purchaser breaches any of its representations, warranties, covenants or agreements contained in this Agreement, which breach would cause any of the conditions set forth in Section 7.1 or Section 7.2 not to be satisfied, and such breach is incapable of being cured or is not cured in accordance with the terms of Section 6.3, provided, however, that the Company is not then in breach of this Agreement so as to cause any of the conditions set forth in Section 7.1 or Section 7.3 not to be satisfied.

## **6.2 Void upon Termination**

- (a) If this Agreement is terminated pursuant to Section 6.1, then:

- (i) this Agreement shall become void and of no force and effect; and
- (ii) no Party will have any liability or further obligation to the other Party hereunder,

except that the provisions of this Section 6.2, Section 4.12, Section 5.2 and Article 8 (other than Section 8.5, Section 8.7, and Section 8.14) shall survive any termination hereof pursuant to Section 6.1.

(b) Neither:

- (i) the termination of this Agreement; nor
- (ii) anything contained in Section 5.2 or this Section 6.2,

will relieve any Party from any liability for any intentional or wilful breach by it of this Agreement, including any intentional or wilful making of a misrepresentation in this Agreement.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Confidentiality Agreement shall survive any termination hereof pursuant to Section 6.1.

### **6.3 Notice and Cure Provisions**

(a) If any Party determines, at any time prior to the Effective Time, that it intends to refuse to complete the transactions contemplated hereby because of any unfilled or unperformed condition contained in this Agreement, then such Party will so notify the other Party forthwith upon making such determination in order that the other Party will have the right and opportunity to take such steps, at its own expense, as may be necessary for the purpose of fulfilling or performing such condition within a reasonable period of time, but in no event later than the Outside Date.

(b) Neither the Company nor the Purchaser may:

- (i) elect not to complete the transactions contemplated hereby pursuant to the conditions precedent contained in Article 7 hereof; or
- (ii) exercise any termination right arising therefrom,

and no payments will be payable as a result of such election pursuant to Article 7 unless forthwith, and in any event prior to the Effective Time, the Party intending to rely thereon has given a written notice to the other Party.

(c) The notice required pursuant to Section 6.3(b) must specify, in reasonable detail all breaches of:

- (i) covenants;

- (ii) representations and warranties; or
- (iii) other matters,

which the Party giving such notice is asserting as the basis for the non-fulfillment of the applicable condition precedent or the exercise of the termination right, as the case may be.

- (d) If any notice required pursuant to Section 6.3(b) is duly given, then provided that the other Party is proceeding diligently to cure such matter, if such matter is susceptible to being cured, the Party giving such notice may not terminate this Agreement as a result thereof until the earlier of the:
  - (i) Outside Date; and
  - (ii) date of expiration of a period of 10 Business Days from such notice.
- (e) If notice required pursuant to Section 6.3(b) is duly given prior to the date of the Company Meeting, then such meeting, unless the Parties otherwise agree, will be postponed or adjourned until the expiry of such period (without causing any breach of any other provision contained herein).

## **ARTICLE 7**

### **CONDITIONS PRECEDENT**

#### **7.1 Mutual Conditions Precedent**

The respective obligations of the Parties to complete the Arrangement are subject to the satisfaction, or mutual waiver by the Parties, on or before the Effective Date, of each of the following conditions, each of which are for the mutual benefit of the Parties and which may be waived, in whole or in part, by the Purchaser and the Company at any time:

- (a) the Arrangement Resolution has been approved by the Affected Securityholders at the Company Meeting, in accordance with the Interim Order and applicable Laws;
- (b) each of the Interim Order and Final Order:
  - (i) has been obtained in form and substance satisfactory to each of the Company and the Purchaser, each acting reasonably; and
  - (ii) has not been set aside or modified in any manner unacceptable to either the Company or the Purchaser, each acting reasonably, on appeal or otherwise;
- (c) the necessary conditional approvals or equivalent approvals, as the case may be, of the TSX will have been obtained;
- (d) no Law has been enacted, issued, promulgated, enforced, made, entered, issued or applied and no order, writ, injunction, judgment, or decree will otherwise have

been taken under any Laws or by any Governmental Authority (whether temporary, preliminary or permanent) that makes the Arrangement illegal or otherwise directly or indirectly cease trades, enjoins, restrains or otherwise prohibits completion of the Arrangement;

- (e) the Arrangement Filings, to be sent to the Registrar in accordance with this Agreement and the BCBCA, are in form and content satisfactory to the Company and the Purchaser, each acting reasonably, if applicable; and
- (f) this Agreement has not been terminated in accordance with its terms.

## **7.2 Additional Conditions Precedent to the Obligations of the Company**

The obligation of the Company to complete the Arrangement will be subject to the satisfaction, or waiver by the Company, on or before the Effective Date, of each of the following conditions, each of which is for the exclusive benefit of the Company and which may be waived by the Company at any time, in whole or in part, in its sole discretion and without prejudice to any other rights that the Company may have:

- (a) the Purchaser has complied in all material respects with its obligations, covenants and agreements in this Agreement to be performed and complied with on or before the Effective Date;
- (b) the representations and warranties of the Purchaser in Section 3.2 are true and correct (disregarding for this purpose all materiality qualifications contained therein) at and as of the date hereof and Effective Date as if made on and as of such date (except for such representations and warranties which are made as of another specified date, in which case such representations and warranties will have been true and correct as of that date) except for breaches of representations and warranties which have not had and would not reasonably be expected to prevent, significantly impede or materially delay the completion of the Arrangement;
- (c) the Company has received a certificate of the Purchaser:
  - (i) signed by a senior officer of the Purchaser; and
  - (ii) dated the Effective Date,

certifying that the conditions set out in Section 7.2(a) and Section 7.2(b) have been satisfied, which certificate will cease to have any force and effect after the Effective Time; and

- (d) the Purchaser has complied with its obligations under Section 2.11 and the Depositary shall have confirmed receipt of the Consideration.

### **7.3 Additional Conditions Precedent to the Obligations of the Purchaser**

The obligation of the Purchaser to complete the Arrangement will be subject to the satisfaction, or waiver by the Purchaser, on or before the Effective Date, of each of the following conditions, each of which is for the exclusive benefit of the Purchaser and which may be waived by the Purchaser at any time, in whole or in part, in its sole discretion and without prejudice to any other rights that the Purchaser may have:

- (a) the Company has complied in all material respects with its obligations, covenants and agreements in this Agreement to be performed and complied with on or before the Effective Date;
- (b) the representations and warranties of the Company in Section 3.1 shall be true and correct (disregarding for this purpose all materiality or Company Material Adverse Effect qualifications contained therein) at and as of the date hereof and the Effective Date as if made on and as of such date (except for such representations and warranties which are made as of another specified date, in which case such representations and warranties shall have been true and correct as of that date) except for breaches of representations and warranties (other than the Fundamental Representations) which have not had and would not reasonably be expected to:
  - (i) have, individually or in the aggregate, a Company Material Adverse Effect; or
  - (ii) prevent, significantly impede or materially delay the completion of the Arrangement;

it being understood that it is a separate condition precedent to the obligations of the Purchaser hereunder that the Fundamental Representations must be accurate in all respects when made and as of the Effective Date;

- (c) there has not occurred prior to the Effective Time a Company Material Adverse Effect;
- (d) the Purchaser shall have received a certificate of the Company:
  - (i) signed by a senior officer of the Company; and
  - (ii) dated the Effective Date,

certifying that the conditions set out in Section 7.3(a), Section 7.3(b) and Section 7.3(c) have been satisfied, which certificate will cease to have any force and effect after the Effective Time;

- (e) each of the Key Consents will have been obtained; and
- (f) in connection with the Arrangement, the Company Shares in respect of which Company Shareholders have either:

- (i) exercised Dissent Rights; or
  - (ii) have instituted proceedings to exercise Dissent Rights,
- do not exceed 10% of the Company Shares then outstanding.

