

COURT FILE NUMBER 2001-07984

COURT COURT OF QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

Form 49
Rule 13.19
Clerk's Stamp

IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, RSC 1985, c
C-36, as amended

AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF
NORTHERN SILICA CORPORATION,
HEEMSKIRK MINING PTY. LTD., CUSTOM
BULK SERVICES INC., HEEMSKIRK
CANADA LIMITED, HEEMSKIRK CANADA
HOLDINGS LIMITED and HCA MOUNTAIN
MINERALS (MOBERLY) LIMITED

APPLICANTS QMETCO LIMITED and TAURUS RESOURCES
NO. 2 B.V.

RESPONDENTS NORTHERN SILICA CORPORATION,
HEEMSKIRK MINING PTY. LTD., CUSTOM
BULK SERVICES INC., HEEMSKIRK
CANADA LIMITED, HEEMSKIRK CANADA
HOLDINGS LIMITED and HCA MOUNTAIN
MINERALS (MOBERLY) LIMITED

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

McMillan LLP

Suite 1700, 421 - 7 Avenue S.W.

Calgary, AB T2P 4K9

Phone: 403-531-4700

Fax: 403-531-4720

Attention : Adam Maerov

Phone: 403-215-2752

Email: adam.maerov@mcmillan.ca

Kourtney Rylands

Phone: 403-355-3326

Email: kourtney.rylands@mcmillan.ca

File No. 273913

AFFIDAVIT OF JERRAD BLANCHARD**Sworn October 20, 2020**

I, Jerrad Blanchard, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY THAT:

A. INTRODUCTION

1. I am the Chief Financial Officer of Northern Silica Corporation (“NSC”), Custom Bulk Services Inc. (“Custom Bulk”), Heemskirk Canada Limited (“Heemskirk Canada”), Heemskirk Canada Holdings Limited (“Heemskirk Holdings”) and HCA Mountain Minerals (Moberly) Limited (“HCA Moberly”, and collectively with Heemskirk Mining Pty. Ltd., the “NSC Companies”).
2. The background to this proceeding and the business of the NSC Companies is described in detail in the affidavit of Martin Boland, sworn June 26, 2020 (the “Boland Affidavit”). A copy of the Boland Affidavit without exhibits is attached as **Exhibit “A”**.
3. I swear this affidavit further to my affidavit sworn in the within action on September 4, 2020 (the “APA Approval Affidavit”). A copy of the APA Approval Affidavit, without exhibits, is attached as **Exhibit “B”**.
4. I am authorized to swear this affidavit on behalf of the NSC Companies and have personal knowledge of the facts hereinafter deposed except where such facts are stated to be on information and belief, and in such cases, I verily believe them to be true.
5. In preparing this affidavit, I have consulted with legal advisors of the NSC Companies and other members of NSC’s management team.
6. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Approval and Vesting Order granted on September 11, 2020 (the “Approval and Vesting Order”).

7. This affidavit is sworn in support of an application by the NSC Companies pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "CCAA") for an order substantially in the form attached as **Schedule "A"** (the "New Facility Approval Order") to the application filed concurrently with this affidavit, granting certain relief, including:
- (a) authorizing and empowering HCA Moberly to obtain and borrow under a credit facility pursuant to the New Facility Agreement (as defined below) among HCA Moberly as borrower and QMetco Limited ("QMetco") as lender in order to repay HCA Moberly's indebtedness outstanding to QMetco in the amount of CAD\$15,500,000.00 (the "New Loan Amount") under the Existing Facility Agreement (as defined below);
 - (b) ordering that borrowings under the credit facility granted pursuant to the New Facility Agreement shall:
 - (i) not exceed the New Loan Amount;
 - (ii) notwithstanding the date of execution of the New Facility Agreement or the date of any advance, not constitute a post-filing obligation of HCA Moberly; and
 - (iii) have the same priority as the borrowings under the credit facility under the Existing Facility Agreement;
 - (c) authorizing and empowering HCA Moberly to execute and deliver the New Facility Agreement and such credit agreements and other definitive documents (collectively, the "Definitive Documents") as are contemplated by the New Facility Agreement or as may be reasonably required by QMetco pursuant to the terms thereof,
 - (d) authorizing and directing HCA Moberly to pay and perform all of its indebtedness, interest, fees, liabilities, and obligations to QMetco under and pursuant to the New

Facility Agreement and the Definitive Documents as and when the same become due and are to be performed;

- (e) ordering that the New Facility Agreement and the Definitive Documents shall be binding on any trustee in bankruptcy that may be appointed in respect of HCA Moberly and shall not be void or voidable by creditors of HCA Moberly;
- (f) varying the Approval and Vesting Order by amending the parcel identifier number in paragraph 9(b)(i) of the Approval and Vesting Order from 029-224-851 to 029-224-861; and
- (a) such further relief as this Court deems just.

B. OVERVIEW OF THE CCAA PROCEEDINGS

8. On June 30, 2020, QMetco and Taurus Resources No. 2 B.V. (“Taurus”) applied for and were granted an initial order in respect of the NSC Companies, which initial order was amended and restated on July 10, 2020 (together, the “Initial Order”).
9. QMetco and Taurus (together, the “Secured Lenders”) applied for relief under the CCAA in their capacity as secured lenders of certain of the Debtors. HCA Moberly is indebted to QMetco pursuant to the HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement dated December 6, 2019 between HCA Moberly as borrower and QMetco as lender (the “Existing Facility Agreement”).
10. On July 10, 2020, the NSC Companies applied for and were granted an amended and restated initial order (the “Initial Order”) that, *inter alia*, approved an interim financing agreement with Vitreo Minerals Ltd. (the “Vitreo”), an affiliate of the Secured Lenders, and granted an Interim Lender’s Charge (as defined in the Initial Order).
11. On July 27, 2020, the NSC Companies applied for and were granted the SISP Order that, *inter alia*:
 - (a) approved the SISP and the SISP Procedures; and

- (b) approved the stalking horse bid made by Vitreo pursuant to the APA, approved the APA and authorized the NSC Companies to execute the APA.
12. On September 11, 2020, the NSC Companies applied for and were granted the Approval and Vesting Order that, *inter alia*:
- (a) terminated the SISP;
 - (b) approved the stalking horse APA submitted by Vitreo as the Successful Bid; and
 - (c) authorized the Vendors (as defined in the APA) to take such additional steps and execute such additional agreements, contracts, deeds bills of sale, transfers or any other document as may be necessary or desirable for completion of the transactions contemplated by the APA.

C. THE SALE TRANSACTION

13. Pursuant to the Asset Purchase Agreement dated July 21, 2020 (the “APA”) between the Vendors and Vitreo, which agreement was approved by the Court pursuant to the Approval and Vesting Order, Vitreo purchased the majority of the assets of certain of the NSC Companies.
14. Section 11.1 of the APA provides that:
- The Sellers shall effect such reorganization of their respective businesses, operations, subsidiaries and assets and shall cooperate in the transfer or assignment by the Buyer and its affiliates of the Senior Secured Claims Amount, or any portion thereof, or such other transactions (each, a “Pre-Closing Reorganization”) as the Buyer may reasonably request prior to the Closing Date.
15. Pursuant to the terms of the APA, the Senior Secured Claims Amount includes a portion of the indebtedness outstanding under the Existing Facility Agreement.

16. Since the granting of the Approval and Vesting Order the NSC Companies have been working with the purchaser, Vitreo, to close the transactions contemplated by the APA, which closing was originally scheduled for October 20, 2020.
17. On Friday October 16, 2020, Vitreo requested that HCA Moberly execute an Unsecured CAD Facility Agreement among HCA Moberly as borrower and QMetco as lender (the “New Facility Agreement”) in order to repay indebtedness outstanding to QMetco under the HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement dated December 6, 2019 between HCA Moberly as borrower and QMetco as lender (the “Existing Facility Agreement”). An unexecuted copy of the New Facility Agreement and an executed copy of the Existing Facility Agreement are attached as **Exhibits “C” and “D”** respectively. I believe that the final executed New Facility Agreement will be substantially in the form attached.
18. I am advised by counsel for Vitreo, Cassels Brock and Blackwell LLP, that the repayment of the indebtedness under the Existing Facility Agreement using the credit facility granted under the New Facility Agreement is an important and necessary step in the organization of Vitreo’s business operations which is required to close the transactions contemplated by the APA.
19. The terms of the New Facility Agreement and the New Facility Approval Order sought by the NSC Companies authorizing the New Facility Agreement indicate that:
 - (a) the repayment terms of the New Facility Agreement are not less favourable to HCA Moberly than those under the Existing Facility Agreement;
 - (b) the borrowings under the New Facility Agreement would have the same priority as the borrowings under the Existing Facility Agreement; and
 - (c) the borrowings under the New Facility Agreement would not exceed the New Loan Amount.
20. The transactions contemplated by the New Facility Agreement constitute a purely administrative step required in connection with the closing of the transactions contemplated

by the APA. I do not believe that the terms of the New Facility Agreement prejudice any stakeholder of HCA Moberly or the other NSC Companies.

21. However, pursuant to paragraph 9 of the Initial Order, the NSC Companies are directed, until further Order of the Court:
 - (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Debtors to any of their creditors as of the date of this Order;
 - (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and
 - (c) not to grant credit or incur liabilities except in the ordinary course of the Business.
22. In order to facilitate the closing of the transactions contemplated by the Court approved APA, the NSC Companies are seeking an Order authorizing HCA Moberly to enter into the New Facility Agreement and perform its obligations thereunder.

D. Varying the Approval and Vesting Order

23. Paragraph 9(b)(i) of the Approval and Vesting Order inadvertently referenced an incorrect Parcel Identifier number in the Order.
24. The Parcel Identifier number in the legal description of the lands should be 029-224-861, not 029-224-851. Other references to the Parcel Identifier number in the Order are correct, as seen on page 17 of Schedule B to the Order.
25. The error is a typographical one and should be corrected.
26. The variation of the Approval and Vesting Order to correct the error does not change the substance of the Order nor does it prejudice any stakeholders.

CONCLUSION

27. The APA was approved by the Court pursuant to the Approval and Vesting Order.

Commissioner for Oaths in and for Alberta

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Jerrad Blanchard

EXHIBIT “A”

This is Exhibit “A” referred to in the Affidavit of
JERRAD BLANCHARD
Sworn before me this 20th day of October, 2020

COMMISSIONER FOR OATHS IN AND FOR ALBERTA

Clerk's Stamp:



COURT FILE NUMBER
COURT
JUDICIAL CENTRE OF

2001 07984

COURT OF QUEEN'S BENCH OF ALBERTA
CALGARY

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

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF NORTHERN SILICA
CORPORATION, HEEMSKIRK MINING PTY. LTD.,
CUSTOM BULK SERVICES INC., HEEMSKIRK CANADA
LIMITED, HEEMSKIRK CANADA HOLDINGS LIMITED,
and HCA MOUNTAIN MINERALS (MOBERLY) LIMITED

APPLICANTS
RESPONDENTS

QMETCO LIMITED and TAURUS RESOURCES NO. 2 B.V.
NORTHERN SILICA CORPORATION, HEEMSKIRK
MINING PTY. LTD., CUSTOM BULK SERVICES INC.,
HEEMSKIRK CANADA LIMITED, HEEMSKIRK CANADA
HOLDINGS LIMITED, and HCA MOUNTAIN MINERALS
(MOBERLY) LIMITED

DOCUMENT
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT:

AFFIDAVIT

Cassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West
888 - 3rd Street SW
Calgary, AB T2P 5C5

Solicitor: Jeffrey Oliver
Telephone: 403-351-2920
Facsimile: 403-648-1151
Email: joliver@cassels.com

File Number: 54614-1

AFFIDAVIT OF:
SWORN ON:

Martin Boland
June 26, 2020

I, Martin Boland, of the City of Melbourne in the State of Victoria, Australia SWEAR AND SAY
THAT:

A. INTRODUCTION

1. I am a director of Taurus Funds Management Pty Limited, an affiliate of the moving parties, QMetco Limited ("**QMetco**") and Taurus Resources No. 2 B.V. ("**Taurus**" and together with QMetco, the "**Moving Parties**").
2. The Moving Parties are part of a group of related companies that provide financing solutions to global mid-tier and junior mining companies, including to the respondents. The respondents, who I collectively refer to as the NSC Companies (as defined below), operate an integrated silica mining and transport business from facilities in Alberta and British Columbia.
3. I have been a member of the Moving Parties' internal working group responsible for advancing senior credit facilities to the NSC Companies and in that capacity I have gained knowledge of the NSC Companies' business, operations and financial circumstances. I am authorized to make this affidavit on behalf of the Moving Parties and have personal knowledge of the facts hereinafter deposed to except where such facts are stated to be based upon information and belief, and in such cases I verily believe them to be true.
4. Before June 18, 2020, I was also a director of Northern Silica Corporation ("**NSC**"), the ultimate corporate parent of the NSC Companies, and in that capacity I gained extensive knowledge of the business, operations and financial circumstances of the NSC Companies. I am presently a director of Heemskirk Mining Pty. Ltd. ("**Heemskirk Australia**").
5. This affidavit is sworn in support of an originating application by the Moving Parties pursuant to the *Companies' Creditors Arrangement Act*, RSC, c C-36, as amended (the "**CCAA**"). The Moving Parties seek an order (the "**Initial Order**") in respect of the NSC Companies substantially in the form attached as Schedule "A" to the originating application filed concurrently with this affidavit, granting relief that is reasonably necessary for the continued operations of the NSC Companies within an initial 10-day stay period, including:
 - (a) declaring that each of the NSC Companies are companies to which the CCAA applies;

- (b) appointing Alvarez & Marsal Canada Inc. ("**Alvarez**") as Monitor in these CCAA proceedings to monitor the NSC Companies' business and affairs (in such capacity, the "**Monitor**");
 - (c) granting a stay of proceedings in respect of the NSC Companies until July 10, 2020, subject to further Order of the Court;
 - (d) authorizing the NSC Companies to pay all reasonable ordinary course operational expenses incurred by the NSC Companies prior to, on or after the commencement of these proceedings;
 - (e) granting an administration charge (the "**Administration Charge**") over all of the assets and undertakings of the NSC Companies (the "**Property**"), which is intended to be increased with this Court's approval at a subsequent hearing prior to the expiry of the initial 10-day stay period (the "**Second Hearing**"), to secure the payment of the fees of the proposed Monitor, counsel to the proposed Monitor, and counsel to the NSC Companies; and
 - (f) granting a directors' and officers' charge (the "**D&O Charge**") over the Property to indemnify the directors and officers of the NSC Companies in respect of liabilities they may incur during the CCAA proceedings in their capacities as directors and officers.
6. Based on my understanding of the matters deposed to herein I believe the facts relating to the NSC Companies' financial and other obligations, are correct.
7. If the above relief is granted as sought, I expect that the NSC Companies will return before this Court at the Second Hearing to seek further relief to continue the CCAA proceeding, including an extension of the stay of proceedings, authorization for the NSC Companies to obtain interim financing, and the granting of a priority charge over the Property to secure the NSC Companies' borrowings under an interim financing facility.
8. Unless otherwise indicated, all amounts stated in this affidavit are in Canadian dollars.

B. CORPORATE STRUCTURE AND BUSINESS OVERVIEW

Corporate Structure

6. NSC is an Alberta corporation with a registered office address of 1900, 520 – 3rd Avenue SW, Calgary, AB T2P 0R3. NSC is the sole shareholder and parent company of Heemskirk Australia, an Australian corporation that conducts business in Canada.
7. Heemskirk Australia is the direct or indirect corporate parent of Custom Bulk Services Inc. (“**Custom Bulk**”), Heemskirk Canada Limited (“**Heemskirk Canada**”), Heemskirk Canada Holdings Limited (“**Heemskirk Holdings**”) and HCA Mountain Minerals (Moberly) Limited (“**HCA Moberly**”) (collectively, the “**Heemskirk Subsidiaries**” and together with NSC and Heemskirk Australia, the “**NSC Companies**”).
8. The NSC Companies are all privately held corporations. The corporate structure of the NSC Companies is set out in the following table:

Entity	Jurisdiction	Shareholders
NSC	Alberta	Various shareholders as described further below
Heemskirk Australia	Australia	NSC (100%)
Heemskirk Canada	Alberta	Heemskirk Australia (100%)
Heemskirk Holdings	British Columbia	Heemskirk Australia (100%)
Custom Bulk	Alberta	Heemskirk Canada (100%)
HCA Moberly	British Columbia	Heemskirk Canada (100%)

An organizational chart of the NSC Companies is attached hereto as **Exhibit “A”**.

9. The NSC Companies operate integrated and intertwined silica mining and transport businesses, though the majority of their operations have been suspended since February 2020, as further described below. The NSC Companies each own various assets used in their joint business operations. Prior to the suspension of their mining and processing operations, the NSC Companies collectively employed 51 employees. Currently, the NSC Companies collectively employ 13 employees.
10. The NSC Companies’ corporate, financial and accounting records are located in Calgary, Alberta. The majority of executive management and administrative support is provided from the NSC Companies’ head office in Calgary.

History of the Moberly Plant

11. HCA Moberly operated the Moberly silica mine located near Golden, British Columbia (the **"Moberly Plant"**) until February 2020. The Moberly Plant mines and processes silica sand from a high-grade silica deposit that has recently been redeveloped by the NSC Companies with a new processing facility capable of producing frac sand products predominantly used in the oil and gas industry. The Moberly Plant is situated on land owned by Heemskirk Holdings.
12. In 1980, Mountain Minerals Co. Ltd. (**"MMCL"**) began mining, crushing and delivering high purity silica from the Moberly silica deposit to a large glass container manufacturing plant located in Lavington, British Columbia (the **"Lavington Plant"**) owned by Consumers Glass Inc. (**"CGI"**).
13. In 2002 the Lavington Plant was acquired by Owens Illinois, one of the world's largest glass manufacturers and on June 30, 2005, MMCL was acquired by Heemskirk Australia.
14. On October 31, 2008, Owens Illinois closed the Lavington Plant. As a result of the closure, the primary source of revenue for the Moberly silica operations was eliminated.

Acquisition of Heemskirk Australia

15. Heemskirk Australia was previously a public corporation listed on the Australian Stock Exchange, but has been delisted since June 21, 2017. All of the shares of Heemskirk Australia were acquired by NSC in July 2017.
16. The Moberly Plant had been operated by HCA Moberly since the acquisition in 2017 until its closure due to adverse economic conditions in February 2020.
17. Since acquiring the shares of Heemskirk Australia, NSC has invested approximately \$69,599,422 into the Moberly Plant to redevelop it and increase its production capabilities.
18. The Moberly Plant consists of the following 6 distinct areas of operation:
 - (a) portable crushing plant;
 - (b) pre-screen and crushing;
 - (c) wet process;
 - (d) drying and finishing;

- (e) fines processing and water clarification; and
 - (f) storage and load-out of silica.
19. When it was operating, operations at the Moberly Plant included blasting and hauling raw silica for processing. After being processed the majority of silica was moved to the NSC Companies' Penhold Facility (as defined below) for sales to the frac sand market in Alberta with limited quantities sold directly to customers at the mine gate.

Penhold Transloading Facility

20. In addition to the Moberly Plant, the company acquired a transloading facility in Penhold, Alberta (the "**Penhold Facility**") when it purchased the Custom Bulk business in February 2018.
21. Transloading is the process of transferring a shipment from one mode of transportation to another. The Penhold Facility is located directly on the Canadian Pacific Rail ("**CPR**") main haul line and was designed to transport various products to same. The Penhold Facility features upgraded and specialized equipment, including certified scaling legal for trade, an accurate inventory tracking system, a dust collection system, and a noise control system.
22. The Penhold Facility was acquired with the intention of using it to receive frac sand by rail from the Moberly Plant. However, in June 2018, there was a CPR derailment near the Moberly Plant, which damaged the existing rail switch to access the facility. The cost to replace the dated rail switch was estimated at \$4.5 million, which in the current economic environment, was cost prohibitive.
23. After the derailment and damage to the rail switch needed to access the Moberly Plant, the NSC Companies were unable to send silica from the Moberly Plant via rail. Instead, since June of 2018 silica has been sent via truck from the Moberly Plant to the Penhold Facility.
24. While the Penhold Facility does not receive silica from the Moberly Plant via rail (and therefore is not currently operating as originally intended), the Penhold Facility has become a necessary and integral part of the NSC Companies' business because it is strategically placed to receive silica from the Moberly Plant via truck, to store the silica, and then to transport the silica to wider markets via rail. Without the Penhold Facility and

direct rail access, the Moberly Plant would have no ability to store and distribute product at a proximal location to its target market. Timing, storage and distribution of materials are critically essential to serving clients in the frac sand market, therefore, Moberly product could not be readily marketed without a strategically located storage and distribution facility.

25. Since the shut-down of the Moberly Plant, the Penhold Facility has been used to store silica and has been used to transload frac sand from third parties to current clients.
26. Since the closure of the Moberly Plant, the NSC Companies have also explored using the Penhold Facility for the storage and transloading of agricultural materials.

C. CHALLENGES FACED BY THE NORTH AMERICAN FRAC SAND INDUSTRY

27. The NSC Companies produce frac sand used in oil and natural gas extraction.
28. Frac sand price and demand have been trending downward since early 2019. Intense competition from both in-basin and Wisconsin based sand suppliers has resulted in lower prices. These factors have led to a wave of bankruptcies of frac sand companies since mid-2019.
29. In addition to these significant market pressures, the Moberly Plant does not have the production capacity to commit months of production to a single large completion job. Further, logistics and the expense of delivery by truck (instead of via rail) beyond immediate geography has made sales from the Moberly Plant uneconomic.
30. In early 2020 the oil price war between Saudi Arabia and Russia and the emergence of the COVID-19 pandemic caused the price of oil to fall to unprecedented low levels. The price of Western Canadian Select oil has recovered slightly, but the price of oil remains low and volatile and has continued to affect investment interest in the Alberta oil and gas market. This has led to an immediate knock-on effect in the frac sand industry.
31. Throughout the fourth quarter of 2019 and the first quarter of 2020, the price of frac sand commanded by the NSC Companies was less than the cost for the NSC Companies to produce and ship the product.