**ARTICLE 8**  
**GENERAL**

**8.1 Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery or by electronic means of communication addressed to the recipient as follows:

- (a) if to the Company as follows:

Polaris Materials Corporation  
2740 – 1055 West Georgia Street  
P.O. Box 11175  
Vancouver, British Columbia, V6E 3R5

Attn: Ken Palko  
Facsimile: 604 915 5001  
Email: kpalko@polarismaterials.com

with a copy (which will not constitute notice) to:

Fasken Martineau DuMoulin LLP  
2900 – 550 Burrard Street  
Vancouver, British Columbia, V6C 0A3

Attention: Georald Ingborg  
Facsimile: 604-632-3225  
E-mail: gingborg@fasken.com

- (b) if to the Purchaser or the Purchaser Parent:

- (a) The Purchaser and the Purchaser Parent, addressed as follows:

Vulcan Materials Company  
1200 Urban Center Drive  
Birmingham, Alabama 35223

Attention: Jerry Perkins, General Counsel and Secretary  
Facsimile: 205-298-2960  
E-Mail: perkinsj@vmcmail.com

with a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019

Facsimile: 212-403-2000  
E-Mail: IKirman@wlrk.com  
Attention: Igor Kirman

## **8.2 Notices deemed given**

Any demand, notice or other communication given pursuant to Section 8.2 will be taken to be duly given, in the case of delivery by:

- (a) hand, when delivered;
- (b) facsimile, on receipt by the sender of a transmission control report from the despatching machine showing the:
  - (i) relevant number of pages;
  - (ii) correct destination fax machine number or name of the recipient; and
  - (iii) the transmission has been made without error;

and

- (c) email, on receipt by the sender of an email message from the recipient, specifically acknowledging receipt, such acknowledgement being in a form that is not automatically generated,

but if the result is that a demand, notice or other communication would be taken to be given or made on a day that is not a Business Day or the demand, notice or other communication is delivered later than 4:00 pm (local time of the recipient), then it will be taken to have been duly given or made at the commencement of business on the next Business Day.

## **8.3 Assignment**

Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by any Party without the prior written consent of the other Parties; provided, that Purchaser (but not the Purchaser Parent) may assign all or any part of its rights under this Agreement to, and its obligations under this Agreement may be assumed by, an affiliate of Purchaser without the Company's prior written consent; provided that (i) such affiliate enters into a written agreement with the Company to be bound by the provisions of this Agreement in all respects and to the same extent as the Purchaser is bound and (ii) the Purchaser shall continue to be bound by all the



obligations hereunder as if such assignment had not occurred and perform such obligations to the extent that such affiliate fails to do so.

#### **8.4 Benefit of Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors (including any successor by reason of amalgamation or statutory arrangement) and permitted assigns of the Parties.

#### **8.5 Third Party Beneficiaries**

- (a) Except as provided in Section 4.9(a), which, without limiting its terms, is intended as stipulations for the benefit of the Indemnified Parties, the Parties intend that:
  - (i) this Agreement will not benefit or create any right or cause of action in favour of any person, other than the Parties; and
  - (ii) no person, other than the Parties, shall be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum.
- (b) Despite the foregoing, the Parties acknowledge to each of the Indemnified Parties their direct rights against the applicable Party under Section 4.9(a), which are intended for the benefit of, and shall be enforceable by, each Indemnified Party, his or her heirs and his or her legal representatives, and for such purpose, the Company confirms that it is acting as trustee on their behalf, and agrees to enforce such provisions on their behalf.
- (c) The Parties reserve their right to vary or rescind the rights at any time and in any way whatsoever, if any, granted by or under this Agreement to any person who is not a Party, without notice to or consent of that Person, including any Indemnified Party.

#### **8.6 Time of Essence**

Time is of the essence of this Agreement.

#### **8.7 Public Announcements**

- (a) No Party shall issue any press release or otherwise make written public statements with respect to the Arrangement or this Agreement without the consent of the other Party (which consent shall not be unreasonably withheld, conditioned or delayed).
- (b) None of the Parties shall make any filing with any Governmental Authority with respect to the Arrangement or the transactions contemplated hereby without prior consultation with the other, provided, however, that:

- (i) the foregoing shall be subject to each Party's overriding obligation to make any disclosure or filing required under applicable Laws; and
- (ii) the Party making the disclosure shall use commercially reasonable efforts to:
  - (A) give prior oral or written notice to the other Party; and
  - (B) reasonable opportunity for the other Party to review or comment on the disclosure or filing (other than with respect to confidential information contained in such disclosure or filing),and if such prior notice is not possible, to give notice immediately following the making of any such disclosure or filing.
- (c) Except as otherwise required by Section 5.1, the Company shall have no obligation to obtain the consent of or consult with the Purchaser prior to any press release, public statement, disclosure or filing by the Company with regard to an Acquisition Proposal or a Change of Recommendation.
- (d) The Parties acknowledge that this Agreement may be filed under such Party's profile on SEDAR and or with the U.S. Securities Exchange Commission under the rules of the U.S. Exchange Act, as applicable; provided that each Party will provide reasonable opportunity for the other Party to review or comment on the disclosure or filing (including any proposed redactions).

## **8.8 Governing Law; Attornment**

- (a) This Agreement shall be governed, including as to validity, interpretation and effect, by the laws of the Province of British Columbia and the laws of Canada applicable therein.
- (b) Each of the Parties hereby:
  - (i) irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of British Columbia in respect of all matters arising under and in relation to this Agreement or the Arrangement; and
  - (ii) waives, to the fullest extent possible, the defence of an inconvenient forum or any similar defence to the maintenance of proceedings in such courts.

## **8.9 Entire Agreement**

- (a) This Agreement constitutes, together with the Confidentiality Agreement, the entire agreement between the Parties with respect to the subject matter thereof.
- (b) There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Parties with

respect thereto except as expressly set forth in this Agreement and the Confidentiality Agreement.

### **8.10 Amendment**

This Agreement and the Plan of Arrangement, may, at any time and from time to time before or after the holding of the Company Meeting but not later than the Effective Time, be amended by written agreement of the Parties without, subject to applicable Laws, further notice to or authorization on the part of the Affected Securityholders, and any such amendment may, without limitation:

- (a) change the time for performance of any of the obligations or acts of the Parties;
- (b) waive any inaccuracies or modify any representation, term or provision contained herein or in any document delivered pursuant hereto; or
- (c) waive compliance with or modify any of the:
  - (i) conditions precedent referred to in Article 7; or
  - (ii) any of the covenants herein contained or waive or modify performance of any of the obligations of the Parties,

provided, however, that no such amendment may reduce or materially affect the consideration to be received by the Affected Securityholders under the Arrangement without their approval at the Company Meeting or, following the Company Meeting, without their approval given in the same manner as required by applicable Laws for the approval of the Arrangement as may be required by the Court.

### **8.11 Waiver and Modifications**

- (a) Any Party may:
  - (i) waive, in whole or in part, any inaccuracy of, or consent to the modification of, any representation or warranty made to it hereunder or in any document to be delivered pursuant hereto;
  - (ii) extend the time for the performance of any of the obligations or acts of the other Parties;
  - (iii) waive or consent to the modification of any of the covenants herein contained for its benefit or waive or consent to the modification of any of the obligations of the other Parties hereto; or
  - (iv) waive the fulfillment of any condition to its own obligations contained herein.
- (b) No waiver or consent to the modifications of any of the provisions of this Agreement will be effective or binding unless:

- (i) made in writing; and
- (ii) signed by the Party or Parties purporting to give the same,

and, unless otherwise provided, will be limited to the specific breach or condition waived.

- (c) The rights and remedies of the Parties hereunder are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise.
- (d) No single or partial exercise by a Party of any right or remedy precludes or otherwise affects any further exercise of such right or remedy or the exercise of any other right or remedy to which that Party may be entitled.
- (e) No waiver or partial waiver of any nature, in any one or more instances, will be deemed or construed a continued waiver of any condition or breach of any other term, representation or warranty in this Agreement.

#### **8.12 Severability**

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect so long as the economic or legal substance of the transactions contemplated herein is not affected in any material manner or would prevent or significantly impede or materially delay the completion of the Arrangement.

#### **8.13 Mutual Interest**

Notwithstanding the fact that any part of this Agreement has been drafted or prepared by or on behalf of one of the Parties, all Parties confirm that:

- (a) they and their respective counsel have reviewed and negotiated this Agreement;
- (b) the Parties have adopted this Agreement as the joint agreement and understanding of the Parties;
- (c) the language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent;
- (d) the Parties waive the application of any Laws or rules of construction providing that ambiguities in any agreement or other document will be construed against the Party drafting such agreement or other document; and
- (e) no rule of construction providing that a provision is to be interpreted in favour of the person who contracted the obligation and against the person who stipulated it will be applied against any Party.

**8.14 Injunctive Relief**

Subject to Section 5.2(d), the Parties agree that irreparable harm would occur if any of the provisions of this Agreement:

- (a) are not performed in accordance with their specific terms; or
- (b) are otherwise breached,

for which money damages would not be an adequate remedy at law and accordingly agree that, in addition to any other remedy to which a Party may be entitled at law or in equity, a Party will be entitled to seek an injunction or injunctions and other equitable relief to prevent breaches of this Agreement and the Parties waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief.

**8.15 No Personal Liability**

- (a) No director, officer or employee of the Purchaser will have any personal liability to the Company under this Agreement or any other document delivered in connection with this Agreement or the Arrangement on behalf of the Purchaser.
- (b) No director, officer or employee of the Company will have any personal liability to the Purchaser under this Agreement or any other document delivered in connection with this Agreement or the Arrangement on behalf of the Company.