32. As a result of the difficulties experienced by the NSC Companies, operations at the Moberly Plant were shut down in late February of 2020. The NSC Companies also transitioned the Penhold Facility to store and ship agricultural products for customers.
33. The NSC Companies have also been investigating diversification possibilities which could allow them to repurpose the Moberly Plant to provide product to industries other than the oil and gas industry, however, such investigations have not concluded and will require further investment in order for the companies to pursue a repurposing of the Moberly Plant.

D. LIABILITIES

Loan Agreements

34. The NSC Companies collectively owe \$81.6 million pursuant to various loan agreements, as set out below (collectively, the “**Loan Agreements**”):

Borrower	Lender	Amount Outstanding	Security Agreement
HCA Moberly	Taurus	\$53.2 million	Yes
HCA Moberly	First Samuel Limited (“ First Samuel ”)	\$5.6 million	No
HCA Moberly	QMetco	\$21.5 million	Yes
Custom Bulk	Alberta Treasury Branches (“ ATB ”)	\$1.3 million	Yes

35. On June 11, 2020, the board of directors of NSC received notice of a share transfer (the “**Rabinov Share Transfer Notice**”), pursuant to which a corporation controlled by an existing shareholder named Marc Rabinov (“**Rabinov**”) would become the beneficial holder of 40.06% of the issued and outstanding shares of NSC (the “**Rabinov Share Transfer**”). The Rabinov Share Transfer Notice also stated that, pursuant to section 4.2(d) of the Amended and Restated Unanimous Shareholders’ Agreement of NSC dated May 18, 2017 (the “**NSC USA**”), Rabinov’s greater than 40% interest in NSC entitled Rabinov to appoint Philip Katz (“**Katz**”) and Jeremy Katz as directors of NSC. A copy of the NSC USA is attached hereto as **Exhibit “B”**.
36. As of June 26, 2020, the Rabinov Share Transfer had not been accepted by Computershare Investor Services Inc. (“**Computershare**”), the transfer agent of NSC. As a result, Rabinov is not yet entitled to appoint directors pursuant to the NSC USA.

37. As of June 26, 2020, NSC had 1,172,321,433 common shares issued and outstanding. Shareholders of NSC with significant holdings include:
- (a) Taurus with just over 50% of outstanding common shares; and
 - (b) First Samuel with approximately 39% of the outstanding common shares.
38. It is anticipated that if the Rabinov Share Transfer closes, shareholders of NSC with significant holdings are anticipated to include:
- (a) Taurus with just over 50% of outstanding common shares; and
 - (b) Rabinov with approximately 42% of the outstanding common shares, which includes his pre-existing shareholdings.
39. As will be discussed further below, pursuant to the NSC USA, shareholders holding 20% or more of the outstanding common shares of NSC are entitled to appoint a director to the board of NSC at a duly constituted shareholders meeting. However, I have been advised that the process to transfer the shares has not yet been completed by Computershare and First Samuel. Therefore, the Rabinov Share Transfer has not yet closed and Rabinov is not yet a shareholder with 20% or more of the common shares of NSC entitled to appoint a director under the USA.

Taurus Indebtedness

40. The NSC Companies' most significant secured creditor is Taurus, which, as discussed above, is also a significant shareholder of NSC. Taurus, together with its wholly owned subsidiary, QMetco, are the largest secured creditors of the NSC Companies.
41. On July 15, 2015, Taurus, as lender, and HCA Moberly, as borrower, entered into a secured facility agreement in the aggregate amount of US\$40 million (the "**Original Loan Agreement**") as amended and novated by an agreement dated February 10, 2016 (the "**First Amendment Agreement**"), and as amended by an amending and accession agreement dated December 21, 2018 (the "**Second Amending Agreement**") (collectively, the "**Taurus Loan Agreement**"). Attached as **Exhibit "C"** is a copy of the Taurus Loan Agreement. Despite the commitment of US\$40 million, only US\$25 million of the loan was drawn for the purpose of building the Moberly Plant.

42. NSC, Heemskirk Australia, Heemskirk Holdings, and Heemskirk Canada jointly and severally unconditionally guaranteed the obligations of HCA Moberly under the Taurus Loan Agreement.
43. On February 14, 2016, HCA Moberly issued a \$100 million debenture (the “**Taurus Debenture**”) in favour of Taurus as security for its obligations under the Taurus Loan Agreement. The Taurus Debenture grants security in all assets and undertakings of HCA Moberly, including all of HCA Moberly’s mineral leases and claims tenures. On February 14, 2016, each of Heemskirk Canada and Heemskirk Holdings issued \$100 million debentures in favour of Taurus as security for their obligations as guarantors under the Taurus Loan Agreement (the “**Taurus Guarantor Debentures**”). The Taurus Guarantor Debentures are secured against all assets and undertakings of each of Heemskirk Canada and Heemskirk Holdings.
44. In addition, Heemskirk Canada pledged 100% of the shares of HCA Moberly and Custom Bulk as security for HCA Moberly’s obligations under the Taurus Loan Agreement.
45. On February 14, 2016, HCA Moberly executed a royalty deed in favour of Taurus to provide a royalty in the products produced on the Moberly Plant lands.
46. On March 22, 2016, Taurus registered mortgage instrument number CA5058473 in the amount of \$100 million against title to the Moberly Plant lands as security for the indebtedness of HCA Moberly under the Taurus Loan Agreement. Attached as **Exhibit “D”** is a copy of a B.C. Land Title search current to May 19, 2020 evidencing same.
47. As of the date of this affidavit, there is approximately \$53.2 million outstanding under the Taurus Loan Agreement.
48. HCA Moberly failed to make payments to Taurus as required under the terms of the Taurus Loan Agreement on:
 - (a) June 30, 2018;
 - (b) September 30, 2019;
 - (c) December 31, 2019; and
 - (d) March 31, 2020.

49. On December 16, 2019, Taurus agreed to waive the defaults up to June 30, 2020. Attached as **Exhibit “E”** is a copy of the waiver agreement.

QMetco Indebtedness

50. On June 28, 2019, QMetco, as lender, and HCA Moberly, as borrower, entered into an unsecured working capital facility agreement in the original amount of \$6,500,000 (the **“QMetco Facility Agreement”**). HCA Moberly made subsequent draws under the QMetco Facility Agreement in the amount of \$11.5 million.
51. On December 6, 2019, QMetco, as lender, and HCA Moberly, as borrower, entered into a secured working capital facility agreement (the **“QMetco Secured Facility Agreement”**), under which HCA Moberly repaid any amounts owing under the QMetco Facility Agreement. In December 2019 QMetco made advances under the QMetco Secured Facility Agreement in the amount of \$18 million. Attached as **Exhibit “F”** is a copy of the QMetco Secured Facility Agreement.
52. NSC, Heemskirk Australia, Heemskirk Holdings, and Heemskirk Canada jointly and severally unconditionally guaranteed the obligations of HCA Moberly under the QMetco Secured Facility Agreement.
53. On December 6, 2019, HCA Moberly issued a \$45 million debenture (the **“QMetco Debenture”**) in favour of QMetco as security for its obligations under the QMetco Secured Facility Agreement. The QMetco Debenture is secured against all assets and undertakings of HCA Moberly, including all of HCA Moberly’s surface leases and mining tenures.
54. On December 6, 2019, each of Heemskirk Canada and Heemskirk Holdings executed debentures in favour of QMetco as security for their obligations as guarantors under the QMetco Secured Facility Agreement (the **“QMetco Guarantor Debentures”**). The QMetco Guarantor Debentures are secured against all assets and undertakings of each of Heemskirk Canada and Heemskirk Holdings. Copies of the Taurus Debenture, the Taurus Guarantor Debentures, the QMetco Debenture and the QMetco Guarantor Debentures will be provided in a separate affidavit in the interest of efficiency, given my location in Melbourne, Australia and the length of these materials.

55. In addition, Heemskirk Canada pledged 100% of the shares of HCA Moberly and Custom Bulk as security for HCA Moberly's obligations under the QMetco Secured Facility Agreement.
56. On December 6, 2019, HCA Moberly, as borrower, Taurus, as subordinated lender, and QMetco, as senior lender, entered into an intercreditor agreement (the "**Intercreditor Agreement**"). Attached hereto as **Exhibit "G"** is a copy of the Intercreditor Agreement.
57. Pursuant to the Intercreditor Agreement, the obligations of HCA Moberly under the Taurus Loan Agreement were postponed and subordinated to the obligations of HCA Moberly under the QMetco Secured Facility Agreement.
58. The QMetco Secured Facility Agreement termination date of January 31, 2020, has been extended pursuant to certain letter agreements dated January 28, 2020, February 28, 2020, and March 31, 2020, April 28, 2020, and May 26, 2020 (the "**QMetco Extension Letters**"). Attached hereto as **Exhibit "H"** are copies of the QMetco Extension Letters.
59. The most recent extension granted by QMetco on May 26, 2020, extended the termination date to June 30, 2020.
60. As of the date of this affidavit, there is approximately \$21.5 million outstanding under the QMetco Secured Facility Agreement.

Recent Correspondence with HCA Moberly

61. On June 17, 2020, counsel for the Moving Parties wrote to counsel for HCA Moberly as borrower under the Taurus Loan Agreement and the QMetco Secured Facility Agreement. The Moving Parties advised that they were not prepared to provide any further funding to the NSC Companies and that they would not agree to any further extensions of the maturity date of the Taurus Loan Agreement or the QMetco Secured Facility Agreement beyond the previously agreed June 30, 2020 date. In its correspondence the Moving Parties further requested that the NSC Companies advise Taurus and QMetco whether the NSC Companies were insolvent and whether the NSC Companies intended to repay the indebtedness owing under the Taurus Loan Agreement and the QMetco Secured Facility Agreement in full by no later than June 30, 2020. Attached hereto as **Exhibit "I"** is a copy of the correspondence.

62. On June 18, 2020, counsel for HCA Moberly responded and advised the Moving Parties that the NSC Companies were recently forced to suspend their silica mining operations for the reasons described herein and that without additional financial support from their lenders, the NSC Companies are or will soon be unable to repay their obligations as they generally become due. For this reason, and because the realizable value of the NSC Companies' assets does not appear to be sufficient to enable payment of all of their obligations as they come due, it appears that the NSC Companies are insolvent and are not currently in a position to repay their indebtedness to the Moving Parties nor do they expect to be in a position to do so by June 30, 2020. Attached hereto as **Exhibit "J"** is a copy of the response.
63. On June 18, 2020, QMetco delivered demand letters and notices of intention to enforce security under s.244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**") to HCA Moberly, NSC, Heemskirk Australia, Heemskirk Holdings, and Heemskirk Canada demanding payment of all amounts outstanding under the QMetco Secured Facility Agreement.
64. On June 23, 2020, Taurus delivered demand letters and notices of intention to enforce security under s.244 of the BIA to HCA Moberly, NSC, Heemskirk Australia, Heemskirk Holdings, and Heemskirk Canada demanding payment of all amounts outstanding under the Taurus Loan Agreement.

ATB Secured Indebtedness

65. The secured creditor of Custom Bulk is Alberta Treasury Branches ("**ATB**"). On July 30, 2012, ATB, as lender, and Custom Bulk, as borrower, entered into a loan agreement dated August 1, 2012, which was amended and restated on December 12, 2013, February 24, 2014, August 11, 2015, February 15, 2018 and February 12, 2020 (as amended and restated, the "**ATB Loan Agreement**").
66. Under the ATB Loan Agreement, ATB granted Custom Bulk a non-revolving reducing credit facility of \$631,644.17, a non-revolving reducing credit facility of \$623,266.58 and an Alberta BusinessCard Mastercard of \$50,000, which was amended from time to time. Attached as **Exhibit "K"** is a copy of the ATB Loan Agreement.
67. On August 14, 2012, Custom Bulk executed a general security agreement as security for its obligations under the ATB Loan Agreement (the "**Custom Bulk GSA**"). Attached as

Exhibit “L” is a copy of the Custom Bulk GSA. The Custom Bulk GSA grants in favour of ATB security interest in all of the assets and undertakings of Custom Bulk.

68. On August 16, 2012, ATB registered mortgage instrument number 122268071, as amended by registration 132194298 dated June 27, 2013, in the amount of \$2,700,000 against title to the Penhold Facility lands as security for the indebtedness under the ATB Loan Agreement. Attached as **Exhibit “M”** are copies of the Alberta Land Title searches for the applicable legal titles current to June 4, 2020 and June 12, 2020, evidencing same.
69. Heemskirk Canada guaranteed the obligations of Custom Bulk under the ATB Loan Agreement, limited to \$1,500,000, pursuant to a continuing guarantee dated February 14, 2018 (the **“ATB Guarantee”**).
70. On February 15, 2018, Heemskirk Canada executed a general security agreement as security for its obligations under the ATB Guarantee (the **“Heemskirk Canada GSA”**).
71. The Heemskirk Canada GSA provides a security interest against all present and after acquired personal property and proceeds of Heemskirk Canada in favour of ATB.
72. As of the date of this affidavit, there is approximately \$1.3 million outstanding under the ATB Loan Agreement (the **“ATB Indebtedness”**).
73. On February 15, 2018, ATB, Heemskirk Canada, and Taurus entered into a subordination agreement whereby ATB postponed the ATB Indebtedness and its security against Heemskirk Canada to Taurus as senior secured lender (the **“Subordination Agreement”**).
74. The Subordination Agreement does not apply to debt or security in respect of Custom Bulk. As such, ATB appears to be the primary secured creditor in respect of the assets of Custom Bulk.
75. The Custom Bulk-owned Penhold Facility is a valuable asset within the NSC Companies’ enterprise, being the facility that enables the transport element of the business. Although the Moving Parties are not creditors of Custom Bulk, the Moving Parties are interested parties in Custom Bulk as they are pledgees of 100% of Custom Bulk’s common shares. As discussed in greater detail below, I believe that if the NSC Companies’ business enterprise is marketed en-bloc within a CCAA sale process that includes the assets of

Custom Bulk, the business enterprise will yield a higher recovery compared to a marketing process that excludes the Custom Bulk assets.

The Rolling Stock Lease

76. Custom Bulk and TrinityRail Canada Inc. are parties to a railroad car lease (the “**Rolling Stock Lease**”), which is also subject to a trust indenture with Wilmington Trust. The Rolling Stock Lease was entered into connection with the transloading of sand from truck to rail and the transportation of sand from the Penhold Facility to customers. The Rolling Stock Lease is not currently necessary for the NSC Companies’ business given the CPR derailment which has left the NSC Companies unable to ship frac sand by rail from the Moberly Facility, the lack of demand for frac sand in the Alberta oil and gas market, and the shut down of the Moberly Plant.

PPR Registrations

77. Taurus and QMetco have registrations in the Alberta and British Columbia Personal Property Registries (each a “**PPR**”) against:
- (a) Heemskirk Holdings;
 - (b) Heemskirk Canada; and
 - (c) HCA Moberly.
78. ATB has a registration in the Alberta PPR against
- (a) Custom Bulk; and
 - (b) Heemskirk Canada.

Attached as **Exhibit “N”** are copies of the Alberta and British Columbia PPR searches of the NSC Companies current to June 8, 2020, with the exception of Custom Bulk, which searches are current to June 9, 2020.

79. Other than Taurus, QMetco, and ATB, the parties with registrations against some or all of the NSC Companies in the Alberta and British Columbia PPRs include:
- (a) Canadian Imperial Bank of Commerce, which provides banking arrangements for certain of the NSC Companies (as discussed further below);

- (b) Trinityrail Canada Inc., Wilmington Trust Company, as indenture trustee, and NP SPE X LP in respect of the Rolling Stock Lease;
- (c) RCAP Leasing Inc. in respect of certain office equipment; and
- (d) Jack Carter Chevrolet Cadillac Buick GMC Ltd in respect of certain motor vehicles.

Other Significant Liabilities

- 80. On April 27, 2018, First Samuel, as lender on behalf of certain subscribers, and HCA Moberly, as borrower, entered into a loan note subscription agreement, as amended by an amending agreement dated February 11, 2019 (the “**Loan Note Subscription Agreement**”).
- 81. As of the date of this affidavit, there is approximately \$5.6 million outstanding under the Loan Note Subscription Agreement.
- 82. As noted above, I am advised that Rabinov recently acquired the First Samuel indebtedness for a nominal purchase price.
- 83. In total, the NSC Companies have over \$97 million in liabilities, including:
 - (a) approximately \$81.6 million outstanding pursuant to the Loan Agreements;
 - (b) an estimated liability of approximately \$7,947,355 under the Rolling Stock Lease;
 - (c) \$5.6 million outstanding under the Loan Note Subscription Agreement;
 - (d) estimated liabilities of approximately \$45,000 under various vehicle and equipment leases;
 - (e) liabilities under siding lease agreements between CPR and each of Custom Bulk and HCA Moberly (the “**Siding Lease Agreements**”);
 - (f) liabilities under a railcar storage agreement between Canadian Heartland Training Railway Services Inc. and Custom Bulk (the “**Railcar Storage Lease**” and together with the Rolling Stock Lease and the Siding Lease Agreements, the “**Rail Agreements**”); and
 - (g) contingent liabilities of approximately \$2.1 million relating to disputes with contractors and subcontractors regarding construction deficiencies at the Moberly

Plant for which notices of arbitration and claims have been filed. The NSC Companies estimate that they have a counter-claim for such deficiencies in the amount of \$2.7 million.

E. ASSETS

84. The aggregate book value of NSC's assets as reported in the annual financial statements for the year ended September 30, 2019, is approximately \$62,269,000, with property, plant and equipment comprising \$53,988,000 of the total asset amount. The aggregate current assets of NSC are reported as \$8,281,000.
85. The aggregate book value of NSC's assets as reported in the interim financial statements, as at the six months ended March 31, 2020, is approximately \$66,028,000 with property, plant and equipment comprising \$53,982,000 of the total asset amount. The aggregate current assets of NSC are reported as \$5,719,000.
86. In light of the pricing and demand challenges facing the North American frac sand industry described above, I believe that the net realizable value of these assets is likely to be materially lower than the book value.
87. The assets attributed to each of the NSC Companies can be described generally as follows:
- (a) NSC and Heemskirk Australia own the shares of the Heemskirk Subsidiaries;
 - (b) Custom Bulk owns assets related to the Penhold Facility, including the plant, real property, rail siding, rail cars, and other equipment;
 - (c) Heemskirk Canada is a holding company and owns computers, vehicles, and other administrative assets;
 - (d) Heemskirk Holdings owns the land on which the Moberly Plant is situated; and
 - (e) HCA Moberly owns all equipment and buildings related to the Moberly Plant including rail siding, propane infrastructure as well as the mineral claims and mineral leases related to the NSC Companies' mining operations. Attached hereto as **Exhibit "O"** are copies of the British Columbia Mineral Title Online searches with respect to such mineral claims and mineral lease, current to May 20, 2020.

F. FINANCIAL STATEMENTS

88. Attached hereto as **Exhibit “P”** are the consolidated financial statements of NSC for the years ended September 30, 2018, and September 30, 2019. For the year ended September 30, 2018, NSC reported a net loss of \$8,359,000, followed by a net loss of \$87,568,000 for the year ended September 30, 2019.
89. Attached hereto as **Exhibit “Q”** are the consolidated interim financial statements of NSC as at the six months ended March 31, 2020 and March 31, 2019. For the six months ended March 31, 2020, NSC reported a net loss of \$16,564,000.
90. The NSC Companies continue to suffer losses as a result of the current economic climate and other challenges facing their businesses. Without relief under the CCAA, the NSC Companies will continue to incur losses and be unable to restructure their businesses to adapt to recent economic developments.
91. Each of NSC, Heemskirk Canada, Heemskirk Holdings, HCA Moberly and Heemskirk Australia cannot meet their obligations as they come due, including their obligations under the Taurus Loan Agreement and the QMetco Secured Facility Agreement.
92. Custom Bulk cannot meet its obligations under the Rail Agreements as they come due. Custom Bulk has not made payments in respect of the Rolling Stock Lease for several months and there is an estimated liability of approximately \$7,947,355 under the Rolling Stock Lease. In addition, the insolvency of Heemskirk Canada is a default under the ATB Loan Agreement. Upon the granting of any order under the CCAA in respect of Heemskirk Canada, ATB would be in a position to demand repayment of the amounts outstanding under the ATB Loan Agreement and Custom Bulk would not be able to repay such amounts.
93. The NSC Companies are insolvent and cannot continue to operate without restructuring their debt and affairs. In order to pursue a restructuring that will maximize value for stakeholders, the NSC Companies require the flexible relief that is available under the CCAA.

G. EMPLOYEES

94. As stated above, the NSC Companies currently employ 13 employees.

95. If the Initial Order is granted the NSC Companies intend to continue to employ their present 13 employees to assist with the restructuring.
96. The employees will continue to support the NSC Companies during the CCAA proceeding by continuing to provide certain accounting, management, and operational functions to the NSC Companies.
97. In addition, if the NSC Companies are successful in repurposing their operations, the NSC Companies anticipate continuing the employment of each of their current employees and anticipate requiring several new employees upon a successful repurposing of their business.

H. THE URGENT NEED FOR RELIEF UNDER THE CCAA

98. Various options were considered to restructure the NSC Companies for the benefit of their creditors and stakeholders.
99. NSC attempted to raise capital to restructure its debt by issuing a private placement in March 2020, but was unsuccessful. Although Taurus subscribed for securities as part of the private placement, none of the other shareholders, including First Samuel, Rabinov and Katz, chose to subscribe.
100. In April 2020, Taurus put forward a proposal for an issuance of approximately \$80 million NSC convertible notes to retire all secured debt held by Taurus and QMetco and to raise \$6 million of working capital to support the NSC Companies. Taurus suggested that Rabinov and Katz participate in such an issuance by contributing \$3 million, but Rabinov and Katz declined. At the same time, Rabinov and Katz had proposed a \$6 million equity raise that valued the NSC Companies' enterprise value at only the value of the equity raised. Implicit in the Rabinov and Katz proposal was their view that all existing debt and equity positions within the NSC Companies were worthless. Attached hereto as **Exhibit "R"** are the Rabinov and Taurus proposals, exchanged over email.
101. Since February 2020, operations at the Moberly Plant have been suspended due to the current economic circumstances.
102. As noted above, the Moving Parties have delivered demands and statutory enforcement notices under their respective credit facilities. The NSC Companies have insufficient liquidity to repay such facilities.

103. The NSC Companies have notable strengths, including an efficient extraction process. However, the NSC Companies must restructure to continue operating as a going concern.

Case Roadmap

104. The Moving Parties seek the Court's approval of the Initial Order in order to commence a Court-supervised restructuring process. I am advised by my legal counsel, Jeffrey Oliver, of Cassels Brock & Blackwell LLP, that the nature of relief available on an initial CCAA application is restricted to the relief reasonably necessary for the continued operations of the debtor companies in the ordinary course of business for an initial 10-day period.
105. If the Initial Order is granted, the NSC Companies anticipate returning before this Court at the Second Hearing prior to the expiry of the 10-day stay period to seek an extension of the stay of proceedings. At the Second Hearing, the NSC Companies intend to seek the Court's approval of, among other things, an interim financing facility (the "**DIP Facility**") and associated priority charge over the Property, which is presently being negotiated among the Moving Parties and the NSC Companies.
106. If finalized and approved by this Court, the DIP Facility would provide the NSC Companies with required liquidity to develop and implement a Court-supervised sale and investment solicitation process ("**SISP**"), which would feature a broad marketing of the NSC Companies' assets and attempt to achieve a going concern sale for the benefit of all of the NSC Companies' stakeholders.
107. Given their familiarity with the NSC Companies and their continued interest in the NSC Companies' business, the Moving Parties intend to participate as a bidder in a future SISP and are considering the possibility of becoming a stalking horse bidder.
108. Considering the issues identified above, I believe that a Court-supervised restructuring proceeding under the CCAA is the best way to accomplish these goals.

I. RELIEF SOUGHT

Stay of Proceedings

109. The NSC Companies do not have adequate liquidity to continue operations or the necessary stability to restructure without a CCAA proceeding.

110. The NSC Companies operate as an integrated enterprise, with their head office located in Calgary. The NSC Companies require a stay of proceedings to restructure their affairs and allow the NSC Companies the necessary time to repurpose and re-start operations at the Moberly Plant and to ramp-up operations at the Penhold Facility.
111. The initial request for a stay of proceedings is limited to a 10-day stay period, which will provide additional time and breathing space for the Moving Parties and the NSC Companies to finalize the DIP Facility and the SISP, in coordination with the proposed Monitor.
112. For these reasons, I believe that the granting of a stay of proceedings is in the best interests of the NSC Companies.

Appointment of Monitor

113. The NSC Companies seek to have Alvarez appointed as Monitor in accordance with the CCAA. The proposed Monitor has agreed to act as court appointed Monitor to the NSC Companies. Attached as **Exhibit "S"** is a copy of the consent to act executed by the Monitor.
114. To date the proposed Monitor has been assisting the NSC Companies by beginning to develop a restructuring plan and is familiar with the NSC Companies' assets and businesses.

Administration Charge

115. There are a number of financial and operational issues for which the NSC Companies will require the expertise of the proposed Monitor during the CCAA proceedings. In my dealings and interaction to date with the proposed Monitor I have determined that the proposed Monitor possesses expertise, not only in corporate restructuring matters generally, but also brings to bear insight and experience in connection with operational and financial issues experienced by entities such as the NSC Companies who are undergoing a restructuring.
116. The proposed Monitor, its counsel, and the NSC Companies' counsel are essential to the success of the proceedings.
117. I would expect that a first ranking Administration Charge against the Property will be required in order to secure the fees and disbursements incurred in connection with

services rendered to the NSC Companies both before and after the commencement of the proceedings by:

- (a) the proposed Monitor and its counsel, Torys LLP; and
- (b) McMillan LLP, the NSC Companies' counsel.

Directors' & Officers' Charge

- 118. The NSC Companies' directors and officers are essential personnel to the NSC Companies' business. The restructuring process requires the participation of these important personnel.
- 119. NSC's directors and officers currently benefit from directors' and officers' insurance coverage up to an amount of \$5 million. However, this coverage may prove insufficient or subject to standard exclusions which could make it difficult to cover all potential liabilities that may arise in the CCAA proceeding.
- 120. I would expect the NSC Companies' directors and officers to be concerned about the potential consequences for their personal liability that may arise in the context of the present restructuring.
- 121. Failure to offer additional protections to the directors and officers may result in resignations and will complicate the restructuring process.
- 122. For the reasons set out above, the NSC Companies seek the D&O Charge, which shall constitute a charge on the Property to indemnify the directors and officers of any liability that they may incur in connection with these proceedings and that are not covered by the current insurance coverage. I am advised by the NSC Companies that they plan to seek an increase in the amount of the D&O Charge at the Second Hearing.

J. CASH MANAGEMENT SYSTEM

- 123. The NSC Companies utilize consolidated cash management systems. Heemskirk Canada and HCA Moberly maintain accounts with Canadian Bank of Imperial Commerce ("**CIBC**") which are used to pay expenses.

- 124. Custom Bulk maintains accounts with ATB which are used to pay expenses. In addition, the NSC Companies maintain a corporate credit card with ATB that is utilized on a consolidated basis.
- 125. The NSC Companies also retain the services of Ceridian Canada Ltd. ("**Ceridian**"), as a third-party payroll service provider, through which payroll is paid twice each month from the CIBC accounts along with employee taxes and deductions as required.
- 126. The CIBC and ATB cash management systems, as well as the services of Ceridian, are integral to the business of the NSC Companies.

K. NSC UNANIMOUS SHAREHOLDERS AGREEMENT

- 127. As noted above, Rabinov expects to soon complete a transaction that would result in his control of approximately 42% of the issued and outstanding NSC shares.
- 128. The NSC USA provides that shareholders with 20% or greater equity interest in NSC may appoint one director per each 20% interest. Such shareholders are entitled to appoint directors at a duly called shareholders meeting or upon 21 days notice to the board of directors.
- 129. There are currently three directors sitting on the NSC board of directors, including the chief executive officer of NSC and two independent directors. In addition to myself, Peter Briggs also resigned from the NSC board of directors on June 18, 2020.
- 130. The USA requires special approval (75%) by the board of directors for certain matters relating to the sale of assets, the restructuring of shares or the granting of security. Special approval is not required to seek protection under the CCAA or any restructuring legislation generally.
- 131. From discussions I have had with NSC's management, I understand that Rabinov intends to appoint two new directors – Katz and Jeremy Katz - to the NSC board with the intention of opposing an application for relief under the CCAA.

L. PROCEDURAL MATTERS

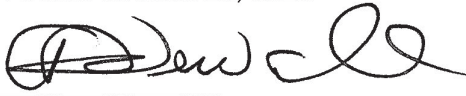
- 132. As discussed above, the NSC Companies operate as an integrated enterprise. The Calgary-based employees have historically provided general management, accounting,

human resources, and sales and marketing functions for the NSC Companies on an integrated basis.

133. It is therefore most expedient and efficient that the restructuring be implemented through one CCAA proceeding that is overseen and directed by the Court in Calgary, which is the home jurisdiction of NSC, the parent company of the NSC Companies.

134. I make this affidavit in support of the relief sought in the originating application filed concurrently, and for no other or improper purpose.

Sworn before me at Melbourne in the State
of Victoria on June 26, 2020



A person authorized under section 19(1) of
the Oaths and Affirmations Act 2018 to
take an affidavit


Martin Boland

Print Name: ADEWALE OLADEJO

ADEWALE OLADEJO
NOTARY PUBLIC
Level 1, 1 Queens Road
MELBOURNE 3004, VICTORIA, AUSTRALIA
My appointment is not limited by time

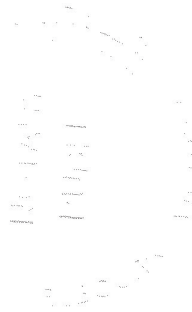


EXHIBIT “B”

This is Exhibit “B” referred to in the Affidavit of
JERRAD BLANCHARD
Sworn before me this 20th day of October, 2020

COMMISSIONER FOR OATHS IN AND FOR ALBERTA

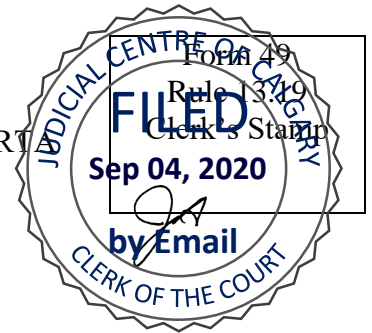


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COURT FILE NUMBER 2001-07984

COURT COURT OF QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, RSC 1985, c
C-36, as amended

COM
Sept 11 2020
Justice D.B Nixon

AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF
NORTHERN SILICA CORPORATION,
HEEMSKIRK MINING PTY. LTD., CUSTOM
BULK SERVICES INC., HEEMSKIRK
CANADA LIMITED, HEEMSKIRK CANADA
HOLDINGS LIMITED and HCA MOUNTAIN
MINERALS (MOBERLY) LIMITED

APPLICANTS QMETCO LIMITED and TAURUS RESOURCES
NO. 2 B.V.RESPONDENTS NORTHERN SILICA CORPORATION,
HEEMSKIRK MINING PTY. LTD., CUSTOM
BULK SERVICES INC., HEEMSKIRK
CANADA LIMITED, HEEMSKIRK CANADA
HOLDINGS LIMITED and HCA MOUNTAIN
MINERALS (MOBERLY) LIMITEDDOCUMENT **AFFIDAVIT (SISP TERMINATION, APA
APPROVAL)**ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT**McMillan LLP**

Suite 1700, 421 - 7 Avenue S.W.

Calgary, AB T2P 4K9

Phone: 403-531-4700

Fax: 403-531-4720

Attention : Adam Maerov

Phone: 403-215-2752

Email: adam.maerov@mcmillan.ca

Kourtney Rylands

Phone: 403-355-3326

Email: kourtney.rylands@mcmillan.ca

File No. 273913

AFFIDAVIT OF JERRAD BLANCHARD

Sworn September 4, 2020

I, Jerrad Blanchard, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY THAT:

A. INTRODUCTION

1. I am the Chief Financial Officer of Northern Silica Corporation (“NSC”), Custom Bulk Services Inc. (“Custom Bulk”), Heemskirk Canada Limited (“Heemskirk Canada”), Heemskirk Canada Holdings Limited (“Heemskirk Holdings”) and HCA Mountain Minerals (Moberly) Limited (“Moberly”, and collectively with Heemskirk Mining Pty. Ltd., the “NSC Companies”).
2. The background to this proceeding and the business of the NSC Companies is described in detail in the affidavit of Martin Boland, sworn June 26, 2020 (the “Boland Affidavit”). A copy of the Boland Affidavit without exhibits is attached as **Exhibit “A”**.
3. I swear this affidavit further to my affidavits sworn in the within action on July 2, 2020 (the “Comeback Affidavit”) and July 21, 2020 (the “SISP Affidavit”). Copies of the Comeback Affidavit and the SISP Affidavit, without exhibits, are attached respectively as **Exhibits “B”** and **“C”**.
4. I am authorized to swear this affidavit on behalf of the NSC Companies and have personal knowledge of the facts hereinafter deposed except where such facts are stated to be on information and belief, and in such cases, I verily believe them to be true.
5. In preparing this affidavit, I have consulted with legal, financial and other advisors of the NSC Companies and other members of NSC’s management team. I have also consulted with representatives of the Monitor, Alvarez & Marsal Canada Inc. (in such capacity, the “Monitor”) and Whitehorn Merchant Capital Inc. in its capacity as sales agent (the “Sales Agent”).

6. Capitalized terms not otherwise defined herein shall have the meaning given to them in the SISP (as defined below) and the SISP Affidavit.
7. This affidavit is sworn in support of an application by the NSC Companies pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "CCAA") for a sale approval and vesting order substantially in the form attached as Schedule "A" (the "Approval and Vesting Order") to the application filed concurrently with this affidavit, granting certain relief, including:
 - (i) terminating the sales and investment solicitation process ("SISP") approved by the July 27, 2020 Order of the Honourable Justice K.M. Horner (the "SISP Order"), in substantially the form attached as Exhibit "D" to the SISP Affidavit. A copy of the SISP is attached hereto as **Exhibit "D"**;
 - (ii) declaring that the Stalking Horse Agreement (as defined in the SISP) (the "APA") entered into on July 21, 2020 between Custom Bulk, Heemskirk Canada, Heemskirk Holdings, and Moberly (the "Sellers"), as sellers, Vitreo Minerals Ltd. (the "Stalking Horse Bidder"), as purchaser, and the Monitor, in respect of the assets described therein (the "Purchased Assets"), is the Successful Bid;
 - (iii) authorizing the NSC Companies and the Monitor to take all steps or actions necessary or desirable to complete the closing of the Transaction contemplated by the APA, including the execution of any other agreement, contract, deed, bill of sale, transfer or any other document which could be required or be useful to give full and complete effect to the APA. A copy of the APA is attached hereto as **Exhibit "E"**;
 - (iv) vesting the Purchased Assets in the name of the Stalking Horse Bidder, or its nominee, free and clear of all Claims (as defined in the Approval and Vesting Order) other than Permitted Encumbrances (as defined in the Approval and Vesting Order);

- (v) extending the stay of proceedings (the “Stay Period”) up to and including November 27, 2020; and
- (vi) such further relief as this Court deems just.

B. OVERVIEW OF THE CCAA PROCEEDINGS

8. On June 30, 2020, QMetco Limited and Taurus Resources No. 2 B.V. (the “Secured Lenders”) applied for and were granted an initial order in respect of the NSC Companies.
9. On July 10, 2020, the NSC Companies applied for and were granted an amended and restated initial order (the “Initial Order”) that, *inter alia*, approved an interim financing agreement with Vitreo Minerals Ltd. (the “Interim Lender”) and granted an Interim Lender’s Charge (as defined in the Initial Order).
10. On July 27, 2020, the NSC Companies applied for and were granted the SISP Order that, *inter alia*:
 - (a) approved the SISP and the SISP Procedures; and
 - (b) approved the bid made by the Stalking Horse Bidder pursuant to the APA, approved the APA and authorized the NSC Companies to execute the APA.
11. On July 27, 2020, the NSC Companies also applied for and were granted an order that, *inter alia*:
 - (a) approved the engagement of the Sales Agent and the granting of the Sales Agent Charge; and
 - (b) extended the Stay Period up to and including October 9, 2020.

C. THE SALE AND INVESTMENT SOLICITATION PROCESS

12. The SISP set forth the process by which the NSC Companies and the Sales Agent, with the assistance of the Monitor, conducted the process for the sale of all or substantially all of the business of the NSC Companies.

13. The SISP and the SISP Order contemplate that the NSC Companies' property, assets, and undertakings will be marketed in an open and transparent manner.
14. The purpose of the SISP was to canvas the market for one or more offers that is or are superior to the Transaction contemplated by the APA.
15. The Monitor recommended that the Court approve the SISP and the APA for the reasons set out in the Second Report of the Monitor dated July 22, 2020.
16. A summary of the terms of the SISP is contained in the SISP Affidavit. The SISP includes the following key dates:

Date	Step
As soon as reasonably practicable after granting of the SISP Order approving the SISP Procedures, but in any event no more than five (5) business days after the issuance of the SISP Order.	The Monitor shall cause a notice of the sale and investor solicitation process contemplated by these SISP Procedures and such other relevant information which the Monitor considers appropriate to be published in The Globe and Mail (National Edition) and such other publications as the Monitor, in consultation with the Applicants and the Sales Agent, may deem appropriate.
For a period of approximately five (5) weeks following the granting of the SISP Order, or for such shorter period as the Monitor may determine appropriate ("Phase I").	The Monitor will solicit non-binding letters of interest from prospective strategic or financial parties to acquire the Property or to invest in the Applicants
Not later than 5:00 PM (Mountain Time) on August 26, 2020, or such later other date or time as may be agreed by the Applicants, the Monitor, and the DIP Lender	Qualified Bidders that desire to participate in Phase I shall submit a non-binding letter of interest (the "Qualified Non-Binding LOI") that complies with all of the following requirements to the Monitor and the Sales Agent.

Date	Step
Not later than 5:00 PM (Mountain time) on September 24, 2020, or such later other date or time as may be agreed by the Applicants, the Monitor, and the DIP Lender, including for the purpose of accommodating a Qualified Bidder from outside of Canada who does not have operations or qualified personnel who reside in Canada and is required to observe a 14-day quarantine upon entry into Canada prior to completing due diligence activities within Canada	A Qualified Bidder that is not eliminated from the SISP in accordance with these SISP Procedures and that desires to participate in Phase II will deliver written copies of a Qualified Purchase Bid or a Qualified Investment Bid to the Sales Agent.

17. The NSC Companies and the Sales Agent, with the assistance of the Monitor, have conducted Phase I of the SISP. The results of Phase I of the SISP are summarized in the confidential supplement to the third report of the Monitor to be filed in these proceedings (the “Confidential Supplement”). The information contained in the Confidential Supplement is commercially sensitive and disclosure of such information may have adverse consequences for the sale of the Sellers’ assets.
18. The SISP contemplates that the Sales Agent shall recommend to the NSC Companies and the Monitor that the SISP be terminated at the end of Phase I if:
 - (a) no Qualified Non-Binding LOI is received by the Sales Agent; or
 - (b) the Sales Agent determines that there is no reasonable prospect that any Qualified Non-Binding LOI received will result in a Superior Offer.
19. The SISP further contemplates that if the SISP is terminated pursuant to the Sales Agent’s recommendation, the Applicants shall promptly take steps to close the Transaction contemplated by the APA.
20. The results of Phase I of the SISP were reviewed by the Sales Agent. I understand that the Sales Agent has determined that there is no reasonable prospect that any Qualified Non-

Binding LOI received will result in a Superior Offer. As a result, on September 1, 2020, the Sales Agent recommended to the NSC Companies and the Monitor that the SISP be terminated and the Transaction contemplated by the APA closed. The NSC Companies and the Monitor have accepted the Sales Agent's recommendation.

21. In the absence of any Qualified Non-Binding LOIs that will proceed to Phase II of the SISP, I believe that it is in the best interest of the NSC Companies and their stakeholders for this Honourable Court to terminate the SISP, declare the APA the Successful Bid, authorize the parties to close the Transaction contemplated by the APA and vest the Purchased Assets in the Stalking Horse Bidder, or its nominee, free and clear of all Claims other than Permitted Encumbrances.

D. THE STALKING HORSE BID

22. As discussed above, on July 27, 2020 this Honourable Court granted approval of the APA as a stalking horse credit bid.
23. The key terms of the APA are summarized at paragraphs 14 to 18 of the SISP Affidavit.
24. In the absence of a Superior Bid, I believe that the APA is in the best interests of the Sellers and their stakeholders and will help maximize the value obtained for the Sellers' assets. Among other things, the transactions contemplated by the APA:
 - (a) provide continuing employment for substantially all of the Sellers' employees while leveraging asset and market intelligence developed by management;
 - (b) provide certainty for the continuation of the business for the benefit of the local community, with continued compliance with environmental obligations;
 - (c) provide an opportunity to resume full plant operations subject to improved market conditions, which would increase local employment and demand increased products and services from the local community;
 - (d) provide for payment of the Assumed Obligations (as defined in the APA);

- (e) provide a platform for streamlined access to additional capital that may be required to sustain operations and develop business opportunities; and
 - (f) is at or above the price for which interested parties valued the Sellers' assets.
25. I understand that the Monitor is supportive of the closing of the Transaction contemplated by the APA.
 26. I believe that the SISP has ensured that maximum value is being received for the Purchased Assets. The APA represents the best sale transaction available to the NSC Companies and their stakeholders.
 27. I believe it is in the best interest of the NSC Companies and their stakeholders for the SISP to be terminated, the Transaction contemplated by the APA closed and the Purchased Assets vested in the Stalking Horse Bidder, or its nominee, free of all Claims other than the Permitted Encumbrances.

E. EXTENSION OF THE STAY PERIOD


28. As discussed above, the Stay Period will expire on October 9, 2020.
29. The NSC Companies are seeking an extension of the Stay Period up to and including November 27, 2020.
30. Since the Stay Extension Order was granted, the NSC Companies have acted in good faith and with due diligence to:
 - (a) work with the Sales Agent and Monitor to carry out and complete all activities necessary for Phase I of the SISP;
 - (b) work with the Monitor to respond to due diligence requests from prospective bidders;
 - (c) continue discussions with TrinityRail Canada Inc. ("TrinityRail") regarding its application to set aside the disclaimer of the railroad car lease agreement between Custom Bulk and TrinityRail (the "Disclaimer"); and

- (d) complete ongoing reporting on receipts and disbursements and variances and provide the Monitor with cash flow forecasts.
31. The ongoing benefit provided by the CCAA stay of proceedings is critical to the NSC Companies' ability to:
- (a) close the Transaction contemplated by the APA and take any steps incidental to same;
 - (b) resolve the objection by TrinityRail to the Disclaimer; and
 - (c) perform all steps necessary to terminate the CCAA proceedings.
32. Having regard to the circumstances, I believe that the granting of an extension of the Stay Period up to and including up to and including November 27, 2020 is necessary and in the best interests of the NSC Companies and their stakeholders as it will allow the NSC Companies to close the Transaction contemplated by the APA. It will also allow the Monitor to oversee additional wind-down activities.
33. No creditor will be prejudiced by the proposed extension of the Stay Period.
34. The Monitor has reviewed the cash flow forecasts prepared by the NSC Companies, which cash flows demonstrate that the NSC Companies will have sufficient liquidity to fund their operations during the proposed extension of the Stay Period.

CONCLUSION

35. The NSC Companies have and continue to act in good faith and with due diligence in respect of all matters relating to the CCAA proceedings and continue to carry out their business in accordance with the terms of the Initial Order.
36. The Monitor, the Interim Lender and the Secured Lenders are supportive of the relief sought pursuant to the Approval and Vesting Order.
37. I make this affidavit in support of the NSC Companies' application for the Approval and Vesting Order.