**8.16 Counterparts**

This Agreement may be executed and delivered in any number of counterparts (including by facsimile or electronic transmission), each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

*[Remainder of page has been left intentionally blank]*

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**1131083 B.C. LTD.**

By: "Stanley G. Bass"  
Name: Stanley G. Bass  
Title: Chairman

**VULCAN MATERIALS COMPANY**

By: "Stanley G. Bass"  
Name: Stanley G. Bass  
Title: Chief Growth Officer

**POLARIS MATERIALS CORPORATION**

By: "Terrence A. Lyons"  
Name: Terrence A. Lyons  
Title: Chairman and Director

**SCHEDULE A  
FORM OF PLAN OF ARRANGEMENT**

**PLAN OF ARRANGEMENT UNDER DIVISION 5 OF PART 9 OF THE BUSINESS  
CORPORATIONS ACT (BRITISH COLUMBIA)**

**Article 1  
INTERPRETATION**

**1.1 Definitions**

In this Plan of Arrangement, unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the respective meanings set out below and grammatical variations of those terms shall have corresponding meanings:

- (a) “**Arrangement**” means the arrangement under the provisions of Section 288 of the BCBCA, on the terms and conditions set out in this Plan of Arrangement, subject to any amendments or variations thereto made in accordance with Section 8.10 of the Arrangement Agreement or Article 6 of this Plan of Arrangement with the consent of the Company and the Purchaser, each acting reasonably, or made at the direction of the Court in the Final Order;
- (b) “**Arrangement Agreement**” means the agreement made as of August 25, 2017 between the Company, the Purchaser and the Purchaser Parent, including the schedules thereto, as the same may be supplemented or amended from time to time;
- (c) “**Arrangement Resolution**” means the resolution of the Company Securityholders approving the Arrangement to be considered at the Company Meeting;
- (d) “**BCBCA**” means the *Business Corporations Act* (British Columbia), as promulgated or amended from time to time;
- (e) “**Business Day**” means a day other than a Saturday, a Sunday or any other day on which commercial banking institutions in Vancouver, British Columbia, or Birmingham, Alabama are authorized or required by applicable Law to be closed;
- (f) “**Company**” means Polaris Materials Corporation, a corporation incorporated under the laws of the Province of British Columbia;
- (g) “**Company DSUs**” means the Deferred Units granted under the Company DSU Plan;
- (h) “**Company DSU Holder**” means a holder of one or more Company DSUs;
- (i) “**Company DSU Plan**” means the Independent Director Deferred Unit Plan of the Company dated as of April 26, 2016;

- (j) “**Company Meeting**” means the special meeting of the Company Securityholders, including any adjournment or postponement thereof, to be called and held in accordance with the Interim Order for the purpose of considering and, if thought fit, approving the Arrangement Resolution;
- (k) “**Company Options**” means, at any time, options to acquire Company Shares granted pursuant to the Company Option Plans which are, at such time, outstanding and unexercised, whether or not vested;
- (l) “**Company Optionholder**” means a holder of one or more Company Options;
- (m) “**Company Option Plans**” means, collectively, the Stock Option Plan of the Company dated as of April 26, 2016 and the Stock Option Plan of the Company dated April 23, 2001;
- (n) “**Company Securityholders**” means, together, the Company Shareholders, the Company Optionholders and the Company DSU Holders;
- (o) “**Company Shareholder**” means a holder of one or more Company Shares;
- (p) “**Company Shares**” means the common shares without par value in the capital of the Company;
- (q) “**Consideration**” means the consideration to be received by the Company Shareholders pursuant to the Plan of Arrangement in consideration for their Company Shares, consisting of \$2.79 in cash for each Company Share;
- (r) “**Court**” means the Supreme Court of British Columbia;
- (s) “**Depository**” means any trust company, bank or other financial institution agreed to in writing by each of the Parties for the purpose of, among other things, exchanging certificates representing Company Shares for the Consideration in connection with the Arrangement;
- (t) “**Dissent Rights**” has the meaning ascribed thereto in Section 4.1;
- (u) “**Dissenting Company Shareholder**” means a registered holder of Company Shares who has duly and validly exercised the Dissent Rights in respect of the Arrangement Resolution in strict compliance with the Dissent Rights and who has not withdrawn or been deemed to have withdrawn such exercise of Dissent Rights, but only in respect of Company Shares in respect of which Dissent Rights are validly exercised by such holder;
- (v) “**Dissenting Shares**” means the Company Shares held by Dissenting Company Shareholders in respect of which such Dissenting Company Shareholders have given Notice of Dissent;
- (w) “**Effective Date**” means the date upon which the Arrangement becomes effective, as set out in Section 2.1(e) of the Arrangement Agreement;



- (a) “**Effective Time**” means 12:01 a.m. (Vancouver time) on the Effective Date or such other time as the Company and the Purchaser may agree upon in writing;
- (x) “**Final Order**” means the order of the Court approving the Arrangement under Section 291 of the BCBCA, in form and substance acceptable to the Company and the Purchaser, each acting reasonably, after a hearing upon the procedural and substantive fairness of the terms and conditions of the Arrangement, as such order may be affirmed, amended, modified, supplemented or varied by the Court (with the consent of both the Company and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, as affirmed or amended (provided that any such amendment is acceptable to both the Company and the Purchaser, each acting reasonably) on appeal unless such appeal is withdrawn, abandoned or denied;
- (y) “**Former Company Shareholders**” means the holders of Company Shares immediately prior to the Effective Time;
- (z) “**Governmental Authority**” means any multinational, federal, provincial, territorial, state, regional, municipal, local or other government or governmental body and any division, agent, official, minister, agency, commission, commissioner, bureau, board or authority of any government, governmental body, quasi-governmental or private body (including the TSX or any other stock exchange) exercising any statutory, regulatory, expropriation or taxing authority under the authority of any of the foregoing and any domestic, foreign or international judicial, quasi-judicial or administrative court, tribunal, commission, board, panel or arbitrator acting under the authority of any of the foregoing;
- (aa) “**holder**”, when used with reference to any securities of the Company, means the holder of such securities shown from time to time in the central securities register maintained by or on behalf of the Company in respect of such securities;
- (bb) “**Interim Order**” means the interim order of the Court to be issued following the application therefor contemplated by Section 2.2(c) of the Arrangement Agreement, in form and substance acceptable to the Company and the Purchaser, each acting reasonably, providing for, among other things, the calling and holding of the Company Meeting, as such order may be affirmed, amended, modified, supplemented or varied by the Court with the consent of both the Company and the Purchaser, each acting reasonably;
- (cc) “**Letter of Transmittal**” means the letter of transmittal to be delivered by the Company to the Company Shareholders providing for the delivery of Company Shares to the Depositary;
- (dd) “**Liens**” means any mortgage, hypothec, prior claim, lien, pledge, assignment for security, security interest, option, right of first offer or first refusal or other charge or encumbrance of any kind;

- (ee) “**Notice of Dissent**” means a notice of dissent duly and validly given by a registered holder of Company Shares exercising Dissent Rights as contemplated in the Interim Order and as described in Article 4;
- (ff) “**Plan of Arrangement**” means this plan of arrangement, including any appendices hereto, and any amendments, modifications or supplements hereto made from time to time in accordance with the terms hereof or made at the direction of the Court in the Final Order, with the consent of the Company and the Purchaser, each acting reasonably;
- (gg) “**Purchaser**” means 1131083 B.C. Ltd., a corporation incorporated under the laws of the Province of British Columbia;
- (hh) “**Purchaser Parent**” means Vulcan Materials Company, a New Jersey corporation;
- (ii) “**Registrar**” means the person appointed as the Registrar of Companies under section 400 of the BCBCA;
- (jj) “**Tax Act**” means the *Income Tax Act* (Canada), as amended; and
- (cc) “**TSX**” means the Toronto Stock Exchange.

Any terms used but not defined herein shall have the meaning ascribed to such terms in the Arrangement Agreement. In addition, words and phrases used herein and defined in the BCBCA and not otherwise defined herein or in the Arrangement Agreement shall have the same meaning herein as in the BCBCA unless the context otherwise requires.

## **1.2 Interpretation Not Affected by Headings, etc.**

The division of this Plan of Arrangement into Articles, Sections, paragraphs and other portions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof. Unless otherwise indicated, all references to an “Article”, “Section” or “paragraph” followed by a number and/or a letter refer to the specified Article, Section or paragraph of this Plan of Arrangement.

## **1.3 Number**

In this Plan of Arrangement, unless the context otherwise requires, words used herein importing the singular include the plural and *vice versa*.

## **1.4 Date of Any Action**

In the event that any date on which any action is required to be taken hereunder by any of the Parties is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

## **1.5 Time**

Time shall be of the essence in every matter or action contemplated hereunder. All times expressed herein or in any letter of transmittal contemplated herein are local time (Vancouver, British Columbia) unless otherwise stipulated herein or therein.

## **1.6 Currency**

Unless otherwise stated, all references in this Plan of Arrangement to sums of money are expressed in lawful money of Canada.

## **1.7 Statutes**

Any reference to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended or re-enacted, unless stated otherwise.

## **Article 2** **EFFECT OF THE ARRANGEMENT**

### **2.1 Arrangement Agreement**

This Plan of Arrangement is made pursuant to, is subject to the provisions of, and forms a part of the Arrangement Agreement, except in respect of the sequence of the steps comprising the Arrangement, which shall occur in the order set forth herein.

### **2.2 Binding Effect**

This Plan of Arrangement will become effective at the Effective Time and shall be binding upon the Purchaser, the Purchaser Parent, the Company, the Company Shareholders, the Company Optionholders and the Company DSU Holders.

## **Article 3** **ARRANGEMENT**

### **3.1 The Arrangement**

Commencing at the Effective Time, each of the events set out below shall occur and be deemed to occur in the following sequence, in each case without any further authorization, act or formality of or by the Company, the Purchaser, the Purchaser Parent, the Company Securityholders or any other person:

- (a) each Company Option outstanding immediately prior to the Effective Time (whether vested or unvested) that is held by a Company Optionholder, notwithstanding the terms of the Company Option Plans, shall be deemed to be unconditionally vested and exercisable, and:

- (i) such Company Option shall, without any further action by or on behalf of a Company Optionholder, be deemed to be assigned and transferred by such holder to the Company in exchange for a cash payment from the Company equal to the amount (if any) by which the Consideration exceeds the exercise price of such Company Option and each such Company Option shall immediately be cancelled and, for greater certainty, where such amount is zero or negative, such Company Option shall be cancelled without any consideration;
  - (ii) the name of such holder shall be removed from the applicable register of the Company as a holder of Company Options; and
  - (iii) neither the Company nor the Purchaser shall be obligated to pay the holder of such Company Option any other amount in respect of such Company Option;
- (b) each Company DSU outstanding immediately prior to the Effective Time (whether vested or unvested) that is held by a Company DSU Holder, notwithstanding the terms of the Company DSU Plan, shall be deemed to be unconditionally vested, and:
  - (i) such Company DSU shall, without any further action by or on behalf of such Company DSU Holder, be deemed to be assigned and transferred by such holder to the Company in exchange for a cash payment from the Company equal to the amount of the Consideration for each Company DSU and each such Company DSU shall immediately be cancelled;
  - (ii) the name of such holder shall be removed from the applicable register of the Company as a holder of DSUs; and
  - (iii) neither the Company nor the Purchaser shall be obligated to pay the holder of such Company DSU any other amount in respect of such Company DSU;
- (c) the Company Option Plans and the Company DSU Plan, and all certificates, agreements or other documents relating to or representing any Company Options or Company DSUs, shall be terminated and of no further force and effect;
- (d) each issued and outstanding Company Share held by a Dissenting Company Shareholder shall be deemed to be transferred by the holder thereof, without any further act or formality on its part, free and clear of all Liens, to the Purchaser and the Purchaser shall thereupon be obliged to pay the amount therefor determined and payable in accordance with Article 4 hereof, and the name of such holder shall be removed from the central securities register of the Company as a holder of Company Shares and the Purchaser shall be recorded as the registered holder of the Company Shares so transferred and shall be deemed to be the legal owner of such Company Shares; and

- (e) each issued and outstanding Company Share held by a Former Company Shareholder (other than the Purchaser, any affiliate of the Purchaser (including the Purchaser Parent) or a Dissenting Company Shareholder, but including a Dissenting Company Shareholder who is ultimately found not to be entitled to be paid fair value for its Company Shares) shall be transferred by the holder thereof, without any further act or formality on its part, free and clear of all Liens, to the Purchaser in exchange for the Consideration, subject to Article 5 hereof and the name of such holder shall be removed from the central securities register of the Company as a holder of Company Shares and the Purchaser shall be recorded as the registered holder of the Company Shares so transferred and shall be deemed to be the legal owner of such Company Shares.

The exchanges and cancellations provided for in this Section 3.1 will be deemed to occur on the Effective Date, notwithstanding that certain of the procedures related thereto are not completed until after the Effective Date.

Each of the Purchaser and the Company acknowledges and agrees that the Company and any person who does not deal at arm's length with the Company for the purposes of the Tax Act will elect pursuant to subsection 110(1.1) of the Tax Act to forgo any deduction under the Tax Act with respect to cash payments made hereunder to a Company Optionholder or Company DSU Holder who is a resident of Canada or who is employed in Canada (all within the meaning of the Tax Act). The Company shall elect pursuant to subsection 110(1.1) of the Tax Act in respect of the cash payment to the Company Optionholders and the Company DSU Holders pursuant to this Plan of Arrangement, including delivering written notice of such election to each such holder in accordance with the requirements in the Tax Act.

### **3.2 Delivery of Consideration**

(a) Following the receipt of the Final Order and prior to the Effective Date, the Purchaser shall deliver or arrange to be delivered to the Depository the aggregate Consideration to be paid to Former Company Shareholders in accordance with the provisions of Section 3.1(e) hereof, which Consideration shall be held by the Depository as agent and nominee for such Former Company Shareholders for distribution to such Former Company Shareholders in accordance with the provisions of Article 5 hereof.

(b) Subject to the provisions of Article 5 hereof, and upon return of a properly completed Letter of Transmittal by a registered Former Company Shareholder together with certificates representing Company Shares and such other documents as the Depository may require, Former Company Shareholders shall be entitled to receive delivery of the Consideration to which they are entitled pursuant to Section 3.1(e) hereof.

## **Article 4** **DISSENT RIGHTS**

### **4.1 Rights of Dissent**

Pursuant to the Interim Order, each registered Company Shareholder may exercise rights of dissent (“**Dissent Rights**”) under Section 238 of the BCBCA and in the manner set forth in

Sections 237 to 247 of the BCBCA, all as modified by this Article 4 as the same may be modified by the Interim Order or the Final Order in respect of the Arrangement, provided that the written objection to the Arrangement Resolution contemplated by Section 242 of the BCBCA must be sent to and received by the Company not later than 5:00 p.m. (Vancouver time) on the Business Day that is two Business Days before the Company Meeting. Company Shareholders who duly exercise such rights of dissent and who:

(a) are ultimately determined to be entitled to be paid fair value from the Purchaser for the Dissenting Shares in respect of which they have exercised Dissent Rights, notwithstanding anything to the contrary contained in Section 245 of the BCBCA, will be deemed to have irrevocably transferred such Dissenting Shares to the Purchaser pursuant to Section 3.1(d) in consideration of such fair value; or

(b) are ultimately not entitled, for any reason, to be paid fair value for the Dissenting Shares in respect of which they have exercised Dissent Rights, will be deemed to have participated in the Arrangement on the same basis as a Company Shareholder who has not exercised Dissent Rights, as at and from the time specified in Section 3.1(e), and be entitled to receive only the Consideration;

but in no case will the Company or the Purchaser or any other person be required to recognize such holders as holders of Company Shares after the completion of the steps set forth in Section 3.1(d), and each Dissenting Company Shareholder will cease to be entitled to the rights of a Company Shareholder in respect of the Company Shares in relation to which such Dissenting Company Shareholder has exercised Dissent Rights and the central securities register of the Company will be amended to reflect that such former holder is no longer the holder of such Company Shares as and from the completion of the steps in Section 3.1(d).

In addition to any other restrictions set forth in the BCBCA, none of the following shall be entitled to exercise Dissent Rights: (i) Company Optionholders and Company DSU Holders; and (ii) Company Shareholders who vote in favour of the Arrangement Resolution.

## **Article 5** **CERTIFICATES AND PAYMENTS**

### **5.1 Payment of Consideration**

(a) As soon as practicable following the later of the Effective Date and the surrender to the Depositary for cancellation of a certificate that immediately prior to the Effective Time represented outstanding Company Shares that were transferred under Section 3.1(e), together with a duly completed Letter of Transmittal and such additional documents and instruments as the Depositary may reasonably require and such other documents and instruments as would have been required to effect such transfer under the BCBCA, the *Securities Transfer Act* (British Columbia) and the articles of the Company after giving effect to Section 3.1(e) the former holder of such Company Shares shall be entitled to receive in exchange therefor the Consideration that such holder is entitled to receive in accordance with Section 3.1(e) hereof, less any amounts withheld pursuant to Section 5.4.

(b) Subject to Section 5.3, until surrendered as contemplated by this Section 5.1, each certificate which immediately prior to the Effective Time represented Company Shares will be deemed after the Effective Time to represent only the right to receive from the Depositary upon such surrender the Consideration that the holder of such Company Shares is entitled to receive in accordance with Section 3.1 hereof, less any amounts withheld pursuant to Section 5.4.