SWORN BEFORE ME at Calgary, Alberta
this 4th day of September, 2020


Commissioner for Oaths in and for Alberta

[illegible]


Jerrad Blanchard

ADAM C. MAEROV
Barrister and Solicitor
A Commissioner for Oaths in and for Alberta

EXHIBIT “C”

This is Exhibit “C” referred to in the Affidavit of
JERRAD BLANCHARD

Sworn before me this 20th day of October, 2020

COMMISSIONER FOR OATHS IN AND FOR ALBERTA

HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement

Dated 6 December 2019

HCA Mountain Minerals (Moberly) Limited ("**Borrower**")
The entities listed in Schedule 1 as Original Guarantors ("**Original
Guarantors**")
QMetco Limited ("**Lender**")

King & Wood Mallesons
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

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HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement Details

Parties	Borrower and Lender	
Borrower	Name	HCA Mountain Minerals (Moberly) Limited
	Address	Suite 204, 1212-1 st Street SE, Calgary, AB, T2G 2H8
Original Guarantors	The entities listed in Schedule 1 as Original Guarantors.	
Lender	Name	QMetco Limited
	Address	Level 12, 300 Queen Street, Brisbane, Qld, 4000, Australia
Recital	The Lender has agreed to provide a secured working capital loan to the Borrower on the following terms and conditions.	
Date of agreement	See Signing page	

HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement

General terms

1 Definitions

1.1 Definitions

These meanings apply unless the contrary intention appears:

Accession Letter means a document substantially in the form set out in Schedule 6 (*Form of Accession Letter*).

Account Bank means any authorised deposit-taking institution which holds the Project Account and/or the Lock-up Account.

Account Bank Deed means any document entered into between the Borrower, the Lender, an Account Bank and others, which is in form and substance acceptable to the Lender, in relation to the operation of the Project Account and/or the Lock-up Account, as required by clause 16.1(c).

Additional Guarantor means a person which becomes an Additional Guarantor in accordance with clause 22 (*Changes to the Obligors*).

Agreed Budget means:

- (a) the budget and forecast for the Project, including cash flow forecast, capital expenditure and operation and maintenance budget, which must:
 - (i) include a summary of the assumptions used in preparation of the budget;
 - (ii) be approved by the board of the Borrower, which the Lender has agreed prior to Financial Close be the Agreed Budget; or
- (b) any budget and forecast for the Project, from time to time:
 - (i) which is an amendment to, or replacement of, any existing Agreed Budget;
 - (ii) which includes a cash flow forecast, capital expenditure and operation and maintenance budget and a summary of the assumptions used in preparation of the budget;
 - (iii) is approved by the board of the Borrower; and
 - (iv) which has been consented to (in writing) by the Lender.

Amounts Owed means the total of all outstanding Loans and any Capitalised Amounts.

Australian PPSA means Personal Property Securities Act 2009 (Cwlth).

Authorisation means:

- (a) an authorisation, consent, approval, resolution, licence, exemption, filing, lodgement or registration required by any Governmental Agency or any law or regulation; or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law or regulation if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

Authorised Officer means:

- (a) in respect of an Obligor, any company secretary, director, or any person from time to time nominated as an Authorised Officer by that Obligor by a notice to the Lender accompanied by certified copies of signatures of all new persons so appointed (and in respect of which the Lender has not received notice of revocation of the appointment); and
- (b) in respect of the Lender, any person whose title or acting title includes the word Manager, Head, Chief, Executive, Director or President or cognate expressions, or any company secretary or director.

Available Commitment means the Commitment minus:

- (a) the amount of the Lender's participation in any outstanding Loans; and
- (b) in relation to any proposed Loan, the amount of the Lender's participation in the Loans that are due to be made on or before the proposed Utilisation Date.

Availability Period means the period from and including the date of this document to and including 31 January 2020.

Bank Accounts means the Project Account and the Lock-up Account.

BLA means the *Builders' Lien Act* (British Columbia).

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in Brisbane, Australia.

Canadian Obligors means the Borrower, NSC, Heemskirk Canada Holdings Limited and Heemskirk Canada Limited.

Canadian PPSA means the *Personal Property Security Act* (British Columbia) or the *Personal Property Security Act* (Alberta) and all regulations promulgated thereunder, and successor legislation thereto, in each case as applicable to the location of each applicable Obligor and its assets.

Capitalised Amounts means any accrued interest and fees under clauses 7 (*Interest*) and 9 (*Fees*) which have not been paid or prepaid pursuant to clauses 5 (*Repayment*) or 6 (*Pre-payment and cancellation*) and which have been capitalised pursuant to clauses 7 (*Interest*) or 9 (*Fees*).

Change in Control has the meaning given to the term in clause 20.9(b) (*Change in Control*).

Code means the US Internal Revenue Code of 1986.

Code of Banking Practice means the code so named published by the Australian Bankers Association Inc, as updated from time to time.

Collateral means any asset which is subject to a Security in favour of the Lender.

Commitment means C\$18,000,000, to the extent not cancelled or reduced under this document, to the extent not transferred by the Lender under this document.

Compliance Certificate means a certificate substantially in the form set out in Schedule 4 (*Form of Compliance Certificate*).

Corporations Act means the *Corporations Act 2001* (Cth).

Default means an Event of Default or any event or circumstance specified in clause 20 (*Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing, as applicable) be an Event of Default.

Distribution means, in respect of an Obligor, any dividend, charge, interest, fee, payment (other than due under the Facility) or other distribution (whether in cash or kind) or redemption, repurchase, defeasance, retirement or repayment on or in respect of any share capital of that Obligor including any reduction or buy back of share capital and any payment in the nature of interest or dividend.

Enforcement Date means the date on which a notice is issued under clause 20.15 (*Consequences of an Event of Default*).

Existing Lender has the meaning given to this term in clause 21.1 (*Assignments and transfers by the Lender*).

Existing QMetco Unsecured Facility means the document titled "HCA Mountain Minerals (Moberly) Limited – Unsecured Working Capital Facility Agreement, dated 28 June 2019, between the Borrower and the Lender.

Event of Default means any event or circumstance specified as such in clause 20 (*Default*).

Facility means the loan facility made available under this document as described in clause 2.1 (*The Facility*).

Facility Office means the office or offices notified by the Lender to the Borrower in writing on or before the date it becomes the Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this document.

FATCA means:

- (a) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

FATCA Application Date means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2017; or
- (c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2017,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this document.

FATCA Deduction means a deduction or withholding from a payment under a Finance Document required by FATCA.

FATCA Exempt Party means a Party that is entitled to receive payments free from any FATCA Deduction.

FATCA FFI means a foreign financial institution as defined in section 1471(d)(4) of the Code which, if the Lender is not a FATCA Exempt Party, could be required to make a FATCA Deduction.

FATCA Payment means:

- (a) the increase in a payment made by an Obligor to the Lender under clause 10.6 (*FATCA Deduction and gross-up by Obligor*) or clause 10.7(b) (*FATCA Deduction by Lender*); or
- (b) a payment under clause 10.7(b) (*FATCA Deduction by Lender*).

Finance Document means:

- (a) this document;
- (b) the Priority Deed;
- (c) any Utilisation Request;
- (d) any Compliance Certificate;
- (e) once entered, the Account Bank Deed;
- (f) each Security Document; and
- (g) any other document designated as such by the Lender and the Borrower.

Financial Close means the date on which all conditions precedent referred to in clause 3 (*Conditions of Utilisation*) have been satisfied (or waived by the Lender).

Financial Indebtedness means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised under any acceptance credit, bill acceptance, bill discount or bill endorsement facility;

- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any redeemable shares where the holder has the right, or the right in certain conditions, to require redemption;
- (g) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (h) consideration for the acquisition of assets or services payable more than 90 days after acquisition;
- (i) any derivative transaction (and, when calculating the indebtedness for or in respect of any derivative transaction, only the marked to market value shall be taken into account);
- (j) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (k) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above.

Financial Statement means:

- (a) a statement of financial performance;
- (b) a statement of financial position; and
- (c) a statement of cash flow,

together with any notes or directors' declarations to or in respect of those documents and any accompanying reports, statements, declarations and other documents or information.

Governmental Agency means:

- (a) any government, parliament or legislature, any regulatory or administrative authority, agency, commission or board and any other statute, rule or regulation making entity having jurisdiction in the relevant circumstances,
- (b) any person acting under the authority of any of the foregoing or under a statute, rule or regulation thereof, and
- (c) any judicial, administrative or arbitral court, authority, tribunal or commission having jurisdiction in the relevant circumstances.

Group Structure Chart means the structure chart representing the Obligor and each Subsidiary of an Obligor, in a form agreed between the Borrower and the Lender (each acting reasonably).

Guarantor means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with clause 22 (*Changes to the Obligors*).

Increased Costs means:

- (a) a reduction in the rate of return from the Facility or on the Lender's (or its Related Bodies Corporate) overall capital (including, without limitation, as a result of any reduction in the rate of return on capital as more capital is required to be allocated);
- (b) an additional or increased cost; or
- (c) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by the Lender or any of its Related Bodies Corporate to the extent that it is attributable to the Lender having entered into its Commitment or funding or performing its obligations under any Finance Document.

Indirect Tax means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.

IFRS means generally accepted International Financial Reporting Standards, as developed and adopted by the International Financial Reporting Standards Foundation, from time to time.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up, has had a Controller (as defined in the Corporations Act) appointed to its property or has suspended the making of payments; or
- (c) it is subject to any arrangement, assignment, moratorium, reorganisation or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Lender); or
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the Lender reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction,

and **Insolvency** has a corresponding meaning. Notwithstanding the foregoing, the Borrower or Heemskirk Canada Limited (a company incorporated in Alberta, Canada), or other Canadian Obligor as applicable, shall be deemed to be Insolvent if any of the following shall occur:

- (a) if a decree or order of a court of competent jurisdiction is entered adjudging such person a bankrupt or insolvent or approving as properly filed a petition seeking the winding up of a such person under the Companies' Creditors Arrangement Act (Canada), the Bankruptcy and Insolvency Act (Canada), or the Winding-up and Restructuring Act (Canada) or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against any substantial part of the assets of such person or ordering the winding up or liquidation of its affairs and any such decree or order continues unstayed and in effect for a period of forty-five (45) Business Days;
- (b) if such person becomes insolvent, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the Bankruptcy and Insolvency Act (Canada) or any comparable law, seeks relief under the Companies' Creditors Arrangement Act (Canada), the Winding-up and Restructuring Act (Canada) or any other bankruptcy, insolvency or analogous law, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other person with similar powers of itself or of all or any substantial portion of its assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition; or
- (c) if proceedings are commenced for the dissolution, liquidation or voluntary winding up of such person, or for the suspension of the operations of such person and, if such proceedings are being actively and diligently contested in good faith, such proceedings continue undismissed, or unstayed and in effect for any period of thirty (30) consecutive days.

Interest Rate means the interest rate set out in clause 7.1 (*Calculation of interest*).

Lender means:

- (a) the Existing Lender; and
- (b) any person which has become a Party in accordance with clause 21 (*Assignment and Transfers*),

which in each case has not ceased to be a Party in accordance with the terms of this document.

Loan means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan, excluding any Capitalised Amounts.

Lock-up Account means any dollar-denominated bank account opened in accordance with clause 16.4(a) (with the account name and number to be provided by the Borrower to the Lender in writing as soon as reasonably practical following the opening of the account), together with any replacement and

substitute accounts opened with the written consent of the Lender, and sub-accounts of those accounts.

Material Adverse Effect means a material adverse effect on:

- (a) the business, operation, property, condition (financial or otherwise) or prospects of the Obligors taken as a whole;
- (b) the ability of the Obligors (taken as a whole) to perform their obligations under the Finance Documents or the Finance Documents (as defined in the Secured Facility Agreement);
- (c) the validity or enforceability of the whole or any material part of any Finance Document or any rights or remedies of the Lender under the Finance Documents;
- (d) the value of the Secured Property (taken as a whole); or
- (e) the Project.

Material Project Document has the meaning given to this term in the Secured Facility Agreement, from time to time.

Month End means the last day of each calendar month each year.

New Lender has the meaning given to this term in clause 21.1 (*Assignments and transfers by the Lender*).

NSC means Northern Silica Corporation, an Alberta private corporation incorporated under the Business Corporations Act (Alberta) whose corporate access number is 2020084675 and whose registered office address is 2500, 450 – 1st Street SW, Calgary, Alberta, T2P 5H1.

Obligor means a Borrower or a Guarantor.

OFAC means the Office of Foreign Assets Control of the Department of Treasury of the United States of America.

Party means a party to this document and includes its successors in title, permitted assigns and permitted transferees.

Permitted Financial Indebtedness means:

- (a) in relation to the incurrence of Financial Indebtedness, any Financial Indebtedness specified in the clause 19.10(a) (*Incurring Financial Indebtedness*); and/or
- (b) in relation to the provision of Financial Indebtedness, any Financial Indebtedness specified in clause 19.11(b).

Permitted Security has the meaning given to it in the Secured Facility Agreement, and for the purpose of this agreement includes:

- (a) the security interest granted by Heemskirk Canada Limited in favour of Canadian Imperial Bank of Commerce, represented by PPSA registration no. 11082612805 and registered on August 26, 2011, as amended by registration nos. 14040911883, 15070638641, and 15071029726, and as otherwise amended from time to time; and

- (b) the security interest granted by Heemskirk Canada Limited in favour of ATB Financial, represented by PPSA registration no. 18020635821, and as otherwise amended from time to time.

Project has the meaning given to it in the Secured Facility Agreement.

Project Area has the meaning given to it in the Secured Facility Agreement.

PPSA means the Australian PPSA, and with respect to the Canadian Obligors or assets located in Canada, also means Canadian PPSA.

PPSR means the Personal Property Securities Register, as established by the PPSA.

Priority Deed means the intercreditor and subordination agreement dated as of the date hereof between the Lender, as senior lender, Taurus Resources No. 2 B.V., as subordinate lender, and the Borrower.

Project has the meaning given to this term in the Secured Facility Agreement.

Project Account means the dollar-denominated bank account opened by the Borrower (with Canadian Imperial Bank of Commerce (Bank SWIFT code: CIBCCATT), with an account name of HCA Mountain Minerals (Moberly) Ltd and account number of 77-23814), together with any replacement and substitute accounts opened with the written consent of the Lender, and sub-accounts of those accounts.

Project Account Approved Purpose has the meaning given to the term "Approved Purpose" in the Secured Facility Agreement.

Project Lease has the meaning given to this term in the Secured Facility Agreement.

Related Body Corporate means, with respect to any person, each other person that directly or indirectly (through one or more intermediaries or otherwise) controls, is controlled by, or is under common control with, such person; and a person shall be deemed to be "**controlled by**" any other person if such other person possesses, directly or indirectly, (a) the power to vote more than 50% of the securities (on a fully-diluted basis) having ordinary voting power for the election of directors or managing general partners, or (b) the power to direct or cause the direction of the management and policies of such person, whether by contract or otherwise, provided that a body corporate, trust or partnership shall not be precluded from being a related body corporate merely because it is formed or established outside Australia, and for the purpose of this document, includes, with respect to a specified person, another person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified, where "control" means the possession, directly or indirectly, of the power to direct or ensure the direction of the management or policies of a person, whether through the ability to exercise voting power, by contract or otherwise.

Repeating Representations means each of the representations set out in clause 17 (*Representations*).

Resignation Letter means a letter substantially in the form set out in Schedule 5 (*Form of Resignation Letter*).

Sanction or Sanctions means individually and collectively, respectively, any and all applicable economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and anti-terrorism laws imposed, administered or enforced from time to time by:

- (a) the United States of America, including those administered by OFAC, the U.S. State Department, the U.S. Department of Commerce, or through any existing or future executive order;
- (b) the United Nations Security Council;
- (c) the European Union;
- (d) the United Kingdom;
- (e) the Australian Department of Foreign Affairs and Trade;
- (f) the Kingdom of Spain;
- (g) the government of Canada; or
- (h) any other jurisdiction in which any Obligor is located or doing business.

Sanctioned Entity means any person that is the target of Sanctions, including without limitation, a person that is:

- (a) listed on OFAC's SDN List and 'Blocked Persons List';
- (b) listed on OFAC's 'Consolidated Non-SDN List';
- (c) a legal entity that is deemed by OFAC to be a Sanctions target based on the direct or indirect ownership or control of such legal entity by Sanctioned Entity(s);
- (d) listed in any Sanctions list of designated persons maintained by the government of Canada, including a person described or designated under the provisions of the Criminal Code (Canada), the Special Economic Measures Act (Canada), the Justice for Victims of Corrupt Foreign Officials Act (Canada) or the United Nations Act (Canada) or any associated regulations;
- (e) a person engaged in dealings or transactions with any such Sanctioned Entity in violation of applicable Sanctions; or
- (f) a person that is a Sanctions target pursuant to any territorial or country-based Sanctions program.

SDN List means the Specially Designated Nationals and Blocked Persons List, as published by the United States Department of the Treasury Office of Foreign Asset Control from time to time, and available at - <http://www.treas.gov/offices/enforcement/ofac/sdn/index.html> or any official successor website, which identifies terrorist organisations, individual terrorists and states which sponsor terrorism that are, in each instance, restricted from doing business with the United States of America and/or American companies and/or Americans.

Secured Facility Agreement means the document titled "US\$40,000,000 Secured Facility Agreement" dated 15 July 2015 between the Borrower, Taurus Funds Management Pty Ltd as trustee for Taurus Resources No.2 L.P and Taurus Funds Management Pty Limited as trustee for Taurus Resources No.2 Trust and others, as amended and novated to Taurus Resources No. 2 B.V. on 10 February 2016 and amended and acceded to by NSC on 21 December 2018, as amended from time to time.

Secured Property means any property which is pledged or secured to the Lender under a Security Document.

Security means:

- (a) a mortgage, charge, pledge, lien or other security interest securing any obligation of any person including any "security interest" as defined in sections 12(1) or (2) of the Australian PPSA or as defined in the Canadian PPSA;
 - (b) any title retention arrangement;
 - (c) any right, interest, agreement, notice or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts or not repayable in certain circumstances;
 - (d) any third party right or interest or any right arising as a consequence of the enforcement of a judgement; or
 - (e) any other agreement, notice or arrangement having a similar effect,
- or any agreement or arrangement to create any of them or allow them to exist.

Security Document means:

- (a) any Accession Letter;
- (b) the Canadian law pledge of the shares in the Borrower, dated on or around the date of this document, granted by Heemskirk Canada Limited (a company incorporated in Alberta, Canada);
- (c) the Canadian law fixed and floating charge debenture, dated on or about the date of this document, granted by the Borrower over all of its assets;
- (d) the Canadian law fixed and floating charge debenture, dated on or about the date of this document, granted by Heemskirk Canada Limited (a company incorporated in Alberta, Canada) over all of its assets (including its bank accounts and contracts);
- (e) the Canadian law fixed and floating charge debenture, dated on or about the date of this document, granted by Heemskirk Canada Holdings Limited (a company incorporated in British Columbia, Canada) over all of its assets (including its bank accounts and contracts); and
- (f) any other document designated as such by the Lender and the Borrower.

Subsidiary means, with respect to any person, (a) any corporation in which greater than 50% of its stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors or such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation have or might have voting power by reason of the happening of any contingency unless such contingency has occurred and then only for so long as it continues) as of the time is owned by the person directly or indirectly through Subsidiaries; and (b) any partnership, limited liability company, association or other entity in which the person directly or indirectly through Subsidiaries is either a general partner or has a greater than 50% equity interest at the time. It also includes any entity required by IFRS to be included in the consolidated annual financial report of an entity or which would be required if that entity were a corporation.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty, interest or other amount payable in connection with any failure to pay or any delay in paying any of the same).

Tax Credit means a credit against, relief or remission for, or repayment of any Tax.

Tax Deduction means a deduction or withholding for or on account of Tax from a payment under a Finance Document other than a FATCA Deduction.

Tax Payment means an increased payment made by an Obligor to the Lender under clause 10.1 (*Tax gross-up*) or a payment under clause 10.2 (*Tax indemnity*).

Termination Date means the earlier of:

- (a) 31 January 2020; or
- (b) the date all Amounts Owing are prepaid in full.

US Tax Obligor means:

- (a) an entity which is resident for tax purposes in the United States of America; or
- (b) an entity some or all of whose payments under the Finance Documents are from sources within the United States for US federal income tax purposes.

Utilisation Date means the date on which the Loan is to be made to the Borrower.

Utilisation Request means a notice substantially in the form set out in Schedule 3 (*Utilisation Request*).

1.2 Interpretation

- (a) Unless the contrary intention appears, any reference in a Finance Document to:
 - (i) "**assets**" or "**property**" includes present and future properties, revenues and rights of every description;
 - (ii) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, replaced or novated;
 - (iii) the "**Secured Facility Agreement**" (including any reference which incorporated any definition or clause of the Secured Facility Agreement into any Finance Document) is a reference to the Secured Facility Agreement which has been notified to the Lender by the Borrower or Taurus Resources No. 2 B.V., from time to time, as being the Secured Facility Agreement in force at that time;
 - (iv) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (v) a "**person**" or "**entity**" includes any person, firm, company, body corporate, government, state or agency of a state or any

association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and any reference to a particular person or entity (as so defined) includes a reference to that person's or entity's executors, administrators, successors, substitutes (including by novation) and assigns;

- (vi) a "**regulation**" includes any regulation, rule, official directive, treaty, request or guideline (whether or not having the force of law) of any Governmental Agency and if not having the force of law, with which responsible entities in the position of the relevant Party would normally comply;
 - (vii) the words "**including**", "**for example**" or "**such as**" when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
 - (viii) a provision of law or a regulation is a reference to that provision as amended, consolidated, replaced or re-enacted;
 - (ix) US\$ or USD denotes the lawful currency of the United States of America
 - (x) C\$ or CAD denotes the lawful currency of Canada;
 - (xi) unless a contrary indication appears, a time of day is a reference to Brisbane time;
 - (xii) "**law**" means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them);
 - (xiii) a "**derivative transaction**" includes any derivative transaction entered into in connection with obtaining protection against, or a benefit from, fluctuation in any rate or price;
 - (xiv) a reference to any thing (including an amount) is a reference to the whole and each part of it;
 - (xv) "**know your customer checks**" or "**KYC**" means any "know your customer" or other identification checks or procedures under any law or regulation; and
 - (xvi) "**security interest**" has the meaning given to it in the PPSA.
- (b) Section, clause and schedule headings are for ease of reference only.
 - (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this document.
 - (d) A Default is "**continuing**" if it has not been remedied to the satisfaction of the Lender or waived in writing.