(c) As soon as practicable after the Effective Date, the Company will pay the amounts, less any amounts withheld pursuant to Section 5.4, to be paid to Company Optionholders and Company DSU Holders, either (i) pursuant to the normal payroll practices and procedures of the Company, or (ii) in the event that payment pursuant to the normal payroll practices and procedures of the Company is not practicable for any such holder, by cheque, wire transfer or other form of immediately available funds delivered to such Company Optionholders and Company DSU Holders, as applicable, as reflected on the registers maintained by or on behalf of the Company in respect of Company Options and Company DSUs immediately prior to the Effective Time.

(d) No holder of Company Shares, Company Options, or Company DSUs shall be entitled to receive any consideration or entitlement with respect to such Company Shares, Company Options or Company DSUs, other than any consideration or entitlement to which such holder is entitled to receive in accordance with Section 3.1, this Section 5.1 and the other terms of this Plan of Arrangement and, for greater certainty, no such holder will be entitled to receive any interest, dividends, premium or other payment in connection therewith, other than any declared but unpaid dividends.

## **5.2 Loss of Certificates**

In the event any certificate which immediately prior to the Effective Time represented any outstanding Company Shares that were acquired by the Purchaser pursuant to Section 3.1 has been lost, stolen or destroyed, upon the making of an affidavit of that fact by the former holder of such Company Shares, the Depositary will issue in exchange for such lost, stolen or destroyed certificate, the Consideration to which the former holder of such Company Shares is entitled to receive pursuant to Section 3.1 hereof in accordance with such holder's Letter of Transmittal. When authorizing such payment in relation to any lost, stolen or destroyed certificate, the former holder of such Company Shares will, as a condition precedent to the delivery of such Consideration, give a bond satisfactory to the Company, the Purchaser and the Depositary in such sum as the Purchaser may direct or otherwise indemnify the Company and the Purchaser in a manner satisfactory to the Company and the Purchaser against any claim that may be made against the Company or the Purchaser with respect to the certificate alleged to have been lost, stolen or destroyed.

## **5.3 Extinction of Rights**

(a) If any Former Company Shareholder fails to deliver to the Depositary the certificates, documents or instruments required to be delivered to the Depositary under Section 5.1 or Section 5.2 in order for such Former Company Shareholder to receive the Consideration which such former holder is entitled to receive pursuant to Section 3.1, on or before the sixth anniversary of the Effective Date, on the sixth anniversary of the Effective Date (i) such former holder will be deemed to have donated and forfeited to the Purchaser or its

successor any Consideration held by the Depositary in trust for such former holder to which such former holder is entitled and (ii) any certificate representing Company Shares formerly held by such former holder will cease to represent a claim of any nature whatsoever and will be deemed to have been surrendered to the Purchaser and will be cancelled. Neither the Company nor the Purchaser, or any of their respective successors, will be liable to any person in respect of any Consideration (including any consideration previously held by the Depositary in trust for any such former holder) which is forfeited to the Company or the Purchaser or delivered to any public official pursuant to any applicable abandoned property, escheat or similar law.

(b) Any payment made by way of cheque by the Depositary pursuant to this Plan of Arrangement that has not been deposited or has been returned to the Depositary or that otherwise remains unclaimed, in each case, on or before the sixth anniversary of the Effective Date, and any right or claim to payment hereunder that remains outstanding on the sixth anniversary of the Effective Date, shall cease to represent a right or claim of any kind or nature and the right of the holder to receive the Consideration pursuant to this Plan of Arrangement shall terminate and be deemed to be surrendered and forfeited to the Purchaser for no consideration.

#### **5.4 Withholding Rights**

The Company, the Purchaser and the Depositary will be entitled to deduct and withhold from any consideration otherwise payable to any Company Shareholder, Company Optionholder, or Company DSU Holder or any other person under this Plan of Arrangement (including any payment to Dissenting Company Shareholders) such amounts as the Company, the Purchaser or the Depositary is required to deduct and withhold with respect to such payment under the Tax Act, the United States Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder, or any provision of any provincial, state, local or foreign tax law as counsel may advise is required to be so deducted and withheld by the Company, the Purchaser or the Depositary, as the case may be. For the purposes hereof, all such withheld amounts shall be treated as having been paid to the person in respect of which such deduction and withholding was made on account of the obligation to make payment to such person hereunder, provided that such deducted or withheld amounts are actually remitted to the appropriate Governmental Authority by or on behalf of the Company, the Purchaser or the Depositary, as the case may be.

#### **5.5 No Liens**

Any exchange or transfer of securities pursuant to this Plan of Arrangement shall be free and clear of any Liens or other claims of third parties of any kind.

#### **5.6 Paramountcy**

From and after the Effective Time: (a) this Plan of Arrangement shall take precedence and priority over any and all Company Shares, Company Options, and Company DSUs issued prior to the Effective Time, (b) the rights and obligations of the Company Shareholders, the Company Optionholders, the Company DSU Holders the Company, the Purchaser, the Depositary and any transfer agent or other depositary therefor in relation thereto, shall be solely as provided for in this Plan of Arrangement, and (c) all actions, causes of action, claims or proceedings (actual or contingent and whether or not previously asserted) based on or in any way relating to any



Company Shares, Company Options, or Company DSUs shall be deemed to have been settled, compromised, released and determined without liability except as set forth in this Plan of Arrangement.

## **Article 6** **AMENDMENTS**

### **6.1 Amendments to Plan of Arrangement**

(a) The Company and the Purchaser reserve the right to amend, modify or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification or supplement must be (i) set out in writing, (ii) approved by the Purchaser and the Company, (iii) filed with the Court and, if made following the Company Meeting, approved by the Court; and (iv) communicated to or approved by the Company Securityholders if and as required by the Court.

(b) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by the Company and the Purchaser at any time prior to the Company Meeting with or without any other prior notice or communication and, if so proposed and accepted by the persons voting at the Company Meeting (other than as may be required under the Interim Order), will become part of this Plan of Arrangement for all purposes.

(c) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Company Meeting will be effective only if such amendment, modification or supplement (i) is consented to by each of the Company and the Purchaser and (ii) if required by the Court or applicable law, is consented to by Company Securityholders voting in the manner directed by the Court.

(d) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by the Purchaser provided that it concerns a matter which, in the reasonable opinion of the Purchaser, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the financial or economic interests of any Former Company Shareholder or former holder of Company Options or Company DSUs, and such amendments, modifications or supplements need not be filed with the Court or communicated to the Former Company Shareholders or former holders of Company Options or Company DSUs.

(e) The Purchaser shall be entitled to propose an amendment, modification or supplement to this Plan of Arrangement at any time prior to the Effective Time and, unless such proposal shall be adverse to the financial or economic interests of any Company Securityholders, the Company shall propose and implement such amendment, modification or supplement in accordance with the process described in paragraphs (a) to (c) of this Section 6.1, as may be applicable.

**Article 7**  
**FURTHER ASSURANCES**

Notwithstanding that the transactions and events set out herein will occur and be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the Company and the Purchaser will make, do and execute, or cause to be made, done and executed, any such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of them in order to further document or evidence any of the transactions or events set out herein.

**SCHEDULE B  
ARRANGEMENT RESOLUTION**

**RESOLUTION OF THE SHAREHOLDERS  
OF POLARIS MATERIALS CORPORATION.  
(THE “COMPANY”)**

**BE IT RESOLVED AS A SPECIAL RESOLUTION THAT:**

A. The arrangement (as it may be, or may have been, modified or amended in accordance with its terms, the “**Arrangement**”) under Division 5 of Part 9 of the *Business Corporations Act* (British Columbia) (the “**BCBCA**”) involving the Company and its securityholders, all as more particularly described and set forth in the Management Information Circular of the Company dated ●, 2017 (the “**Circular**”), is hereby authorized, approved and adopted.

B. The plan of arrangement (as it may be, or may have been, modified or amended in accordance with its terms, the “**Plan of Arrangement**”) involving the Company and its securityholders and implementing the Arrangement, the full text of which is attached as Appendix ● to the Circular is hereby authorized, approved and adopted.

C. The Arrangement Agreement (as it may be amended from time to time in accordance with its terms, the “**Arrangement Agreement**”) dated as of August 25, 2017 between the Company, 1131083 B.C. Ltd. and Vulcan Materials Company and all the transaction contemplated therein, the actions of the directors of the Company in approving the Arrangement and the Arrangement Agreement and the actions of the directors and officers of the Company in executing and delivering the Arrangement Agreement and causing the performance by the Company of its obligations thereunder are hereby confirmed, ratified, authorized and approved.

D. The Company be and is hereby authorized to apply for a final order from the Supreme Court of British Columbia to approve the Arrangement on the terms set forth in the Arrangement Agreement and the Plan of Arrangement (as they may be amended, modified or supplemented and as described in the Circular).