1.3 Code of Banking Practice

The Parties agree that the Code of Banking Practice does not apply to the Finance Documents and the transactions under them.

2 The loan

2.1 The Facility

- (a) Subject to the terms of this document, the Lender makes available to the Borrower a CAD loan facility in an aggregate amount equal to the aggregate of the Commitment and the Capitalised Amounts.
- (b) At the end of the Availability Period for the Facility, the whole of the Available Commitment for the Facility is automatically cancelled and the Commitment of the Lender reduces to the same extent.

2.2 Specific purpose

The Borrower agrees to use and apply all amounts borrowed by it under the Facility to:

- (a) pay or repay any outstanding 'Amounts Owed' (as defined in the Existing QMetco Unsecured Facility) under the Existing QMetco Unsecured Facility; or
- (b) fund working capital in accordance with the Agreed Budget.

2.3 Monitoring

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this document.

3 Conditions of Utilisation

3.1 Initial conditions precedent

The Borrower may not deliver a Utilisation Request unless the Lender has received all of the documents and other evidence listed in Part 1 of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon being so satisfied.

3.2 Further conditions precedent

The Lender will only be obliged to comply with clause 4.4 (*Lender's participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Loan; and
- (b) the aggregate of:
 - (i) the amount of the Loan proposed to be made on the proposed Utilisation Date; and
 - (ii) the amount of all outstanding Loans and all other amounts outstanding under the Facility (other than the Capitalised Amounts) on the proposed Utilisation Date,does not exceed the Commitment; and
- (c) the Repeating Representations to be made by each Obligor are in all material respects correct, and are not misleading.

4 Utilisation

4.1 Delivery of a Utilisation Request

The Borrower may utilise the Facility by delivering a Utilisation Request to the Lender no less than 10 Business Days (or such shorter period agreed between the Borrower and the Lender in writing) before a proposed Utilisation Date, duly completed and signed by an Authorised Officer of the Borrower.

4.2 Completion of a Utilisation Request

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) the proposed Utilisation Date is a Business Day within the Availability Period; and
 - (ii) the currency and amount of the Loan comply with clause 4.3 (*Currency and amount*).
- (b) Only one Loan may be requested in each Utilisation Request.

4.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be CAD.
- (b) The amount of the proposed Loan must be a minimum of C\$200,000 (and an integral multiple of C\$100,000) or, if less, the Available Commitment.

4.4 Lender's participation

If the conditions set out in this document have been met, the Lender shall make the Loan available by the Utilisation Date through its Facility Office.

5 Repayment

- (a) The Borrower shall repay the Amounts Owed on the Termination Date.
- (b) The Borrower may not reborrow any part of the Facility which is repaid.

6 Prepayment and cancellation

6.1 Illegality

If it becomes unlawful (or impossible as a result of a change in law or regulation) in any relevant jurisdiction for the Lender to perform any of its obligations as contemplated by this document or to fund or maintain its participation in any loan or the Facility:

- (a) that Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) upon the Lender notifying the Borrower, the Commitment or such portion thereof as may be unlawful to maintain will be immediately cancelled; and

- (c) the Borrower shall repay the Amounts Owed or such portion thereof as may be unlawful to maintain in accordance with clause 5 (*Repayment*) on:
 - (i) the later of the next Month End after the Lender has notified the Borrower; or
 - (ii) if earlier, the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

6.2 Voluntary cancellation

The Borrower may, if it gives the Lender not less than 10 Business Days' (or such shorter period as the Lender may agree) prior notice, cancel the whole or any part (being a minimum amount of C\$250,000 and a whole multiple of C\$100,000) of the Available Commitment.

6.3 Voluntary prepayment of Amounts Owed

The Borrower may, if it gives the Lender not less than 10 Business Days' (or such shorter period as the Lender agrees) prior notice, prepay the whole or any part of the Amounts Owed (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of C\$200,000 and a whole multiple of C\$100,000) without penalty.

6.4 Right of replacement or repayment and cancellation

- (a) If:
 - (i) any sum payable to the Lender by an Obligor is required to be increased under clause 10.1 (*Tax gross-up*);
 - (ii) the Lender claims indemnification from the Borrower under clause 10.2 (*Tax indemnity*) or clause 11 (*Increased costs*); or
 - (iii) at any time on or after the date which is six months before the earliest FATCA Application Date for any payment by a Party to a Lender, that Lender is not, or has ceased to be, a FATCA Exempt Party and, as a consequence, a Party will be required to make a FATCA Deduction from a payment to that Lender on or after that FATCA Application Date,

the Borrower may, whilst the circumstance giving rise to the requirement or indemnification or FATCA Deduction continues, give the Lender notice of cancellation of the Commitment and its intention to procure the repayment of the Amounts Owed.

- (b) On receipt of a notice referred to in this clause 6.4, the Commitment shall immediately be reduced to zero.
- (c) On the next Month End following a notice under this clause 6.4 (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay the Amounts Owed in accordance with clause 5 (*Repayment*).

6.5 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this clause 6 shall be irrevocable and, unless a contrary indication appears in this document, shall specify the date or dates upon which the relevant

cancellation, repayment or prepayment is to be made and the amount of that cancellation, repayment or prepayment.

- (b) Any prepayment or repayment under this document shall be made together with accrued but unpaid interest and fees on or in connection with the amount repaid or prepaid and without premium or penalty.
- (c) The Borrower may not reborrow any part of either Facility which is prepaid or repaid. The applicable Commitment will reduce and be cancelled by the amount repaid or prepaid.
- (d) The Borrower shall not repay or prepay all or any part of the Amounts Owings or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this document.
- (e) No amount of the Commitments cancelled under this document may be subsequently reinstated.

7 Interest

7.1 Calculation of interest

The rate of interest on the Amounts Owing is the aggregate of:

- (a) the then current interest rate applying under the Secured Facility Agreement per annum; and
- (b) 5.00% per annum,

together the ("**Interest Rate**").

7.2 Payment of interest

- (a) Subject to paragraph (b) below, the Borrower shall pay accrued interest on the Amounts Owing at the Interest Rate:
 - (i) on each Month End;
 - (ii) whenever it repays or prepays any Amounts Owing (other than if on a Month End); and
 - (iii) on the Termination Date.
- (b) For each date accrued interest is payable, all interest payable will be capitalised.
- (c) Any interest which is capitalised in accordance with paragraph (b) above shall be automatically added to, and from that time form part of the Capitalised Amounts and the principal amount of the Amounts Owing to which it relates on each Month End.

7.3 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after any judgment for the recovery of that amount) at a rate equal to the Interest Rate. Any interest accruing under this clause 7.3 shall be immediately payable by the Obligor on demand by the Lender.

- (b) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at each Month End and on the Termination Date but will remain immediately due and payable.

7.4 Interest Act (Canada)

Interest Act (Canada) For purposes of disclosure pursuant to the *Interest Act (Canada)*, the yearly rate of interest to which any rate of interest hereunder which is not calculated on the actual number of days in the applicable year is equivalent may be determined by multiplying the applicable rate by a fraction, the numerator of which is the number of days to the same calendar date in the next calendar year and the denominator of which is the applicable number of days used in the calculation of such interest rate.

7.5 Criminal Code (Canada)

Notwithstanding any provision herein to the contrary, in no event will the aggregate "**interest**" (as defined in section 347 of the Criminal Code (Canada)) payable under this document exceed the maximum effective annual rate of interest on the "**credit advanced**" (as defined in that section) permitted under that section and, if any payment, collection or demand pursuant to this document in respect of "**interest**" (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection or demand will be deemed to have been made by mutual mistake of the Borrower and the Lender and the amount of such excess payment or collection will be first used to reduce the Amounts Owed and the remaining amount of such excess (if any) will be refunded to the Borrower upon the request of the Borrower. For purposes of this document, the effective annual rate of interest will be determined in accordance with generally accepted actuarial practices and principles over the term of the Facility on the basis of annual compounding of the lawfully permitted rate of interest and, in the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Lender will be prima facie evidence, for the purposes of such determination.

8 Month Ends

If a Month End would otherwise be a day which is not a Business Day, that Month End will instead be deemed to be the next Business Day in that calendar month (if there is one) or on the preceding Business Day (if there is not).

9 Fees

9.1 Arranging fee

- (a) The Borrower shall pay to the Lender a fee in CAD computed at the rate of 3% of the amount of any Loan drawn under this Facility, payable on the Utilisation Date of that Loan ("**Arranging Fee**"), other than in respect of any Loan drawn for the purpose of paying or repaying any outstanding 'Amounts Owed' (as defined in the Existing QMetco Unsecured Facility) under the Existing QMetco Unsecured Facility.
- (b) The Arranging Fee will be capitalised.
- (c) Any amount which is capitalised in accordance with paragraph (b) above shall be automatically added to, and from that time form part of the Capitalised Amounts and the principal amount of the Amounts Owed to which it relates.

9.2 Commitment fee

- (a) The Borrower shall pay to the Lender a fee in CAD computed at the rate of 2% per annum on the Available Commitments for the Availability Period ("**Commitment Fee**").
- (b) The accrued Commitment Fee is payable on the last day of each calendar month during the Availability Period and on the cancelled amount of the Commitment at the time the cancellation is effective.
- (c) For each date the Commitment Fee is payable, the Commitment Fee will be capitalised.
- (d) Any amount which is capitalised in accordance with paragraph (b) above shall be automatically added to, and from that time form part of the Capitalised Amounts and the principal amount of the Amounts Owing to which it relates on the last day of each calendar month.

10 Tax gross-up and Indemnities

10.1 Tax gross-up

- (a) Each Obligor shall make all payments to be made by it under or in connection with the Finance Documents without any Tax Deduction unless such Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly. Similarly, the Lender shall notify the Borrower on becoming so aware in respect of a payment payable to the Lender.
- (c) If a Tax Deduction is required by law to be made by an Obligor except in relation to a Tax described in clause 10.2(b)(i) (*Tax indemnity*), that Obligor shall pay an additional amount together with the payment so that, after making any Tax Deduction, the Lender receive an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Lender evidence satisfactory to the Lender, acting reasonably, that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

10.2 Tax indemnity

- (a) If the Lender is or will be, for or on account of Tax, subject to any liability or required to make any payment or deduction in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under or in connection with a Finance Document then the Borrower shall (within three Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which that Lender determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Lender in respect of a Finance

Document or a transaction, deduction or payment under or in connection with it.

(b) Paragraph (a) above shall not apply:

(i) with respect to any Tax assessed on the Lender or required to be withheld, deducted or remitted by the Borrower:

(A) under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or

(B) under the law of the jurisdiction in which the Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender; or

(C) by reason of the Lender and the Borrower not dealing at arm's length for purposes of the Income Tax Act (Canada) at the relevant time; or

(D) by reason of the Lender being a "specified shareholder" of the Borrower (within the meaning of subsection 18(5) of the Income Tax Act (Canada)) at the time of any payment or deemed payment, or by reason of the Lender not dealing at arm's length for the purposes of the Income Tax Act (Canada) with a "specified shareholder" of the Borrower at the time of any payment or deemed payment; or

(ii) to the extent the relevant loss, liability or cost is compensated for by an increased payment under clause 10.1 (*Tax gross-up*), clause 10.6 (*FATCA Deduction and gross-up by Obligor*) or clause 10.7(b) (*FATCA Deduction by Lender*) or is compensated for by a payment under clause 10.7(b) (*FATCA Deduction by Lender*).

10.3 Tax Credit

If an Obligor makes a Tax Payment and the Lender determines in its absolute discretion that:

(a) a Tax Credit is attributable to that Tax Payment; and

(b) the Lender has obtained, utilised and retained that Tax Credit,

the Lender shall pay an amount to the Obligors which the Lender determines in its absolute discretion will leave it (after that payment) in the same after-Tax position as it would have been in had the circumstances not arisen which caused the Tax Payment to be required to be made by the Obligor.

10.4 Stamp duties and Taxes

The Borrower shall:

(a) pay; and

- (b) within three Business Days of demand, indemnify the Lender against any cost, loss or liability the Lender incurs in relation to,

all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

10.5 Indirect Tax

- (a) All payments to be made by an Obligor under or in connection with any Finance Document have been calculated without regard to Indirect Tax. If all or part of any such payment is the consideration for a taxable supply or chargeable with Indirect Tax then, when the Obligor makes the payment:
 - (i) it must pay to the Lender an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and
 - (ii) the Lender will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax.
- (b) Where a Finance Document requires an Obligor to reimburse or indemnify the Lender for any costs or expenses, that Obligor shall also at the same time pay and indemnify the Lender against all Indirect Tax incurred by the Lender in respect of the costs or expenses save to the extent that the Lender is entitled to repayment or credit in respect of the Indirect Tax. The Lender will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax.

10.6 FATCA Deduction and gross-up by Obligor

- (a) If an Obligor is required to make a FATCA Deduction, that Obligor shall make that FATCA Deduction and any payment required in connection with that FATCA Deduction within the time allowed and in the minimum amount required by FATCA.
- (b) If a FATCA Deduction is required to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any FATCA Deduction) leaves an amount equal to the payment which would have been due if no FATCA Deduction had been required.
- (c) The Borrower shall promptly upon becoming aware that an Obligor must make a FATCA Deduction (or that there is any change in the rate or the basis of a FATCA Deduction) notify the Lender accordingly. Similarly, the Lender shall notify the Borrower on becoming so aware in respect of a payment payable to the Lender.
- (d) Within thirty days of making either a FATCA Deduction or any payment required in connection with that FATCA Deduction, the Obligor making that FATCA Deduction shall deliver to the Lender evidence reasonably satisfactory to the Lender that the FATCA Deduction or payment has been made or (as applicable) any appropriate payment paid to the relevant governmental or taxation authority.

10.7 FATCA Deduction by Lender

- (a) The Lender may make any FATCA Deduction it is required by FATCA to make, and any payment required in connection with that FATCA Deduction, and the Lender shall not be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise

compensate the recipient of the payment for that FATCA Deduction. If the Lender becomes aware that it must make a FATCA Deduction in respect of a payment to another Party (or that there is any change in the rate or the basis of such FATCA Deduction), it shall notify that Party.

- (b) The Borrower shall (within three Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered by the Lender as a result of another Party making a FATCA Deduction in respect of a payment due to it under a Finance Document. This paragraph shall not apply to the extent a loss, liability or cost is compensated for by an increased payment under clause 11 (*Increased costs*).

10.8 Tax Credit and FATCA

If an Obligor makes a FATCA Payment and the Lender determines in its absolute discretion that:

- (a) a Tax Credit is attributable to an increased payment of which that FATCA Payment forms part, to that FATCA Payment or to a FATCA Deduction in consequence of which that FATCA Payment was required; and
- (b) the Lender has obtained, utilised and retained that Tax Credit,

the Lender shall pay an amount to the Obligor which the Lender determines in its absolute discretion will leave it (after that payment) in the same after-Tax position as it would have been in had the FATCA Payment not been required to be made by the Obligor.

10.9 FATCA Information

- (a) Subject to clause 10.9(c), each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party; and
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA (including its applicable "passthru payment percentage" or other information required under the US Treasury Regulations or other official guidance including intergovernmental agreements) as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA.
- (b) If a Party confirms to another Party pursuant to clause 10.9(a)(i) that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) clause 10.9(a) shall not oblige the Lender to do anything which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or

- (iii) any duty of confidentiality.
- (d) If a Party fails to confirm its status or to supply forms, documentation or other information requested in accordance with clause 10.9(a) (including, for the avoidance of doubt, where clause 10.9(c) applies), then:
 - (i) if that Party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such Party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party; and
 - (ii) if that Party failed to confirm its applicable "passthru payment percentage" then such Party shall be treated for the purposes of the Finance Documents (and payments made thereunder) as if its applicable "passthru payment percentage" is 100%,

until (in each case) such time as the Party in question provides the requested confirmation, forms, documentation or other information.

11 Increased Costs

11.1 Increased costs

Subject to clause 11.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Lender, pay to the Lender the amount of any Increased Costs incurred by the Lender or any of its Related Bodies Corporate as a result of:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
- (b) compliance with any law or regulation,

applying for the first time after the date of this document. This includes, without limitation, any law or regulation with regard to capital adequacy, prudential limits, liquidity, reserve assets, Tax, capital requirements, leverage ratio, liquidity standards or other standards, rules or requirements under or following any of the following published by the Basel Committee on Banking Supervision (as amended, supplement restated):

- (c) "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer, published in December 2010;
- (d) "Globally systematically important banks: assessment methodology and the additional loss absorbency requirement – Rules text", published in November 2011; and
- (e) any further guidance standards relating to the above or known as Basel III.

11.2 Increased cost claims

- (a) If the Lender intends to make a claim pursuant to this clause 11 (*Increased costs*), it shall promptly notify the Borrower of the event giving rise to the claim.

- (b) The Lender shall, as soon as practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Costs.

11.3 Exceptions

This clause 11 (*Increased costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) attributable to a FATCA Deduction required to be made by an Obligor or the Lender;
- (c) compensated for by clause 10.7(b) (*FATCA Deduction by Lender*);
- (d) compensated for by clause 10.2 (*Tax indemnity*) (or would have been compensated for under clause 10.2 (*Tax indemnity*) but was not so compensated solely because one of the exclusions in paragraph (b) of clause 10.2 (*Tax indemnity*) applied); or
- (e) attributable to the wilful breach by the Lender or its Related Bodies Corporate of any law or regulation.

12 Other Indemnities

12.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
 - (i) making or filing a claim or proof against that Obligor; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Lender against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.
- (c) Payment of an amount in a currency other than the due currency does not discharge that amount except to the extent of the amount of the due currency actually obtained when the recipient converts the amount received into the due currency.

12.2 Other indemnities

The Obligors shall, within three Business Days of demand, indemnify the Lender against any cost, expense, loss or liability (including legal fees) incurred by the Lender as a result of:

- (a) the occurrence of any Default or the investigation of any event which it reasonably believes is a Default;
- (b) any other information produced or approved by an Obligor or on behalf of an Obligor under or in connection with the Finance Documents, or the transactions they contemplate, being or being alleged to be misleading or deceptive in any respect (including by omission);
- (c) any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Obligor or with respect to the transactions contemplated or financed under a Finance Document;
- (d) a failure by an Obligor to pay any amount due under a Finance Document on its due date;
- (e) funding, or making arrangements to fund, its participation in a Loan requested in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this document (other than by reason of default or negligence by the Lender alone);
- (f) acting or relying on any notice, request or instruction from an Obligor which it reasonably believes to be genuine, correct and appropriately authorised; or
- (g) the Amounts Owed (or part of the Amounts Owed) not being prepaid in accordance with a valid notice of prepayment given by the Borrower.

13 Mitigation by the Lender

13.1 Mitigation

- (a) The Lender shall negotiate in good faith with a view to finding a way to mitigate any circumstances which arise and which would result in any amount becoming payable to it under, or its Commitment being cancelled pursuant to, any of the following clauses: clause 6.1 (*Illegality*), clause 10 (*Tax gross-up and indemnities*) (other than clause 10.5 (*Indirect Tax*)) or clause 11 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to a Related Body Corporate or another Facility Office, subject to the Borrower's written consent which shall not be unreasonably withheld. For the avoidance of doubt, if the Borrower withholds its consent, the Lender will be taken to have complied with its obligations under this clause 13.1(a).
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents including under clause 10 (*Tax gross-up and indemnities*).

13.2 Indemnity and limitation of liability

- (a) The Obligors shall indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under clause 13.1 (*Mitigation*).

- (b) The Lender is not obliged to take any steps under clause 13.1 (*Mitigation*) if, in the reasonable opinion of the Lender, to do so might be prejudicial to it.

14 Costs and Expenses

14.1 Transaction expenses

The Borrower shall promptly on demand pay the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing, execution and completion of:

- (a) this document and any other documents referred to in this document; and
- (b) any other Finance Document.

14.2 Amendment costs

If an Obligor requests an amendment, waiver or consent the Borrower shall, within three Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by or for the account of the Lender in complying with that request or requirement.

14.3 Enforcement costs

The Borrower shall, within three Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees) incurred by the Lender in connection with the enforcement of, or the preservation of any rights under, any Finance Document or in connection with anything referred to in clause 12.2 (*Other indemnities*).

15 Guarantee and Indemnity

15.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to the Lender punctual performance by each Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with the Lender that whenever an Obligor does not pay any amount when due under or in connection with any Finance Document (or anything which would have been due if the Finance Document or the amount was enforceable, valid and not illegal), then subject to the relevant amount not having been paid by any other Obligor, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) indemnifies the Lender immediately on demand against any cost, loss or liability suffered by the Lender (including legal fees incurred by or on behalf of the Lender resulting from any action instituted in respect of the guaranteed obligations):
 - (i) if any obligation guaranteed by it (or anything which would have been an obligation guaranteed by it if not unenforceable, invalid or illegal) is or becomes unenforceable, invalid or illegal. The

amount of the cost, loss or liability shall be equal to the amount which the Lender would otherwise have been entitled to recover;

- (ii) if an Obligor does not pay any amount when due under or in connection with any Finance Document;
- (iii) if any of its obligations under clauses 15.1(a) or (b) is or becomes unenforceable, invalid or illegal. The amount of the loss recovered under this sub-paragraph shall be equal to the amount which the Lender would otherwise have been entitled to recover;
- (iv) if the Lender is obliged, or agrees, to pay an amount to a liquidator of an Insolvent person in connection with a payment by an Obligor (for example, a Lender may have to, or agree to, pay interest on the amount); or
- (v) in connection with any person exercising, or not exercising, rights under this guarantee, undertaking and indemnity.

Each of paragraphs (a), (b) and (c) is a separate obligation. None is limited by reference to the other.

15.2 Continuing guarantee

This guarantee, undertaking and indemnity is a continuing guarantee, undertaking and indemnity and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

15.3 Reinstatement

If any payment to or any discharge given by the Lender (whether in respect of the obligations of any Obligor or any Security for those obligations or otherwise) is avoided or reduced for any reason (including, without limitation, as a result of Insolvency, breach of fiduciary or statutory duties or any similar event):

- (a) the liability of each Obligor shall continue as if the payment, discharge, avoidance or reduction had not occurred;
- (b) the Lender shall be entitled to recover the value or amount of that Security or payment from each Obligor, as if the payment, discharge, avoidance or reduction had not occurred, together with any associated costs or expenses; and
- (c) each Obligor shall do anything (including signing any document) to reinstate any Security (including this guarantee, undertaking and indemnity) held by the Lender from an Obligor immediately before the payment, discharge, avoidance or reduction.

15.4 Waiver of defences

The obligations of each Guarantor under this clause 15 will not be affected by an act, omission, matter or thing which, but for this clause 15, would reduce, release or prejudice any of its obligations under this clause 15 (without limitation and whether or not known to it or the Lender) including:

- (a) any time, waiver or other concession or consent granted to, or composition with, any Obligor or other person;
- (b) the release or resignation of any other Obligor or any other person;

- (c) any composition or arrangement with any creditor of any Obligor or other person;
- (d) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, execute, take up or enforce, any rights against, or Security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (e) any incapacity or lack of power, authority or legal personality of, or dissolution or change in, the members or status of an Obligor or any other person;
- (f) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or Security including any change in purpose of, any extension of or any increases in any facility or the addition of any new facility under any Finance Document or other document or Security;
- (g) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security;
- (h) any set off, combination of accounts or counterclaim;
- (i) any Insolvency or similar proceedings;
- (j) this document or any other Finance Document not being executed by or binding against any other Obligor or any other party; and
- (k) any assignment or other dealing with this guarantee, undertaking and indemnity or any Finance Document.

References in clause 15.1 to obligations of an Obligor or amounts due will include what would have been obligations or amounts due but for any of the above, as well as obligations and amounts due which result from any of the above.

15.5 Variations and replacements

The Guarantor acknowledges that the Finance Documents may be varied or replaced from time to time by agreement between the parties to the relevant Finance Document.

The Guarantor confirms that an Obligor's obligations under a Finance Document to pay any amount when due under or in connection with the Finance Document includes any amount payable under the Finance Document as varied or replaced by agreement between the parties to the relevant Finance Document. The Guarantor confirms that each of clauses 15.1(a), (b) and (c) apply regardless of:

- (a) how the Finance Document is varied or replaced; and
- (b) the reasons for the variation or replacement; and
- (c) whether the amount payable under the Finance Document decreases or increases or the Finance Document is otherwise more onerous as a result of the variation or replacement.

This clause does not limit clause 15.4 (*Waiver of defences*).

15.6 Immediate recourse

Each Guarantor waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this clause 15. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

15.7 Appropriations

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, Security or rights held or received by the Lender (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this clause 15 (Guarantee and Indemnity).

15.8 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, no Guarantor will:

- (a) exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents:
 - (i) to be indemnified by an Obligor or any other guarantor of, or provider of Security for, any Obligor's obligations under the Finance Documents;
 - (ii) to claim any contribution from an Obligor or any other guarantor of, or provider of Security for, any Obligor's obligations under the Finance Documents; or
 - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any other guarantee or Security:
 - (A) taken pursuant to, or in connection with, the Finance Documents by the Lender; or
 - (B) in favour of a person other than the Lender in connection with any obligations of, or any other amounts payable, by any Obligor to, or for the account of, that other person; or
- (b) in any form of administration of an Obligor or any other guarantor of, or provider of Security for, any Obligor's obligations under the Finance Documents (including liquidation, winding up, bankruptcy, voluntary administration, dissolution or receivership or any analogous process) prove for or claim, or exercise any vote or other rights in respect of, any indebtedness of any nature owed to it by the Obligor or the other guarantor or Security provider.

The Guarantor must, on demand from the Lender, notify any relevant person of the terms of this clause 15 and other parts of this guarantee, undertaking and indemnity that may be relevant. The Guarantor also authorises the Lender to do so at any time in its discretion and without first asking the Guarantor to do it. This applies despite anything else in this guarantee, undertaking and indemnity.

15.9 Guarantor's right of proof limited

No Guarantor shall exercise a right of proof in any form of administration of an Obligor (including liquidation, winding up, bankruptcy, voluntary administration, dissolution or receivership or any analogous process) independently of an attorney appointed under clause 15.10 (*Right to prove*).

15.10 Right to prove

- (a) Each Guarantor irrevocably appoints the Lender and each of its Authorised Officers severally as its attorney and agrees to formally approve all action taken by an attorney under this clause 15.10. Such appointment is irrevocable and coupled with an interest.
- (b) Each attorney may:
 - (i) do anything which a Guarantor may lawfully do to exercise a right of proof in any form of administration of an Obligor or any other guarantor of, or provider of Security for, any Obligor's obligations under the Finance Documents (including liquidation, winding up, bankruptcy, voluntary administration, dissolution or receivership or any analogous process). (These things may be done in the Guarantor's name or the attorney's name and they include signing and delivering documents, taking part in legal proceedings and receiving any dividend arising out of the right of proof); and
 - (ii) delegate its powers (including this power) and may revoke a delegation; and
 - (iii) exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so.
- (c) No attorney need account to a Guarantor for any dividend received on exercising a right of proof under clause 15.10(b) except to the extent that any dividend remains after the Lender has received all amounts payable to it under or in connection with the Finance Documents.

15.11 Additional security

This guarantee, undertaking and indemnity is in addition to and is not in any way prejudiced by any other guarantee, undertaking and indemnity or Security now or subsequently held by the Lender.

15.12 Approval

Each Obligor which holds issued shares in a Guarantor, in its capacity as holder of those shares, confirms that it approves the terms of, and the transactions contemplated by, the Finance Documents to which each Guarantor is a party (including the terms of this guarantee, undertaking and indemnity).

16 Bank Accounts

16.1 General

- (a) The Borrower shall maintain the Bank Accounts in accordance with this clause 16 (*Bank Accounts*), in accordance with the Account Bank Deed, if any, and in accordance with the Priority Deed.
- (b) Each Obligor shall give such notices as the Lender may require in connection with the perfection or protection of the Security over the Project Account, the Lock-up Account (if required in accordance with clause 16.3 (*Lock-up Account*)) or for the purpose of giving effect to the provisions of this clause 16 (*Bank Accounts*)).
- (c) The Bank Accounts shall be separate accounts which are held with an Account Bank. The Borrower must procure that the Account Bank in respect of the Project Account enter into an Account Bank Deed, and, if requested, in respect of the Lock-up Account.
- (d) The Bank Accounts must be denominated in US or Canadian dollars (except the Lock-up Account which must be denominated in US dollars). The Borrower acknowledges that all amounts advanced or payable hereunder shall be in US dollars and the Borrower bears all currency and foreign exchange risk.
- (e) If any Obligor or the Account Bank receives any moneys for crediting to the Bank Accounts in a currency other than dollars, that Obligor must convert those moneys into dollars (at the Account Bank's prevailing market rates for comparable transactions) on the date on which they are received. The amount must be paid into the Project Account or the Lock-up Account (if required in accordance with clause 16.3 (*Lock-up Account*)) immediately after it is converted into the relevant currency.
- (f) The restrictions on the operation of, and withdrawal of funds from, the Bank Accounts contained in this document will not affect the obligations of the Obligors to make all payments required to be made to the Lender on the respective due dates for payment in accordance with the Finance Documents.
- (g) The detailed operating procedures for the Bank Accounts will be agreed from time to time between the Borrower and the Account Bank. In the event of any inconsistency between this document and those procedures, this document will prevail.
- (h) Neither the ability of the Borrower to make any withdrawal from any Bank Account in accordance with this document nor any such withdrawal will be construed as a waiver by the Lender of any Security over the Bank Accounts.
- (i) In receiving any payments into the Bank Accounts or making any withdrawals from any Bank Account, each Obligor shall ensure that it has obtained all such Authorisations as are necessary in order for such payment to be made into, or such withdrawal to be made from, the Bank Accounts.

16.2 Project Account

- (a) The Borrower shall open and maintain the Project Account and shall procure that the following amounts are paid into it:
 - (i) the proceeds of all Loans made to the Borrower; and

- (ii) any insurance proceeds which are required to be deposited into the Project Account in accordance with clause 20.11(b) of the Secured Facility Agreement.
- (b) Subject to clause 16.4 (*Withdrawals*), the Borrower may only withdraw and use any amounts standing to the credit of the Project Account for the Project Account Approved Purpose.

16.3 Lock-up Account

- (a) In the event that the Borrower is required to deposit funds into the Lock-up Account in accordance with the Secured Facility Agreement, the Borrower must open and maintain the Lock-up Account with the Account Bank for the purpose of holding the amounts required by the Secured Facility Agreement.
- (b) The Borrower must give notice to the Lender once the Lock-up Account has been opened (along with all relevant account details), following which the Borrower must take all steps to perfect the Lender's Security over the Lock-up Account.
- (c) Subject to clause 16.4 (*Withdrawals*), the Borrower may only withdraw amounts from the Lock-Up Account in accordance with the Secured Facility Agreement.

16.4 Withdrawals

- (a) No withdrawals from the Bank Accounts may be made except as expressly permitted by this document or the applicable Account Bank Deed.
- (b) No Obligor may request any withdrawal to be made from the Project Account:
 - (i) to the extent that the Project Account would become overdrawn as a result; or
 - (ii) if, prior to the date of the relevant proposed withdrawal, the Lender notifies the Account Bank that the withdrawal is not, or would not be, permitted under any Finance Document.
- (c) No Obligor may request any withdrawal to be made from a Bank Account at any time whilst an Event of Default is continuing (or if any Event of Default would result from the withdrawal) except with the written consent of the Lender (in its absolute discretion).
- (d) Notwithstanding any other provision of this document, if an Enforcement Date has occurred:
 - (i) no amount will be payable to any Obligor, or, may be withdrawn by any Obligor, with respect to any Bank Account; and
 - (ii) the Lender will, to the fullest extent under all applicable laws and pursuant to the applicable Bank Account Deeds, be entitled (but not obliged) without prior notice to, or the consent of, any Obligor to be the sole signatory on all Bank Accounts.
- (e) The Lender shall promptly notify the Account Bank in respect of the Project Account and the Account Bank in respect of the Lock-up Account of the occurrence of an Enforcement Date. Such Account Banks shall

be entitled to accept the Lender's notification under this clause without further enquiry as to the validity of the notification.

16.5 Administration and miscellaneous

- (a) The Borrower shall provide the Lender and any of their representatives with access on reasonable notice and during normal business hours to review the books and records relating to the Bank Accounts.
- (b) Except where this document specifically provides otherwise, no Obligor may exercise any right which it may have under any applicable law to direct the Account Bank to transfer any amount standing to the credit of the Project Account to it or to its order.

17 Representations

Each Obligor makes the representations and warranties set out in this clause 17 to the Lender on the date of this document, and, in the case of Repeating Representations, on the other dates set out in clause 17.23 (*Repetition*).

17.1 Status

- (a) It is a corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
- (b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.
- (c) It is not a FATCA FFI or a US Tax Obligor.

17.2 Binding obligations

- (a) The obligations expressed to be assumed by it in each Finance Document to which it is expressed to be a party are, subject to any necessary stamping and registration requirements, any equitable principles and bankruptcy, insolvency, moratorium, reorganisation or other similar laws generally affecting creditors' rights, legal, valid, binding and enforceable obligations.
- (b) Without limiting paragraph (a) above, each Security Document to which it is a party creates the security interests which that Security Document purports to create and those security interests are valid and effective, subject to any registration requirements.

17.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its or any of its Subsidiaries constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets in any material respect;

nor (except as provided in any Security Document) result in the existence of, or oblige it to create, any Security over any of its assets.

17.4 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees, undertakings or indemnities contemplated by the Finance Documents to which it is a party.

17.5 Authorisations

- (a) All Authorisations required or desirable:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations under the Finance Documents to which it is a party have been obtained or effected and are in full force and effect;
 - (ii) to ensure the Finance Documents to which it is a party are valid, enforceable and admissible in evidence in any applicable jurisdiction have been obtained or effected and are in full force and effect;
 - (iii) for it and its Subsidiaries to carry on their business, where failure to obtain it might have a Material Adverse Effect, have or will be obtained or effected if and when required for purposes of the construction and operation of the Project, and are in full force and effect while so required; and
 - (iv) to enable it to create the Security to be created by it pursuant to any Security Document and to ensure that such Security has the priority and ranking it is expressed to have, subject to the Priority Deed, have been obtained or effected and are in full force and effect.
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of each Obligor and required to operate and maintain the Project have been obtained or effected and are in full force and effect.
- (c) The Borrower has no reasonable belief that any Authorisation which has been obtained will be suspended, cancelled or revoked.
- (d) The Borrower is not in material violation of any Authorisation.
- (e) To the Borrower's knowledge, no counterparty to a Material Project Document is in material violation of any Authorisation.

17.6 Governing law and enforcement

- (a) The choice of law referred to in clause 23.2 (*Governing law*) as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation and in British Columbia, Canada.
- (b) Any judgment obtained against it in any jurisdiction referred to in clause 23.3 (*Jurisdiction*) in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation.

17.7 Taxation

- (a) It is not required under the law applicable where it is incorporated or resident to make any deduction for or on account of Tax from any payment it may make under any Finance Document to the Lender.
- (b) It (and each of its Subsidiaries) has paid when due all Taxes payable by it under applicable law except to the extent that it is contesting payment in good faith (and which has been notified to the Lender), by appropriate means and in respect of which adequate provision for the payment of such Taxes has been made as required by IFRS except where a failure to pay may have a Material Adverse Effect.
- (c) No claims in respect of Taxes which (if adversely determined) would, or would be reasonably likely to, have a Material Adverse Effect have been made against it or any of its Subsidiaries.

17.8 No filing or stamp taxes

Under the law of its jurisdiction of incorporation or residence it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp duty, registration tax or similar Tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

17.9 Compliance with laws and regulatory compliance

The Borrower and its Related Bodies Corporate are in compliance in all material respects with all laws and regulations that are applicable to it, its assets or any activity relating to the Finance Documents.

17.10 No default

- (a) No Default has occurred and is continuing.
- (b) No Default might reasonably be expected to result from the making of any Loan.
- (c) No other event or circumstance is outstanding which constitutes a default under any other agreement, law regulation or instrument which is binding on it or its Related Bodies Corporate or to which its (or any of its Related Bodies Corporate's) assets are subject which in each case might have a Material Adverse Effect.

17.11 No misleading information

- (a) Any factual information provided by or on behalf of an Obligor in writing in connection with the Finance Documents and the transactions they contemplate was true, complete and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) Any financial projections provided by or on behalf of an Obligor have been prepared by appropriately qualified persons on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) Nothing has occurred or been omitted from the information provided in writing in connection with the Finance Documents or the transactions they contemplate and no information has been given or withheld that results in the information provided in writing in connection with the Finance Documents or the transactions they contemplate being untrue or misleading in any material respect.

- (d) There has been no material adverse change in its business or financial condition (or the business or financial condition of the consolidated entity) since the date to which its most recent Financial Statements given to the Lender were prepared.

17.12 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or Governmental Agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect (either alone or together with other determinations) have been started or, to the best of its knowledge and belief, having made due enquiry, been started or threatened against it or any of its Subsidiaries.

17.13 Trustee

- (a) It does not enter any Finance Document or hold any property as a trustee.
- (b) It is the beneficial owner of and has good title to all property held by it or on its behalf, and all undertakings carried on by it, free from Security, other than any Permitted Security and security created under or pursuant to the Secured Facility Agreement.

17.14 Partnerships and Joint Ventures

The Borrower is not a limited or general partner in any partnership or a joint venturer in any joint venture or a member in any limited liability company.

17.15 Shares

- (a) The shares of each Obligor are fully paid and are not subject to:
 - (i) any option to purchase or similar rights;
 - (ii) any calls or other liability to pay money; or
 - (iii) any restrictions as to transfer or registration (including pursuant to the creation or enforcement of any Security other than security created pursuant to the Finance Documents and/or pursuant to the Secured Facility Agreement).
- (b) There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any Obligor (including any option or right of pre-emption or conversion).
- (c) Any Obligor whose shares are the subject of any Security in favour of the Lender has provided to the Lender a certified copy of a resolution of the directors and shareholders of such Obligor consenting to the transfer of those shares on creation or enforcement of that Security.

17.16 Benefit

It benefits by entering into the Finance Documents to which it is a party.

17.17 No immunity

Neither it nor any of its Related Bodies Corporate or their assets has immunity from the jurisdiction of a court or from legal process.

17.18 Authorised Signatures

Each of its Authorised Officers is authorised to sign Utilisation Requests and other notices on its behalf and do the other things contemplated in this document except where it has previously notified the Lender in writing that the authority has been revoked.

17.19 Anti-corruption

Each Obligor has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintains as at the date of this document policies and procedures designed to promote and achieve compliance with such laws.

17.20 Solvency

No Obligor nor any of their Related Bodies Corporate is Insolvent.

17.21 Permitted Security and Permitted Financial Indebtedness

- (a) Each Obligor and their Related Bodies Corporate's assets are not subject to any Security other than as provided in any Security Document or a Permitted Security.
- (b) Each Obligor and their Related Bodies Corporate have not provided or incurred any Financial Indebtedness other than Permitted Financial Indebtedness.

17.22 Group Structure Chart

The Group Structure Chart delivered to the Lender is true, complete and accurate in all material respects and shows the following information:

- (a) each Obligor, including current name and company registration number, its jurisdiction of incorporation, a list of shareholders and indicating whether a company is not a company with limited liability; and
- (b) all minority interests in any Obligor and any person in which any Obligor holds shares in its issued share capital or equivalent ownership interest of such person.

17.23 Repetition

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of any Utilisation Request and each Month End while any amount is outstanding under this document.

17.24 Reliance

Each Obligor acknowledges that the Lender has entered into the Finance Documents in reliance on the representations and warranties in this clause 17.

17.25 Ranking

- (a) The Obligor's payment obligations under the Finance Documents rank ahead of the claims of all its other creditors, except for:
 - (i) obligations mandatorily preferred by law applying to companies generally;

- (ii) the security interest granted by Heemskirk Canada Limited in favour of Canadian Imperial Bank of Commerce, represented by PPSA registration no. 11082612805 and registered on August 26, 2011, as amended by registration nos. 14040911883, 15070638641, and 15071029726, and as otherwise amended from time to time; and
 - (iii) the security interest granted by Heemskirk Canada Limited in favour of ATB Financial, represented by PPSA registration no. 18020635821, and as otherwise amended from time to time.
- (b) Subject to the Priority Deed and any Permitted Security, the Security created pursuant to the Security Documents has or will have the ranking in priority which it is expressed to have in the Security Documents and it is not subject to any prior ranking or pari passu ranking Security.

17.26 Security

- (a) The Security created by the Security Documents constitutes legal, valid and enforceable security interests and, subject to:
 - (i) obligations mandatorily preferred by law applying to companies generally;
 - (ii) the security interest granted by Heemskirk Canada Limited in favour of Canadian Imperial Bank of Commerce, represented by PPSA registration no. 11082612805 and registered on August 26, 2011, as amended by registration nos. 14040911883, 15070638641, and 15071029726, and as otherwise amended from time to time; and
 - (iii) the security interest granted by Heemskirk Canada Limited in favour of ATB Financial, represented by PPSA registration no. 18020635821, and as otherwise amended from time to time.
- (b) Subject to the Priority Deed and any Permitted Security, the Security created by the Security Documents ranks as a first priority security interest over the assets described in the relevant Security Documents.
- (c) To the extent that it has entered into any Security Document, it is the sole legal and beneficial owner of the assets over which Security is purported to be given under that Security Document.
- (d) No Security exists over all or any of the present or future assets of any Obligor other than as permitted by this document.
- (e) To the extent that it has entered into a Security Document that creates, or purports to create, Security over any shares, the shares over which such Security has been created, or purported to be created, constitute the entire issued share capital of the relevant person that has issued such shares.
- (f) All of the Security which constitutes real property or tangible personal property is, or where installed pursuant to the Material Project Documents, will be, located in the Project Area.
- (g) The Secured Property is identical to the assets the subject of the 'Security Documents' under the Secured Facility Agreement, other than security provided under the Royalty Deed (as such term is defined in the Secured Facility Agreement).

17.27 Project documents

- (a) The Material Project Documents:
 - (i) are in full force and effect (other than where termination of a Material Project Document is permitted under clause 20.14 (*Material Project Documents*));
 - (ii) contain no restrictions, covenants and conditions that would adversely affect the use, possession, ownership, exploration, development, construction, operation and/or exploitation of the Project assets in the manner contemplated by the Finance Documents; and
 - (iii) are capable of being:
 - (A) assigned to the Lender; or
 - (B) the subject of a security granted to the Lender,without the consent of the applicable counterparty.
- (b) It is not in default under any Material Project Document and each other party to any Material Project Document has complied in all material respects with such Material Project Document and, in any event, no such other party to any Material Project Document is in default thereunder which remains outstanding.
- (c) No circumstances exist which would, or would be reasonably likely to, give any other party to a Material Project Document legal grounds to terminate, cancel or revoke that Material Project Document.
- (d) The Lender has been provided with copies or details of all material documents and contracts entered into by the Borrower relating to the Project and no other agreements or arrangements exist which would materially affect the transactions or arrangements contemplated by:
 - (i) the Finance Documents; or
 - (ii) the Material Project Documents.

18 Information Undertakings

The undertakings in this clause 18 remain in full force from the date of this document for as long as any amount is outstanding under the Finance Documents or any Commitment is in force.

18.1 Financial Statements

The Borrower shall supply to the Lender the Financial Statements described under clause 18.1 of the Secured Facility Agreement at the same time and in the same form these are required to be supplied under the Secured Facility Agreement.

18.2 Compliance Certificate

The Borrower shall supply to the Lender, within 60 Business Days of each Month End, a Compliance Certificate, which shall be signed by a director of the Borrower.