E. Notwithstanding that this resolution has been passed (and the Arrangement approved and agreed to) by the securityholders of the Company, or that the Arrangement has been approved by the Supreme Court of British Columbia, the directors of the Company are hereby authorized and empowered without further approval of any shareholders of the Company:

- (b) to amend the Arrangement Agreement or the Plan of Arrangement to the extent permitted by the Arrangement Agreement or Plan of Arrangement; and
- (c) subject to the terms and conditions of the Arrangement Agreement, not to proceed with the Arrangement at any time prior to the Effective Time (as defined in the Arrangement Agreement).

F. Any officer or director of the Company is hereby authorized for and on behalf of the Company to execute and deliver for filing with the Registrar under the BCBCA any and all

documents as are necessary or desirable to give effect to the Arrangement in accordance with the Arrangement Agreement or the Plan of Arrangement, such determination to be conclusively evidenced by the execution and delivery of such documents.

G. Any one director or officer of the Company is hereby authorized, empowered and instructed, acting for, in the name and on behalf of the Company, to execute or cause to be executed, under the seal of the Company or otherwise, and to deliver or to cause to be delivered, all such other documents and to do or to cause to be done all such other acts and things as in such person's opinion may be necessary or desirable in order to carry out the intent of the foregoing paragraphs of these resolutions and the matters authorized thereby, such determination to be conclusively evidenced by the execution and delivery of such document or the doing of such act or thing.

**SCHEDULE C**  
**SUPPORT AGREEMENTS**

## VOTING AGREEMENT

**THIS AGREEMENT** is made as of the \_\_\_\_ day of August, 2017.

**BETWEEN:**

**THE PERSONS LISTED ON SCHEDULE A HERETO** (collectively, the “**Securityholders**” and each individually a “**Securityholder**”)

-and-

**1131083 B.C. Ltd.**, a corporation existing under the laws of the Province of British Columbia (the “**Purchaser**”)

-and-

**Vulcan Materials Company**, a corporation existing under the laws of New Jersey, United States (the “**Purchaser Parent**”)

**WHEREAS** each Securityholder is the registered and/or direct or indirect beneficial owner of the issued and outstanding Shares, Options and DSUs (each as defined herein) of Polaris Materials Corporation (“**Polaris**”) set forth opposite such Securityholder’s name on Schedule A hereto;

**AND WHEREAS** each Securityholder understands the Purchaser, the Purchaser Parent, which wholly owns the Purchaser, and Polaris are, concurrently with the execution and delivery of this Agreement, executing and delivering the Arrangement Agreement (as defined herein) providing for the Arrangement (as defined herein);

**AND WHEREAS** this Agreement sets out the terms and conditions of the agreement of each Securityholder (i) to vote its Securityholder Securities (as defined herein) or cause the same to be voted in favour of the Arrangement Resolution (as defined herein) and (ii) to abide by the other restrictions and covenants set forth herein;

**AND WHEREAS** each Securityholder acknowledges that the Purchaser and the Purchaser Parent would not enter into the Arrangement Agreement but for the execution and delivery of this Agreement by such Securityholder;

**AND WHEREAS** the foregoing recitals are made by a Securityholder only with respect to itself and its Securityholder Securities and, for greater certainty, are not made in relation to any other Securityholder or any other Securityholder Securities;

**NOW THEREFORE** this Agreement witnesses that, in consideration of the premises and the covenants and agreements herein contained, the parties hereto agree as follows:

**ARTICLE 2**  
**INTERPRETATION**

**2.1 Definitions**

In this Agreement:

“**affiliate**” has the meaning ascribed thereto in National Instrument 45-106 – *Prospectus Exemptions*;

“**Arrangement**” means the arrangement under the provisions of Section 288 of the BCBCA on the terms and subject to the conditions set forth in the Plan of Arrangement, subject to any amendments or variations thereto made in accordance with the terms of the Arrangement Agreement or the Plan of Arrangement with the consent of Polaris and the Purchaser, each acting reasonably or made at the direction of the Court in the Final Order;

“**Arrangement Agreement**” means the arrangement agreement dated the date hereof between the Purchaser, the Purchaser Parent and Polaris, as it may be amended, supplemented, restated or otherwise modified from time to time in accordance with its terms;

“**Arrangement Resolution**” means the special resolution of the Polaris Securityholders approving the Arrangement to be considered and, if thought fit, passed by the Polaris Securityholders at Polaris Meeting, to be substantially in the form and content of Schedule B to the Arrangement Agreement;

“**BCBCA**” means the *Business Corporations Act* (British Columbia) and the regulations made thereunder, as promulgated or amended from time to time;

“**Court**” means the Supreme Court of British Columbia or other court as applicable;

“**DSU**” means a Deferred Unit issued under the DSU Plan;

“**DSU Plan**” means the Independent Director Deferred Unit Plan of Polaris dated as of April 26, 2016;

“**Effective Date**” means the date upon which the Arrangement becomes effective as provided in Section 1.1 of the Plan of Arrangement;

“**Effective Time**” has the meaning ascribed thereto in Section 1.1 of the Plan of Arrangement;

“**Final Order**” means the order of the Court approving the Arrangement under Section 291 of the BCBCA, in form and substance acceptable to the Purchaser and Polaris, each acting reasonably, after a hearing upon the procedural and substantive fairness of the terms and conditions of the Arrangement, as such order may be affirmed, amended, modified, supplemented or varied by the Court (with the consent of both Purchaser and

Polaris, each acting reasonably) at any time prior to the Effective Date or, if appealed, as affirmed or amended (provided that any such amendment, modification, supplement or variation is acceptable to both the Purchaser and Polaris, each acting reasonably) on appeal unless such appeal is withdrawn, abandoned or denied;

“**Interim Order**” means the interim order of the Court to be issued following the application therefor submitted to the Court as contemplated by Section 2.2(c) of the Arrangement Agreement, in form and substance acceptable to Polaris and the Purchaser, each acting reasonably, providing for, among other things, the calling and holding of the Polaris Meeting, as such order may be affirmed, amended, modified, supplemented or varied by the Court with the consent of both Polaris and the Purchaser, each acting reasonably;

“**Option**” means an option to acquire Shares granted pursuant to either of the Option Plans;

“**Option Plans**” means, collectively, the Stock Option Plan of Polaris dated as of April 26, 2016 and the Stock Option Plan of Polaris dated April 23, 2001;

“**Plan of Arrangement**” means the plan of arrangement substantially in the form and content set out in Schedule A to the Arrangement Agreement, as amended, modified or supplemented from time to time:

(a) in accordance with either:

- (i) the Arrangement Agreement; or
- (ii) Article 6 of the Plan of Arrangement,

with the consent of Polaris and the Purchaser, each acting reasonably; or

(b) at the direction of the Court in the Final Order;

“**Polaris Meeting**” means the special meeting of Polaris Securityholders, including any adjournment or postponement thereof, to be called and held in accordance with the Interim Order and the Arrangement Agreement to consider the Arrangement Resolution;

“**Polaris Securityholder**” means a holder of one or more Shares, Options and/or DSUs;

“**Securityholder Securities**” means all Shares and all other securities of Polaris including, but not limited to, Options and DSUs, beneficially owned or controlled or directed by the Securityholder prior to the Effective Time, including (i) all Shares issuable upon the exercise of Options or the redemption of DSUs beneficially owned or controlled or directed by the Securityholder, and (ii) all securities of Polaris or of any holding body corporate, issued or acquired in lieu of or in replacement for or in consideration of all or any of such Shares, or Options or DSUs or any interest in Polaris; and



“Shares” means common shares of Polaris.

## **2.2 Definitions in Arrangement Agreement**

All terms used in this Agreement that are not defined in Section 2.1 or elsewhere herein and that are defined in the Arrangement Agreement shall have the respective meanings ascribed to them in the Arrangement Agreement.

## **2.3 Schedules**

The following Schedules attached hereto constitute an integral part of this Agreement:

Schedule A - List of Securityholders and Securityholder Securities

### **ARTICLE 3** **COVENANTS OF THE SECURITYHOLDER**

## **3.1 General**

Each of the Securityholders severally, and not jointly or jointly and severally, hereby covenants and irrevocably agrees in favour of the Purchaser and the Purchaser Parent that, from the date hereof until the earlier of (i) the Effective Date and (ii) the termination of this Agreement in accordance with Article 5 such Securityholder will, and the Securityholder will ensure that any beneficial owner of Securityholder Securities will:

- (a) not option, sell, transfer, pledge, encumber, grant a security interest in, hypothecate or otherwise convey any Securityholder Securities, or any right or interest therein (legal or equitable), to any person or group or agree to do any of the foregoing, except pursuant to the Arrangement and the exercise of Options or the redemption of DSUs in accordance with their terms;
- (b) not grant or agree to grant any proxy or other right to vote any Securityholder Securities, or enter into any voting trust, vote pooling or other agreement with respect to the right to vote, call or requisition meetings of shareholders or give consents or approval of any kind as to the Securityholder Securities that in each case might reasonably be regarded as likely to prevent or delay the successful completion of the Arrangement or the other transactions contemplated by the Arrangement Agreement and this Agreement;
- (c) not take any other action of any kind which might reasonably be regarded as likely to reduce the success of, or delay or interfere with the completion of, the Arrangement and the other transactions contemplated by the Arrangement Agreement
- (d) vote or cause to be voted any Securityholder Securities against any proposed action by Polaris or its shareholders or affiliates or any other person which would reasonably be expected to prevent or delay the successful completion of the

Arrangement or the other transactions contemplated by the Arrangement Agreement and this Agreement;

- (e) irrevocably waive to the fullest extent permitted by law any and all rights of the Securityholder to dissent with respect to the Arrangement Resolution or any other resolution relating to the approval of the Arrangement and not exercise any such right with respect to any such resolution;
- (f) in the event that any transaction other than the Arrangement is presented for approval of or acceptance by the Polaris Securityholders, not, directly or indirectly, vote in favour of, accept, assist or otherwise further the successful completion of such transaction or purport to tender or deposit into any such transaction any of the Securityholder Securities;
- (g) not solicit, initiate, cause, knowingly encourage, or take any other action designed to facilitate, any inquiry, indication of interest or the making of any proposal that constitutes or could reasonably be expected to lead to a Acquisition Proposal;
- (h) not make any public comment or statement, written or oral, which is inconsistent with the Securityholder's obligations under this Agreement or publicly withdraw support from the transactions contemplated by the Arrangement Agreement;
- (i) hereby agree that any securities of Polaris purchased by the Securityholder in the market, by private agreement or otherwise, shall be deemed to be subject to the terms hereof as Securityholder Securities; and
- (j) take all such steps as are necessary or advisable to ensure that at the Effective Time, its Securityholder Securities will be held by such Securityholder with good and marketable title thereto, free and clear of any and all mortgages, liens, charges, restrictions, security interests, adverse claims, pledges, encumbrances and demands of any nature or kind whatsoever, and will not be subject to any shareholders' agreements, voting trust or similar agreements or any option, right or privilege (whether by law, pre-emptive or contractual) capable of becoming a shareholders' agreement, voting trust or other agreement affecting such Securityholder Securities or the ability of any holder thereof to exercise all ownership rights thereto, including the voting of any such Securityholder Securities.

provided however that nothing in this Section 2.1 will prevent the Securityholder, and solely in his or her capacity as a director or senior officer of the Company, from taking any action, on advice from counsel, required to be taken in the discharge of his or her fiduciary duty as a director or senior officer of the Company, provided that the performance of such duties as a director or senior officer may not impact the Securityholder's obligations under this Agreement, including this Section 2.1, in its capacity as a securityholder.

### **3.2 Voting of the Securityholder Securities in Favour of the Arrangement Resolution**

Each Securityholder hereby agrees with the Purchaser and Purchaser Parent that it will, on or before the tenth Business Day prior to the Polaris Meeting, duly complete and cause forms of proxy or voting instruction forms in respect of all of the Securityholder Securities, and any other documents required in accordance with the Arrangement, to be validly delivered in support of the Arrangement Resolution, and will not withdraw, amend or invalidate any such form of proxy or voting instructions form except as expressly otherwise provided in this Agreement. Each Securityholder will provide copies of each such form of proxy or voting instruction form referred to above to the Purchaser concurrently with its delivery as provided for above.

Each Securityholder hereby revokes and will take all steps necessary to effect the revocation of any and all previous proxies granted or voting instruction forms or other voting documents delivered that may conflict or be inconsistent with the matters set forth in this Agreement.

### **3.3 Reorganization of the Securityholder**

Each Securityholder shall have the right directly or indirectly to take such actions as are necessary or desirable to reorganize its capital, assets and structure as the Securityholder may reasonably determine including, without limitation, transferring some or all of the Securityholder Securities to one or more of its partners or any other Person and winding up or otherwise ceasing to exist; provided, however, that no such reorganization will be undertaken unless each Person who receives any Securityholder Securities currently owned by the Securityholder enters into a counterpart of this Agreement in relation to such shares and agrees to be bound hereby in place of the Securityholder in relation to such shares to the same extent as the Securityholder is bound hereby.

## **ARTICLE 4** **REPRESENTATIONS AND WARRANTIES**

### **4.1 Representations and Warranties of the Securityholder**

Each of the Securityholders, hereby severally, and not jointly or jointly and severally represents and warrants to and covenants with the Purchaser and Purchaser Parent as follows, and acknowledges that the Purchaser and Purchaser Parent is relying upon such representations, warranties and covenants in entering into this Agreement:

- (a) Incorporation; Authorization. If such Securityholder is a corporation or other legal entity, such Securityholder is a subsisting corporation or other entity under the laws of its incorporating jurisdiction. Such Securityholder has all necessary power, authority, capacity and right to enter into this Agreement and to carry out each of its obligations under this Agreement. This Agreement has been duly executed and delivered by such Securityholder and constitutes a legal, valid and binding agreement enforceable by the Purchaser and Purchaser Parent against such Securityholder in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy or

similar proceedings, the equitable power of the courts to stay proceedings before them and the execution of judgments and to the extent that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought.

- (b) Ownership of Shares and Other Securities. Such Securityholder is, and, subject to Section 3.3, will be immediately prior to the Effective Date, the direct or indirect beneficial owner of, or exercises control or direction over, the Securityholder Securities, with good and marketable title thereto, free and clear of any and all mortgages, liens, charges, restrictions, security interests, adverse claims, pledges, encumbrances and demands or rights of others of any nature or kind whatsoever. Such Securityholder is not a party to, bound or affected by or subject to, any charter or by-law, contract, provision, statute, regulation, judgment, order, decree or law which would in any material respect be violated, contravened, breached by, or under which any material default would occur as a result of, the execution and delivery of this Agreement or the consummation of any of the transactions provided for in this Agreement.
- (c) No Agreements. No Person has any agreement or option, or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option, for the purchase, acquisition or transfer of any of such Securityholder's Securityholder Securities, or any interest therein or right thereto, except pursuant to this Agreement.
- (d) Voting. Other than pursuant to this Agreement, none of such Securityholder's Securityholder Securities is subject to any proxy, voting trust, vote pooling or other agreement with respect to the right to vote, call meetings of shareholders or give consents or approvals of any kind.
- (e) Consents. No consent, waiver, approval, authorization, exemption, registration, licence or declaration of or by, or filing with, or notification to any Governmental Authority which has not been made or obtained is required to be made or obtained by the Securityholder in connection with:
  - (i) the execution and delivery by the Securityholder of this Agreement, the performance by the Shareholder of its obligations hereunder or enforcement against the Securityholder of this Agreement; or
  - (ii) the consummation of any transactions by the Securityholder provided for herein, except for, in either case, the filing of insider trading reports under applicable securities legislation.
- (f) Legal Proceedings. There are no legal proceedings in progress or pending before any Governmental Authority or threatened against such Securityholder or any of its affiliates that would adversely affect in any manner the ability of such Securityholder to enter into this Agreement and to perform its obligations hereunder or the title of such Securityholder to any of its Securityholder Securities

and there is no judgment, decree or order against such Securityholder that would adversely affect in any manner the ability of the Securityholder to enter into this Agreement and to perform its obligations hereunder or the title of such Securityholder to any of its Securityholder Securities.

- (g) No Other Securities. The only securities of Polaris beneficially owned or controlled, directly or indirectly, by such Securityholder are its Securityholder Securities and such Securityholder has no other agreement or option, or right or privilege (whether by law, pre emptive or contractual) capable of becoming an agreement or option, for the purchase or acquisition by such Securityholder or transfer to such Securityholder of additional securities of Polaris.

#### **4.2 Representations and Warranties of the Purchaser and the Purchaser Parent**

Each of the Purchaser and the Purchaser Parent hereby represents and warrants to each Securityholder as follows, and acknowledges that each Securityholder is relying upon such representations, warranties and covenants in entering into this Agreement:

- (a) Authorization. It has the requisite corporate power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement by the Purchaser and the Purchaser Parent and the consummation by the Purchaser and the Purchaser Parent of the transactions contemplated hereunder have been duly authorized by all necessary corporate action on the part of the Purchaser and the Purchaser Parent and no other internal proceedings on the part of the Purchaser and the Purchaser Parent are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Purchaser and the Purchaser Parent and constitutes a legal, valid and binding agreement enforceable by the Securityholder against the Purchaser and the Purchaser Parent in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy or similar proceedings, the equitable power of the courts to stay proceedings before them and the execution of judgments and to the extent that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought. The Purchaser and the Purchaser Parent is not a party to, bound or affected by or subject to, any charter or by-law, contract, provision, statute, regulation, judgment, order, decree or law which would in any material respect be violated, contravened, breached by, or under which any material default would occur as a result of, the execution and delivery of this Agreement or the consummation of any of the transactions provided for in this Agreement; and
- (b) Consents. No consent, waiver, approval, authorization, exemption, registration, license or declaration of or by, or filing with, or notice to, any Governmental Authority which has not been received or made is required to be received or made by the Purchaser and the Purchaser Parent in connection with:

- (i) the execution and delivery by the Purchaser and the Purchaser Parent of this Agreement, the performance of the obligations of the Purchaser and the Purchaser Parent hereunder or enforcement against the Purchaser and the Purchaser Parent of this Agreement; or
- (ii) the consummation of any transactions by the Purchaser and the Purchaser Parent provided for herein, except for, in either case, the filing of insider trading reports under applicable securities legislation,

except as provided in the Arrangement Agreement.