18.3 Requirements as to Financial Statements

- (a) Each set of Financial Statements delivered by the Borrower pursuant to clause 18.1 (*Financial Statements*) shall be certified by a director or officer of the Borrower as giving a true and fair view of the financial position and performance of the consolidated entity, the Related Bodies Corporate of the Obligors or relevant Obligor (as the case may be), in the case of financial position, as at the date stated in the Financial Statements, and, in the case of financial performance, for the financial year to which those Financial Statements relate.
- (b) The Borrower shall ensure that each set of Financial Statements delivered pursuant to clause 18.1 (*Financial Statements*) is prepared using IFRS consistently applied, accounting practices and financial reference periods consistent with those applied in the preparation of the previous Financial Statements unless, in relation to any Financial Statements, it notifies the Lender that there has been a change in IFRS, the accounting practices or reference periods and its auditors and it delivers to the Lender:
 - (i) a description of any change necessary for the Financial Statements to reflect the IFRS, accounting practices and reference periods; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Lender, to enable the Lender to make an accurate comparison between the financial position indicated in the Financial Statements and the previous Financial Statements.
- (c) The Borrower shall procure that each set of Financial Statements delivered pursuant to clause 18.1 (*Financial Statements*) gives a true and fair view of the financial position and performance of the consolidated entity or relevant Obligor (as the case may be), in the case of financial position, as at the date stated in the Financial Statements, and, in the case of financial performance, for the financial year to which those Financial Statements relate.

18.4 Notification of Material Adverse Effect or default

- (a) Each Obligor shall promptly provide to the Lender notice of any event(s) or circumstance(s) having a Material Adverse Effect.
- (b) Each Obligor shall notify the Lender of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (c) Promptly upon a request by the Lender, the Borrower shall supply to the Lender a certificate signed by two of its directors or a director and company secretary on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

18.5 "Know your customer" checks

The Borrower shall supply promptly all documents and other evidence reasonably requested by the Lender in order for the Lender or a proposed New Lender under clause 21 (*Assignment and transfers*) to carry out all necessary "know your customer" or other similar checks in relation to an Obligor or

proposed Additional Guarantor under all applicable laws and regulations where such information is not already available to the recipient.

18.6 Documents and other Information

The Borrower shall supply to the Lender:

- (a) promptly, a copy of any Material Project Document that has not been previously provided to the Lender, in a form and substance acceptable to the Lender;
- (b) promptly, a copy of any material document or contract entered into by the Borrower or other Obligor relating to the Project that has not been previously provided to the Lender;
- (c) promptly, details of any termination, cancellation, rescission, discharge or material modification of any of the Material Project Documents or any other material document or contract entered into by the Borrower relating to the Project or Authorisation or any material provision thereof (together with any copies of any documents relating thereto);
- (d) promptly, a copy of any notice of material default (however described) served upon any Obligor under any Material Project Document or any default under the Secured Facility Agreement;
- (e) promptly after issue or receipt, a copy of any material notice, report, demand or correspondence relating to any notice of default under any Material Project Document; and
- (f) promptly, but in any event within 7 days of becoming aware of the same, details of any potential or actual claim (with a value or potential value of more than US\$1,000,000 (or its equivalent)) or any other material dispute under any Material Project Document or any material default (however described) under any Material Project Document.

19 General Undertakings

The undertakings in this clause 19 remain in force from the date of this document for as long as any amount is outstanding under the Finance Documents or any Commitment is in force.

19.1 Authorisations

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect:
 - (i) any Authorisation required to enable it to enter into, exercise its rights and comply with its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in any relevant jurisdiction of any Finance Document; and
 - (ii) to the extent that failure by it to obtain or maintain such Authorisation has, or is reasonably likely to have, a Material Adverse Effect any Authorisation required for it to carry on its business; and

- (b) supply copies to the Lender of any Authorisation referred to in subparagraph (a)(i).

The Borrower shall not:

- (c) cancel or terminate any Authorisation in any material respect or consent to or accept any cancellation or termination of any such Authorisation (other than any cancellation or termination upon expiration thereof);
- (d) sell, assign (other than pursuant to the Security) or otherwise dispose of (by operation of law or otherwise) any material part of its interest in any Authorisation;
- (e) in any way vary, or consent or agree to the variation of any provision of such Authorisation in any material respect;
- (f) petition, request or take any other legal or administrative action that seeks, or may be expected, to impair any Authorisation in any material respect or seeks to amend, modify or supplement any such Applicable Authorisation; or
- (g) amend, supplement or modify any Authorisation in any material respect.

19.2 Compliance with laws

Each Obligor shall comply with all laws and regulations to which it or its assets is subject, if failure so to comply has, or would have, a Material Adverse Effect.

19.3 Negative pledge

- (a) Subject to clause 19.3(c), the Obligors shall not create or permit to subsist (and will ensure that none of their Related Bodies Corporate shall create or permit to subsist) any Security over any of its assets.
- (b) Without limiting paragraph (a), the Obligors shall not (and will ensure that none of their Related Bodies Corporate shall):
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Obligors or their Related Bodies Corporate;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter any title retention arrangement;
 - (iv) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts or not repayable in certain circumstances; or
 - (v) enter into any other preferential arrangement having a similar effect,

in the case of paragraphs 19.3(b)(iii) and 19.3(b)(iv) in circumstances where the arrangement or transaction is entered into primarily as a method of raising or securing Financial Indebtedness or of financing the acquisition of an asset.

- (c) Paragraphs (a) and (b) above do not apply to:

- (i) any Security created under a Finance Document;
 - (ii) a Permitted Security or security granted in accordance with the Secured Facility Agreement; and
 - (iii) any Security created or subsisting with the prior written consent of the Lender (in its absolute discretion).
- (d) No Obligor shall change the location of its chief executive office, assets or its name without prior written notice to the Lender.

19.4 Disposals

- (a) No Obligor shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, licence, transfer or otherwise dispose of any asset or assets or any interest in any asset or assets where the value of the asset or assets (alone or in aggregate) is in excess of an aggregate of US\$500,000.
- (b) Paragraph (a) above does not apply to any Permitted Disposal (as defined in the Secured Facility Agreement).

19.5 Merger

No Obligor shall (and the Borrower shall ensure that no other Obligor will) enter into any amalgamation, demerger, merger or corporate reconstruction or sell, lease or otherwise transfer or dispose of all or substantially all of its property.

19.6 Change of business

The Borrower shall procure that no substantial change is made to the general nature of the business of any Obligor from that carried on at the date of this document.

19.7 Taxation

Each Obligor shall:

- (a) not change its tax residence;
- (b) procure that all Taxes payable by, or assessed upon, it are paid when due save to the extent that:
 - (i) such payment is being contested in good faith and being lawfully withheld and a sufficient reserve (as reasonably determined by it) has been set aside for the purposes of meeting such payment; and
 - (ii) the withholding of such payment, or such failure to pay, in each case, would not (or would not be reasonably likely to) result in a Material Adverse Effect; and
- (c) file all tax returns required to be filed by it in any jurisdiction within the period required by law to the extent that any failure to file such tax returns would, or would be reasonably likely to, result in a Material Adverse Effect.

19.8 Pari passu ranking

Each Obligor shall ensure that at all times its payment obligations under the Finance Documents rank and continue to rank ahead of the claims of all its unsecured creditors, except for:

- (a) obligations mandatorily preferred by law applying to companies generally;
- (b) the security interest granted by Heemskirk Canada Limited in favour of Canadian Imperial Bank of Commerce, represented by PPSA registration no. 11082612805 and registered on August 26, 2011, as amended by registration nos. 14040911883, 15070638641, and 15071029726, and as otherwise amended from time to time; and
- (c) the security interest granted by Heemskirk Canada Limited in favour of ATB Financial, represented by PPSA registration no. 18020635821, and as otherwise amended from time to time.

19.9 Arm's length basis

No Obligor shall enter into any transaction with any person except on arm's length terms or better and for valuable commercial consideration from the other person.

19.10 Incurring Financial Indebtedness

- (a) Subject to paragraph (b) below, no Obligor shall incur or permit to subsist any Financial Indebtedness.
- (b) Clause 19.10(c) does not apply to any Permitted Financial Indebtedness (as defined in the Secured Facility Agreement) or any Financial Indebtedness incurred under:
 - (i) the Secured Facility Agreement; or
 - (ii) the document titled "HCA Mountain Minerals (Moberly) Limited – \$4.4m Loan Note Subscription Agreement" dated 27 April 2018 and amended on 11 February 2019 between the Borrower, First Samuel Limited and NSC.
- (c) The Parties agree that the Financial Indebtedness incurred under and in connection with this document is permitted pursuant to clause 20.13 of the Secured Facility Agreement.

19.11 Providing Financial Indebtedness

- (a) No Obligor shall be a creditor in respect of any Financial Indebtedness.
- (b) Clause 19.11(a) does not apply to any Permitted Financial Indebtedness (as defined in the Secured Facility Agreement).

19.12 Tax

Each Obligor shall pay:

- (a) all Taxes due and payable by it except those which are being contested in good faith and as long as the member has set aside sufficient reserves of liquid assets to satisfy the liability if the contest is unsuccessful to the extent that any failure to pay those Taxes, or would be reasonably likely to, result in a Material Adverse Effect; and

- (b) all Taxes which remain due and payable by it after final determination or settlement of a contest described in paragraph (a).

19.13 Project documents

The Borrower shall:

- (a) other than in respect of the Project Lease, ensure that it (and not any other Obligor) is a party to each Material Project Document and each material document or contract entered into relating to the Project or the operation of the Project;
- (b) ensure that it and Heemskirk Canada Holdings Limited (a company incorporated in British Columbia, Canada) are the parties to the Project Lease;
- (c) ensure that none of its rights under or in respect of any of the Material Project Documents are at any time terminated, materially suspended or materially limited as a result of any act or omission of the Borrower without the prior written consent of the Lender acting reasonably;
- (d) not modify or permit the modification of any term of any Material Project Document which:
 - (i) is incorporated by reference into any Finance Document; or
 - (ii) would have the effect of modifying any term of any Material Project Document which is incorporated by reference into any Finance Document,

in each case, without the prior written consent of the Lender acting reasonably;

- (e) without prejudice to paragraphs (a) and (b), not agree to or permit any termination, cancellation, rescission, discharge or material modification of any Material Project Document, in each case, without the prior written consent of the Lender (which shall not be unreasonably withheld or delayed in the case of a proposed modification of a Material Project Document) unless:
 - (i) the termination or discharge of a Material Project Document follows full and final performance of the parties' obligations under that Material Project Document; or
 - (ii) it is demonstrated to the reasonable satisfaction of the Lender that such Material Project Document, or the arrangements contemplated by such Material Project Document, have been replaced by a replacement Material Project Document, or alternative arrangements, that is or are satisfactory to the Lender (acting reasonably) before that occurrence;
- (f) not assign its rights hereunder or under any Material Project Document to any person except as permitted hereunder;
- (g) duly and properly perform and comply with, in all material respects, its obligations under the Material Project Documents and any material document or contract entered into by the Borrower relating to the Project (except to the extent, if any, they are inconsistent with the obligations of the relevant Obligors under the Finance Documents);

- (h) enforce its rights with a view to ensuring the other parties to the Material Project Documents and any material document or contract entered into by the Borrower relating to the Project perform their material obligations thereunder;
- (i) exercise its rights, and (so far as within its power) ensure that others exercise their respective rights, under and in respect of the Material Project Documents and any material document or contract entered into by the Borrower relating to the Project consistently with the obligations of the Obligor under the Finance Documents; and
- (j) not enter into any Material Project Document and any material document or contract entered into by the Borrower relating to the Project, the entry into or performance of which would, or would be reasonably likely to, result in a Material Adverse Effect.

19.14 Group structure

Each Obligor will ensure that:

- (a) NSC;
- (b) Heemskirk Mining Pty Ltd (ACN 106 720 138);
- (c) Heemskirk Canada Limited (a company incorporated in Alberta, Canada);
- (d) Heemskirk Canada Holdings Limited (a company incorporated in British Columbia, Canada);
- (e) any other company or entity who, from time to time, directly owns all or part of the ownership interests of the Borrower; and
- (f) each Subsidiary of the Borrower which is 100% owned (directly or indirectly) by the Borrower,

is a Guarantor (including by procuring its accession as an Additional Guarantor in accordance with clause 22 (*Changes to the Obligors*)) and (other than NSC and Heemskirk Mining Pty Ltd (ACN 106 720 138)) has provided Security over all of its assets which is in form and substance satisfactory to the Lender, unless the Lender agrees otherwise (in its absolute discretion).

19.15 PPSA Policies and Steps

Each Obligor will promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA.

19.16 Application of FATCA

The Borrower shall procure that, unless otherwise agreed by the Lender, no Obligor shall become a FATCA FFI or a US Tax Obligor.

19.17 Anti-corruption law

- (a) No Obligor shall (and the Borrower shall ensure that no other Obligor will) directly or indirectly use the proceeds of the Facility for any purpose which would breach the United Kingdom's Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.

- (b) Each Obligor shall:
 - (i) conduct its businesses in compliance with applicable anti-corruption laws; and
 - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

19.18 Sanctions

- (a) No Obligor, no person directly or indirectly controlling an Obligor, and no person directly or indirectly controlled by an Obligor:
 - (i) is a Sanctioned Entity;
 - (ii) is controlled by or is acting on behalf of a Sanctioned Entity;
 - (iii) to each Obligor's knowledge, is under investigation for an alleged breach of Sanction or Sanctions by a governmental authority that enforces Sanctions; or
 - (iv) will fund any repayment of the credit with proceeds derived from any transaction that would be prohibited by Sanctions or would otherwise cause any Lender, or any other party to this document, to be in breach of any Sanctions.
- (b) Each Obligor, each person directly or indirectly controlling such Obligor, and each person directly or indirectly controlled by such Obligor will not directly or, to such Obligor's knowledge indirectly, use the proceeds of any Loan hereunder, or lend, contribute, or otherwise make available such proceeds to any subsidiary, joint venture partner, or other person:
 - (i) to fund any activities or business of or with a Sanctioned Entity unless the funding of such activities or business would not cause a violation of Sanctions by any party hereto; or
 - (ii) in any other manner that would otherwise cause any Lender to be in breach of any Sanctions.
- (c) Each Obligor will not fund any repayment of the credit with proceeds directly derived or, to its knowledge, indirectly derived, from any transaction:
 - (i) that was conducted by persons in violation of any Sanctions applicable to such persons; or
 - (ii) that would otherwise cause the Lender or any other party to this document to be in breach of any Sanctions.
- (d) Each Obligor shall comply with all applicable Sanctions in all material respects and shall maintain policies and procedures reasonably designed to promote compliance by such party with applicable Sanctions.

19.19 Distributions

The Borrower must not:

- (a) make a Distribution (whether directly or indirectly); or

- (b) make a payment or repayment of any Financial Indebtedness (whether directly or indirectly) to Related Bodies Corporate,

other than as permitted by the Secured Facility Agreement or as contemplated in the Priority Deed.

19.20 Further assurance

- (a) Each Obligor shall promptly do all such reasonable acts or execute all such reasonable documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may require in favour of the Lender or its nominee(s)):
 - (i) to perfect the Security created or intended to be created under or evidenced by the Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Security Documents) or arising under any law arising in relation to or for the exercise of any rights, powers and remedies of the Lender provided by law or provided under or pursuant to the Finance Documents;
 - (ii) to confer on the Lender Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Security Documents; or
 - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created or intended to be created under or evidenced by any Security Documents.
- (b) Each Obligor shall take all such action as is available to it (including making all filings and registrations) and as may be necessary for the purpose of:
 - (i) the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Lender by or pursuant to the Finance Documents;
 - (ii) ensuring that the Security under each Security Document is valid and enforceable against the relevant person (the security grantor) that has granted such Security and its Insolvency Officers and creditors;
 - (iii) ensuring that such Security is not capable of being avoided or set aside, whether in the winding up, administration or dissolution or otherwise of that security grantor; and
 - (iv) for aiding the exercise of power in any Finance Document.

19.21 Event of Eminent Domain

The Borrower shall, if compulsory transfer or taking of any part of the Collateral by expropriation, eminent domain or similar power (an "**Event of Eminent Domain**") shall be threatened or occur with respect to any material part of the Collateral:

- (a) promptly upon discovery or receipt of notice of any such threat or occurrence provide written notice of either to the Lender;

- (b) diligently pursue all its rights to compensation against the relevant Governmental Agency in respect of such Event of Eminent Domain; and
- (c) not, without the prior written consent of the Lender, which consent (prior to the occurrence and continuance of an Event of Default) shall not be unreasonably withheld, compromise or settle any claim against such Governmental Agency that is in excess of US\$1,000,000.

The Borrower consents to the participation of the Lender in any proceedings resulting from an Event of Eminent Domain that is in excess of \$1,000,000, and the Borrower shall from time to time deliver to the Lender all documents and instruments requested by it, acting reasonably, to permit such participation.

19.22 Existence, Conduct of Business, Properties, etc

Each Obligor shall:

- (a) maintain and preserve its existence as a corporation under its jurisdiction of incorporation; and
- (b) engage only in the business of ownership, operation and maintenance of the Project.

19.23 Obligations

Each Obligor shall pay all obligations, howsoever arising, as and when due and payable except:

- (a) those that may be contested in good faith or as to which a bona fide dispute may exist; provided that with respect to such disputes relating to amounts of more than US\$300,000, the Obligor has established or has caused to be established cash reserves that are adequate for the payment thereof as required by IFRS; and
- (b) the Borrower's trade payables.

19.24 Acquisitions and Investments

The Borrower shall not make or permit to remain outstanding any advances or loans or extensions of credit to, or purchase or own any shares, bonds, notes, debentures or other securities of any person, or acquire all or a substantial part of, whether by way of asset purchase or otherwise, the assets of any other person.

19.25 Abandonment of Project

The Borrower shall not wilfully and voluntarily abandon operation of the Project for a continuous period of more than 30 days, or wilfully and voluntarily abandon construction of the Project for a continuous period of more than 30 days, other than with the prior written consent of the Lender (such consent not to be unreasonably withheld if the reason for the abandonment is extreme weather conditions). For the avoidance of doubt, scheduled maintenance outages will not be considered to be "wilful and voluntary" abandonment of the Project or its construction.

20 Default

Each of the events or circumstances set out in this clause 20 is an Event of Default.

20.1 Non-payment

An Obligor does not pay or repay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by administrative or technical error beyond the control of the Obligors; and
- (b) payment is made within 2 Business Days of its due date.

20.2 Other obligations

- (a) An Obligor does not comply with any provision of the Finance Documents (including any representations, warranties and undertakings made under this document), other than:
 - (i) those referred to in clause 20.1 (*Non-payment*) and clause 20.4(f) (*Cross Default*); or
 - (ii) with any condition of any waiver or consent under or in connection with any Finance Document).
- (b) No Event of Default under paragraph (ii) above will occur if the failure to comply is capable of remedy and is remedied within:
 - (i) subject to paragraph (ii), 15 Business Days (or such longer period agreed by the Lender in its absolute discretion) of; or
 - (ii) in the case of clauses 20.4(c), 20.4(d), 20.8 and 20.11 only, 30 Business Days (or such longer period agreed by the Lender in its absolute discretion) of,

the Lender giving notice to the Borrower or the Borrower becoming aware of the failure to comply, whichever is the earlier.

20.3 Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made that results in a Material Adverse Effect.

20.4 Cross default

- (a) Any Financial Indebtedness of any Obligor (other than pursuant to the Finance Documents), including under the Secured Facility Agreement, is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Obligor is cancelled or suspended by a creditor of any Obligor as a result of an event of default (however described).
- (d) Any creditor of any Obligor becomes entitled to declare any Financial Indebtedness of any Obligor due and payable prior to its specified maturity as a result of an event of default (however described).

- (e) No Event of Default will occur under this clause 20.4 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than US\$500,000 (or its equivalent in any other currency or currencies).
- (f) An Event of Default occurs and is subsisting under the Secured Facility Agreement and all cure periods or remedy periods in respect of such "Event of Default" under the Secured Facility Agreement (if any) have expired.

20.5 Insolvency

- (a) An Obligor is or is presumed or deemed to be Insolvent.
- (b) Any Security over any assets of any Obligor is enforced or any corporate action, legal proceedings or other procedure or step is taken in relation to enforcement of any Security over any assets of any Obligor.
- (c) Any attachment, sequestration, distress or execution (or any analogous event occurring in any jurisdiction) affects any asset or assets of any Obligor.

20.6 Prior claims

A person asserts in writing that they have a better claim than the Lender in respect of any property subject to a Security granted by an Obligor under the Finance Documents unless that claim:

- (a) is under a Permitted Security which is expressly permitted to rank ahead;
- (b) is to the assets the subject of a Permitted Disposal; or
- (c) is withdrawn or waived in writing within 7 Business Days.

20.7 Ownership

- (a) NSC ceases to own 100% of the issued shares in Heemskirk Mining Pty Ltd (ACN 106 720 138).
- (b) Heemskirk Mining Pty Ltd (ACN 106 720 138) ceases to own 100% of the issued shares in Heemskirk Canada Limited (a company incorporated in Alberta, Canada) and Heemskirk Canada Holdings Limited (a company incorporated in British Columbia, Canada).
- (c) Heemskirk Canada Limited (a company incorporated in Alberta, Canada) ceases to own 100% of the issued shares in the Borrower.
- (d) The Borrower ceases to own 100% of the Project.

20.8 Material adverse effect

Any event or circumstance occurs which has, or is reasonably likely to have (or a number of events or circumstances occur, whether related or not, which together have, or are reasonably likely to have) a Material Adverse Effect.

20.9 Change in Control

- (a) There is a Change in Control of the Borrower;

- (b) For the purposes of this clause 20.9, "**Change in Control**" means an event which results in a person not in control of the Borrower subsequently acquiring control of the Borrower, or a person in control of the Borrower subsequently losing control of the Borrower. For the purposes of this definition, "control" and "controlling" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ability to exercise voting power, by contract or otherwise, and, in the case of a corporation, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors of that corporation, the voting rights of the majority of the voting shares of the corporation or the management of the affairs of the corporation. In addition to the foregoing, a person shall be deemed to have acquired control of the Borrower if such person has:
- (i) ownership, directly or indirectly, of securities of the Borrower to which are attached more than 50% of the votes that may be cast to elect directors of the Borrower, other than by way of security only, by or for the benefit of that person; or
 - (ii) ownership, directly or indirectly, of securities of the Borrower, where the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the Borrower; or
 - (iii) the power to direct or cause the direction of the management or policies of the Borrower, whether through the ability to exercise voting power, by contract or otherwise.