## **ARTICLE 5** **TERMINATION**

### **5.1 Automatic Termination**

Unless extended by mutual agreement of the Securityholder, on the one hand, and the Purchaser and the Purchaser Parent, on the other hand, this Agreement shall automatically terminate on the Outside Date. In addition, this Agreement shall automatically terminate:

- (a) at the Effective Time; or
- (b) in the event that the Arrangement Agreement is terminated by any party thereto in accordance with its terms.

### **5.2 Agreement to Terminate**

This Agreement may be terminated by a written instrument executed by each of the Purchaser and the Purchaser Parent and the Securityholder.

### **5.3 Effect of Termination**

If this Agreement is terminated in accordance with this Article 5, the provisions of this Agreement will become void and no party shall have liability to any other party, except in respect of a breach of the representations, warranties, obligations, terms or conditions of this Agreement which occurred prior to such termination in which case any party to this Agreement shall be entitled to pursue any and all remedies at law or equity which may be available to it.

## **ARTICLE 6** **GENERAL**

### **6.1 Further Assurances**

Each of the Securityholders, and the Purchaser and the Purchaser Parent will, from time to time, execute and deliver all such further documents and instruments and do all such acts and things as the other party may reasonably require (at the requesting party's cost)

to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

**6.2 No Effect on Representations and Warranties**

No investigations made by or on behalf of the Purchaser and the Purchaser Parent or any of its authorized agents at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation, warranty or covenant made by the Securityholder herein or pursuant hereto.

No investigations made by or on behalf of the Securityholder or any of its authorized agents at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation, warranty or covenant made by the Purchaser and the Purchaser Parent herein or pursuant hereto.

**6.3 Disclosure** Except as required by applicable laws or regulations or by any Governmental Authority or in accordance with the requirements of any stock exchange, no Securityholder shall make any public announcement or statement with respect to this Agreement without the approval of the Purchaser and Purchaser Parent which shall not be unreasonably withheld or delayed. Notwithstanding the above, the parties agree and consent to the existence and terms and conditions of this Agreement being disclosed by Purchaser and Purchaser Parent in any news release or information circular relating to the Arrangement Agreement, and the filing of a copy thereof by Polaris at [www.sedar.com](http://www.sedar.com).

**6.4 Assignment; Enurement**

The Purchaser and the Purchaser Parent may assign all or part of its rights under this Agreement to a direct or indirect wholly owned subsidiary of the Purchaser and the Purchaser Parent, but, if such assignment takes place, the Purchaser and the Purchaser Parent, shall continue to be liable jointly and severally with the assignee for any obligations hereunder. This Agreement shall not be otherwise assignable by any party hereto without the prior written consent of the other party hereto, which consent may not be unreasonably withheld, conditioned or delayed. The provisions of this Agreement will be binding upon and enure to the benefit of the parties and their respective heirs, administrators, executors, legal representatives, successors and permitted assigns.

**6.5 Time**

Time shall be of the essence of this Agreement.

**6.6 Currency**

All sums of money referred to in this Agreement shall mean Canadian funds.

**6.7 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein (without regard to conflict of laws principles).

**6.8 Entire Agreement**

This Agreement, including the schedules hereto and the provisions of the Arrangement Agreement incorporated herein by reference, constitutes the entire agreement and understanding between and among the parties hereto with respect to the subject matter hereof and supersedes any prior agreement, representation or understanding with respect thereto.

**6.9 Amendments**

This Agreement may not be modified, amended, altered or supplemented, except upon the execution and delivery of a written agreement executed by all of the parties hereto.

**6.10 Notices**

Any notice, request, consent, agreement or approval which may or is required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given or made if delivered, or sent by telecopier or email, in the case of:

- (a) The Purchaser and the Purchaser Parent, addressed as follows:  
Vulcan Materials Company  
1200 Urban Center Drive  
Birmingham, Alabama 35223  
E-Mail: perkinsj@vmcmail.com  
Attention: Jerry Perkins, General Counsel and Secretary

with a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Facsimile: 212-403-2000  
E-Mail: IKirman@wlrk.com  
Attention: Igor Kirman

- (b) the Securityholders at the addresses shown on the attached Schedule A

with a copy (which shall not constitute notice) to:

Fasken Martineau DuMoulin LLP  
2900-550 Burrard Street  
Vancouver, BC



V6C 0A3

Attention: Georald Ingborg  
Facsimile: 604-632-3225  
Email: [gingborg@fasken.com](mailto:gingborg@fasken.com)

or to such other address as the relevant person may from time to time advise by notice in writing given pursuant to this Section. The date of receipt of any such notice, request, consent, agreement or approval shall be deemed to be the date of delivery or sending thereof if sent or delivered during normal business hours on a Business Day at the place of receipt and, otherwise, on the next following Business Day.

**6.11 Specific Performance and other Equitable Rights**

It is recognized and acknowledged that a breach by any party of any material obligations contained in this Agreement will cause the other party to sustain injury for which it would not have an adequate remedy at law for money damages. Accordingly, in the event of any such breach, any aggrieved party shall be entitled to the remedy of specific performance of such obligations and interlocutory, preliminary and permanent injunctive and other equitable relief in addition to any other remedy to which it may be entitled, at law or in equity.

**6.12 Independent Legal Advice**

Each of the parties hereby acknowledges that it has been afforded the opportunity to obtain independent legal advice and confirms by the execution and delivery of this Agreement that they have either done so or waived their right to do so in connection with the entering into of this Agreement. Each of the parties hereby acknowledges that it fully understands this Agreement.

**6.13 Severability**

If, in any jurisdiction, any provision of this Agreement or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.

**6.14 Expenses**

Each of the parties shall pay its respective legal, financial advisory and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed or prepared pursuant hereto and any other costs and expenses whatsoever and howsoever incurred.

**6.15 Counterparts**

This Agreement may be executed in one or more counterparts which together shall be deemed to constitute one valid and binding agreement, and delivery of the counterparts may be effected by means of telecopier or other electronic transmission.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date first written above.

**SIGNED, SEALED AND** )  
**DELIVERED** in the presence of: )

)  
)  
)  
)  
)  
)

\_\_\_\_\_  
Name:

)  
)

\_\_\_\_\_  
Print  
Name:

Executed as of the date first written above.

**1131083 B.C. Ltd.**

By: \_\_\_\_\_  
Name:  
Title:

**Vulcan Materials Company**

By: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE A

### Securityholder

Name of Securityholder	Address of Securityholder	Number of Shares, Options and DSUs
Terrence Lyons	[Redacted]	<ul style="list-style-type: none"><li>• Common Shares: 50,000</li><li>• Options: 372,000</li><li>• DSUs: 65,000</li></ul>
Herbert Wilson	[Redacted]	<ul style="list-style-type: none"><li>• Common Shares: 353,825</li><li>• Options: 903,750</li><li>• DSUs: 0</li></ul>
Eugene Martineau	[Redacted]	<ul style="list-style-type: none"><li>• Common Shares: 20,000</li><li>• Options: 300,000</li><li>• DSUs: 65,000</li></ul>
Marco Romero	[Redacted]	<ul style="list-style-type: none"><li>• Common Shares: 196,488</li><li>• Options: 433,000</li><li>• DSUs: 65,000</li></ul>
Lenard Boggio	[Redacted]	<ul style="list-style-type: none"><li>• Common Shares: 10,000</li><li>• Options: 200,000</li><li>• DSUs: 65,000</li></ul>
Kenneth Palko	[Redacted]	<ul style="list-style-type: none"><li>• Common Shares: 24,900</li><li>• Options: 665,000</li><li>• DSUs: 0</li></ul>
Darren McDonald	[Redacted]	<ul style="list-style-type: none"><li>• Common Shares: 5,000</li><li>• Options: 455,000</li><li>• DSUs: 0</li></ul>
Scott Dryden	[Redacted]	<ul style="list-style-type: none"><li>• Common Shares: 0</li><li>• Options: 235,000</li><li>• DSUs: 0</li></ul>
Nicholas Van Dyk	[Redacted]	<ul style="list-style-type: none"><li>• Common Shares: 8,400</li><li>• Options: 100,000</li><li>• DSUs: 0</li></ul>