20.10 Cessation of business

- (a) An Obligor permanently ceases:
- (i) conducting any material business it carries on; or
 - (ii) in the case of the Borrower, conducting the Project,
- except with the prior written consent of the Lender.
- (b) The authority or ability of any Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, compulsory acquisition, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor or any of its assets or the shares in that Obligor (including without limitation the displacement of all or part of the management of any Obligor).

20.11 Revocation of Authorisation

An Authorisation which is required for the performance by any Obligor of a Finance Document, or the validity and enforceability of a Finance Document is repealed, revoked or terminated or expires or is modified or amended or conditions are attached to it in a manner unacceptable to the Lender.

20.12 Finance Documents

- (a) It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents.

- (b) All or a material part of a Finance Document is terminated or is or becomes void, illegal, invalid or unenforceable, or of limited force and effect.
- (c) An Obligor repudiates or evidences an intention to repudiate either the whole or a part of a Finance Document.
- (d) A provision of a Finance Document is or becomes or is claimed by a party other than the Lender to be wholly or partly invalid, void, voidable or unenforceable.
- (e) The guarantee provided by a Guarantor under this document, or any Security constituted or purported to be constituted by the Security Documents, is not or ceases to be effective.
- (f) Any Security Document ceases to confer the Security it purports to create.
- (g) Any Security constituted or purported to be constituted by the Security Documents does not, or ceases to, have the priority purported to be created.

20.13 Default under other Finance Document

An event occurs which is called an "event of default" under any Finance Document other than this document, or any other event occurs which renders a Security Document enforceable.

20.14 Material Project Documents

- (a) It is or becomes unlawful for an Obligor to perform any of its material obligations under a Material Project Document or a Material Project Document ceases to be in full force and effect other than by expiry or performance in accordance with its terms.
- (b) Notice is given by any party to a Material Project Document to terminate, cancel, discharge or rescind such Material Project Document or any Material Project Document is terminated, cancelled, discharged or rescinded or becomes capable of being terminated, cancelled, discharged or rescinded unless:
 - (i) the termination or discharge of a Material Project Document follows full and final performance of the parties' obligations under that Material Project Document; or
 - (ii) it is demonstrated to the reasonable satisfaction of the Lender that such Material Project Document, or the arrangements contemplated by such Material Project Document, have been replaced by a replacement Material Project Document, or alternative arrangements, that is or are satisfactory to the Lender (acting reasonably) before that occurrence.
- (c) A Material Project Document is or becomes void, illegal, invalid, unenforceable, or of limited force or effect or is materially amended without the prior written consent of the Lender.
- (d) Any party to a Material Project Document becomes Insolvent unless it is demonstrated to the reasonable satisfaction of the Lender that such Material Project Document, or the arrangements contemplated by such Material Project Document, have been replaced by a replacement Material Project Document (on terms and with a counterparty), or

alternative arrangements, that is or are satisfactory to the Lender (acting reasonably) within 60 days of that occurrence.

- (e) Any party to a Material Project Document repudiates or evidences an intention to repudiate either the whole or a material part of a Material Project Document unless the party which repudiates or evidences an intention to repudiate is not an Obligor and it is demonstrated to the reasonable satisfaction of the Lender that such Material Project Document, or the arrangements contemplated by such Material Project Document, have been replaced by a replacement Material Project Document (on terms and with a counterparty), or alternative arrangements, that is or are satisfactory to the Lender (acting reasonably) within 60 days of that occurrence.

20.15 Consequences of an Event of Default

On and at any time after the occurrence of an Event of Default, which is continuing, the Lender may by notice to the Borrower:

- (a) cancel the Commitment whereupon it shall immediately be cancelled;
- (b) declare that all or part of the Amounts Owing be immediately due and payable, whereupon they shall become immediately due and payable;
- (c) declare that all or part of the Amounts Owing be payable on demand, whereupon they shall immediately become payable on demand by the Lender; and/or
- (d) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents (including any rights of enforcement).

The Lender may give notice of one or more of these things.

20.16 Investigation of an Event of Default

If the Lender reasonably believes that a Default is or may be continuing, the Lender may (at the Borrower's cost):

- (a) appoint a person to investigate this and report to the Lender on the affairs, financial condition and business of any Obligor;
- (b) inspect the records of the Borrower and inspect the assets of any Obligor during normal business hours; and
- (c) conduct all searches and enquiries that person considers appropriate in connection with any Obligor and their assets.

Each Obligor shall co-operate with the person and shall comply with every reasonable request they make (and ensure that its officers, employees, agents and attorneys do the same). This includes giving them access to all records and assets during normal business hours and giving them any document or other information that they reasonably request. The Borrower agrees to ensure that each Obligor (and its officers, employees, agents and attorneys) comply with this clause 20.16.

21 Assignment and transfers

21.1 Assignments and transfers by the Lender

Subject to clauses 21.3, 21.4 and 21.5, the Lender ("**Existing Lender**") may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

under the Finance Documents to another person ("**New Lender**").

21.2 Assignment to Canadian Collateral Agent

- (a) At any time, the Lender may assign all or any of its rights and obligations under the Security Documents or other Finance Documents to a Canadian collateral agent or security trustee (the "**Canadian Collateral Agent**") from time to time and without the consent of any Obligor.
- (b) Upon receiving notice of such assignment, the Borrower agrees to and to cause all Obligors to immediately execute all such assignment instruments and documents and do all such things as may be reasonably necessary to effect such assignment and permit the Canadian Collateral Agent to enforce the Security Documents and otherwise deal with the secured property.
- (c) The parties agree that:
 - (i) the Lender may assign or transfer its rights and obligations under the Security Documents separately to any assignment or transfer of its rights and obligations under the other Finance Documents; and
 - (ii) the Canadian Collateral Agent may be unrelated to the Lender.

21.3 Conditions of assignment or transfer

- (a) The consent of the Borrower is not required for an assignment or transfer by the Lender.
- (b) If:
 - (i) the Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under clause 10 (*Tax gross-up and indemnities*) or clause 11 (*Increased costs*),

then the New Lender, or Lender acting through its new Facility Office, is only entitled to receive payment under those clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

- (c) A Lender may not assign or transfer any of its rights or obligations under the Finance Documents or change its Facility Office, if the New Lender or the Lender acting through its new Facility Office would be entitled to

exercise any rights under clause 6.1 (*Illegality*) as a result of circumstances existing at the date the assignment, transfer or change is proposed to occur.

- (d) A Lender must bear its own costs and expenses (including legal fees) in connection with any such assignment or transfer.

21.4 Limitation of responsibility of Existing Lender

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
 - (ii) the financial condition of any Obligor or any other person;
 - (iii) the performance and observance by any Obligor or any other person of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

- (b) Each New Lender confirms to the Existing Lender that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities and any other person in connection with its participation in this document and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities and any other person whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this clause 21 (*Assignment and Transfers*); or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor or any other person of its obligations under the Finance Documents or otherwise.

21.5 Disclosure of confidential information

The Lender may disclose:

- (a) to any person to (or through) whom the Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under a Finance Document;

- (b) to any person with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments may be made by reference to, a Finance Document or any Obligor;
- (c) to any person with (or through) whom that Lender enters into (or may potentially enter into) derivative transaction relating to any Obligor or any of their Related Bodies Corporate;
- (d) to any person in connection with an exercise of rights under a Finance Document;
- (e) to any Party or any Related Bodies Corporate, officers, employees, agents and attorneys, legal and other advisers and auditors;
- (f) to rating agencies to the extent required by them; or
- (g) to any person to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation,

any information about any Obligor and the Finance Documents as that Lender shall consider appropriate, however in the case of disclosure under paragraphs (a), (b), or (c), only after the discloser has agreed in writing to be bound by confidentiality obligations which are consistent with this clause 19.4.

22 Changes to the Obligors

22.1 Assignments and transfers by any Obligor

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents, or allow any interest in them to arise or be varied.

22.2 Additional Guarantors

- (a) Unless otherwise agreed by the Lender, a wholly owned (directly or indirectly) Subsidiary of the Borrower from time to time must become an Additional Guarantor if it is not already an Additional Guarantor. To effect this:
 - (i) the Borrower must deliver to the Lender a duly completed and executed Accession Letter executed as a deed;
 - (ii) in the case of a Subsidiary which would be a FATCA FFI or a US Tax Obligor if it became an Additional Guarantor, the Lender must approve the addition of that Subsidiary – if the Lender does not do so, then despite any other provision of this document, the relevant Subsidiary will not be required to become an Additional Guarantor; and
 - (iii) the Lender must be provided with all of the documents and other evidence listed in Part 2 of Schedule 2 (*Conditions precedent for an Additional Guarantor*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Lender.
- (b) The Lender shall notify the Borrower promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part 2 of Schedule 2 (*Conditions precedent for an Additional Guarantor*).

- (c) If the Lender accepts and executes the Accession Letter, the relevant Subsidiary becomes a Party as an "Additional Guarantor" with effect on and from the date specified in the Accession Letter and is bound by the terms of this document.

22.3 Repetition of Representations

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the Repeating Representations are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

22.4 Resignation of a Guarantor

- (a) The Borrower may request that a Guarantor ceases to be a Guarantor by delivering to the Lender a Resignation Letter.
- (b) The Lender shall accept a Resignation Letter and notify the Borrower of its acceptance if:
 - (i) no Default is continuing or would result from the acceptance of the Resignation Letter (and the Borrower has confirmed this is the case); and
 - (ii) clause 19.14 (*Group structure*) will still be complied with following that resignation,

whereupon that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents.

22.5 Compulsory resignation of FATCA FFIs and US Tax Guarantors

If so directed by the Lender, the Borrower shall procure that any Guarantor which is a FATCA FFI or a US Tax Obligor shall resign as a Guarantor prior to the earliest FATCA Application Date relating to any payment by that Guarantor. For the purposes of clause 22.4 (*Resignation of a Guarantor*) the Lender consents to the resignation of a Guarantor required pursuant to this clause 22.5.

23 General

23.1 General

The parties acknowledge and agree that clauses 25 to 37 (inclusive) of the Secured Facility Agreement applies to this document as though it is set out in full in this document, but with the following amendments:

- (a) all references to "this Agreement" are references to this document;
- (b) all references to "Lender" are references to the Lender;
- (c) all references to "Borrower" are references to the Borrower;
- (d) all references to "Obligor" are references to the Obligors;
- (e) all references to "Default" are references to Default;
- (f) the reference to "Clause 21.1 (*Non-payment*)" in clause 25.3(b)(i) of the Secured Facility Agreement is a reference to clause 17.1 of this document;

- (g) all references to "Party" are references to the Party;
- (h) all references to "Utilisation Request" are references to any Utilisation Request;
- (i) all references to "Finance Documents" are references to the Finance Documents;
- (j) all references to "USD" in clause 27.6 of the Secured Facility Agreement are references to CAD;
- (k) all references to a "Loan" are references to a Loan;
- (l) all references to "Schedule 1 (*The Original Parties*)" in clause 29 of the Secured Facility Agreement is a reference to Schedule 1 in this document;
- (m) the reference to "Clause 10 (*Tax gross up and Indemnities*) and Clause 11 (*Increased costs*)" in clause 30.2 of the Secured Facility Agreement is a reference to clauses 10 and 11 of this document respectively;
- (n) all references to "Commitment" are references to the Commitment.

23.2 Governing Law

This document shall be governed by, and constated in accordance with, the laws of the Province of British Columbia and the federal laws of Canada applicable therein.

23.3 Jurisdiction

- (a) Each Party irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the courts of the Province of British Columbia, in any action or proceeding arising out of or relating to this document or any other Finance Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each party hereby irrevocably waives, to the fullest extent it may effectively do so, the defence of inconvenient forum to the maintenance of such action or proceeding. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this document or in any other Finance Document shall affect any right that the Lender may otherwise have to bring any action or proceeding relating to this document or any other Finance Document against the Borrower or its properties in the courts of any jurisdiction.
- (b) The Borrower irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this document or any other Finance Document in any court referred to in this section. Each of the Parties hereto hereby irrevocably waives, to the fullest extent permitted by Law, the defence of an inconvenient forum to the maintenance of such action or proceeding in any such court.
- (c) The Parties agree that those courts are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

- (d) Each Party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an forum, where that venue falls within paragraph 23.3(a).
- (e) This clause 23.3 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

23.4 Counterparts

This document may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this document to produce or account for more than one such counterpart. Delivery of an executed counterpart of a signature page of this document by telecopy or by sending a scanned copy by electronic mail shall be as effective as delivery of a manually executed counterpart of this document.

EXECUTED as a deed

HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement Schedule 1 Original Obligors

Name of Borrower	Registration number (or equivalent, if any)	Notice details
HCA Mountain Minerals (Moberly) Limited	A company incorporated in British Columbia, Canada	<p>Address: Suite 204, 1212-1st Street SE, Calgary, AB, T2G 2H8</p> <p>Fax number: 1-403-264-2959</p> <p>Email sbroughton@northernsilica / jblanchard@northernsilica.com</p> <p>Department/officer: Scott Broughton / Jarrad Blanchard</p>
Name of Original Guarantor	Registration number (or equivalent, if any)	Notice details
Northern Silica Corporation	A company incorporated in Alberta, Canada	<p>Address: 2500, 450-1st Street SW, Calgary, AB, T2P 5H1</p> <p>Email address: sbroughton@northernsilica / jblanchard@northernsilica.com</p> <p>Attention: Scott Broughton / Jarrad Blanchard</p>
Heemskirk Mining Pty Ltd	ACN 106 720 138	<p>Address: Suite 204, 1212-1st Street SE, Calgary, AB, T2G 2H8</p> <p>Fax number: 1-403-264-2959</p> <p>Email address: sbroughton@northernsilica / jblanchard@northernsilica.com</p> <p>Attention: Scott Broughton / Jarrad Blanchard</p>
Heemskirk Canada Holdings Limited	A company incorporated in British Columbia, Canada	<p>Address: Suite 204, 1212-1st Street SE, Calgary, AB, T2G 2H8</p> <p>Fax number: 1-403-264-2959</p> <p>Email address: sbroughton@northernsilica / jblanchard@northernsilica.com</p> <p>Attention: Scott Broughton / Jarrad Blanchard</p>

Heemskirk Canada
Limited

A company incorporated in
Alberta, Canada

Address: Suite 204, 1212-1st Street SE,
Calgary, AB, T2G 2H8

Fax number: 1-403-264-2959

Email address:
sbroughton@northernsilica /
jblanchard@northernsilica.com

Attention: Scott Broughton / Jarrad
Blanchard

HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement Schedule 2 Conditions precedent

PART 1

INITIAL CONDITIONS PRECEDENT

1 Obligors

- (a) A certified copy of the constitutional documents of each Obligor.
- (b) A certified copy of the register of shareholders of each Obligor.
- (c) A certified extract of a resolution of the board of directors of each Obligor:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (ii) confirming that it is in its best interests to execute the Finance Documents to which it is a party;
 - (iii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf, and/or a power of attorney for execution of each Finance Document to which it is a party;
 - (iv) confirming that it is able to pay its debts as and when they become due;
 - (v) authorising a specified person or persons, on its behalf, as Authorised Officers to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (vi) in respect of any Obligor whose shares are the subject of any Security in favour of the Lender, consenting to the transfer of those shares on creation or enforcement of that Security.
- (d) Not used
- (e) If relevant, an original power of attorney for the execution of the Finance Documents to which it is a party, from each Obligor, executed under common seal or by two directors or a director and a secretary.
- (f) A specimen of the signature of each person authorised by the resolution referred to in paragraph (c) above.
- (g) A certificate of each Obligor (signed by a director) confirming and certifying that:

- (i) borrowing or guaranteeing, as appropriate, the Commitment would not cause any borrowing, guaranteeing or similar limit binding on that Obligor to be exceeded;
- (ii) no Event of Default has occurred and is continuing (and no Event of Default might reasonably be expected to result from the first Loan or the entry into the Finance Documents); and
- (iii) each copy document relating to it specified in this section of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this document.

2 Finance Document

An original, duly executed by each of the parties thereto of:

- (i) this document as each Finance Document;
- (ii) original share or unit certificates and blank, executed transfer forms in respect of any shares or units which are secured pursuant to the new Security Documents; and
- (iii) executed copies of any other documents or things which are required to ensure that each such Finance Document which must be stamped or registered can be stamped or registered (including payment of any stamp duty or registration fees and provision of a duly completed and signed multi jurisdictional mortgage statement (if applicable)) and any other forms required in respect of stamping or registration.

3 KYC requirements

All documents and other evidence reasonably requested by the Lender in order for the Lender to carry out all necessary "know your customer" or other similar checks in relation to each Obligor under all applicable laws and regulations where such information is not already available to the recipient.

4 Other documents and evidence

- (a) A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified each Obligor accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (b) If available, the latest audited Financial Statements of each Obligor.
- (c) Evidence that the fees, costs and expenses then due from each Obligor pursuant to clause 14 (*Costs and expenses*) which are due and payable on Financial Close have been paid or will be paid on or by the first Utilisation Date.
- (d) A legal opinion of the legal advisers to the Obligors or Lender in Canada in respect of each Obligor and the laws of Canada.

- (e) If an Obligor is incorporated in a jurisdiction outside Canada, a legal opinion of the legal advisers to that Obligor in the jurisdiction in which the Obligor is incorporated in respect of the Obligor and the laws of that jurisdiction.
- (f) A certificate signed by an authorised signatory of each Obligor, setting out details required by the Lender for purposes of registering financing statements or financing changes statements on the PPSR or otherwise perfecting security interests arising under the Finance Documents.
- (g) A schedule of all registrations on the PPSR in respect of each Obligor and its assets.
- (h) Evidence to the reasonable satisfaction of the Lender that all PPSA registrations required by the Lender have been made.

PART 2

CONDITIONS PRECEDENT REQUIRED TO BE DELIVERED BY AN ADDITIONAL GUARANTOR

1 Additional Guarantor

- (a) A certified copy of the constitutional documents of the Additional Guarantor (if any).
- (b) A certified copy of the register of shareholders of the Additional Guarantor.
- (c) A certified copy of a resolution of the board of directors of the Additional Guarantor:
 - (i) approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute the Accession Letter and any other Finance Document;
 - (ii) confirming that it is in its best interests to execute the Finance Documents to which it is a party;
 - (iii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf and/or a power of attorney for execution of the Finance Documents to which it is a party;
 - (iv) confirming that it is able to pay its debts as and when they become due;
 - (v) authorising a specified person or persons, on its behalf, as Authorised Officers to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents; and
 - (vi) if the Additional Guarantor's shares are the subject of any Security in favour of the Lender, consenting to the transfer of those shares on creation or enforcement of that Security.
- (d) If the Additional Guarantor's shares are the subject of any Security in favour of the Lender, a certified copy of a resolution of the shareholders of such Additional Guarantor consenting to the transfer of those shares on creation or enforcement of that Security.
- (e) If relevant, an original power of attorney for the execution of the Finance Documents to which it is a party, from the Additional Guarantor executed under common seal or by two directors or a director and a secretary.
- (f) A specimen of the signature of each person authorised by the resolution referred to in paragraph (c) above.
- (g) A certificate of each Obligor (signed by two directors or a director and a company secretary) confirming and certifying that:
 - (i) borrowing or guaranteeing, as appropriate, the Commitment would not cause any borrowing, guaranteeing or similar limit binding on the Additional Guarantor to be exceeded;

- (ii) each copy document relating to it specified in this Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of its accession; and
- (iii) if it is incorporated in Australia, such Additional Guarantor is not in breach of Chapter 2E of the Corporations Act 2001.

2 Finance Documents

An Accession Letter and Security Documents, duly executed by the Additional Guarantor and/or the Borrower, together with:

- (i) executed copies of any other documents or things which are required to ensure that each Finance Document which must be stamped or registered can be stamped or registered (including payment of any stamp duty or registration fees);
- (ii) original share or unit certificates and blank, executed transfer forms in respect of any shares or units which are secured pursuant to the new Security Documents; and
- (iii) executed copies of any other documents or things which are required to ensure that each such Finance Document which must be stamped or registered can be stamped or registered (including payment of any stamp duty or registration fees and provision of a duly completed and signed multi jurisdictional mortgage statement (if applicable)) and any other forms required in respect of stamping or registration.

3 KYC requirements

All documents and other evidence reasonably requested by the Lender in order for the Lender to carry out all necessary "know your customer" or other similar checks in relation to the Additional Guarantor under all applicable laws and regulations where such information is not already available to the recipient.

4 Other documents and evidence

- (a) A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Additional Guarantor accordingly) in connection with the entry into and performance of the transactions contemplated by the Accession Letter or for the validity and enforceability of any Finance Document to which the Additional Guarantor is a party.
- (b) If available, the latest audited Financial Statements of the Additional Guarantor.
- (c) Evidence that the fees, costs and expenses then due from any Obligor pursuant to clause 14 (*Costs and expenses*) which are due and payable on the accession of the Additional Guarantor have been paid or will be paid on or by the date of the accession.
- (d) A legal opinion of the legal advisers to the Additional Guarantor or Lender in Canada in respect of the Additional Guarantor and the laws of Canada.

- (e) If the Additional Guarantor is incorporated in a jurisdiction outside Canada, a legal opinion of the legal advisers to the Borrower in the jurisdiction in which the Additional Guarantor is incorporated in respect of the Additional Guarantor and the laws of that jurisdiction.
- (f) A certificate signed by an authorised signatory of the Additional Guarantor, setting out details required by the Lender for purposes of registering financing statements or financing changes statements on the PPSR or otherwise perfecting security interests arising under the Finance Documents.
- (g) A schedule of all registrations on the PPSR in respect of the Additional Guarantor and its assets.
- (h) Evidence to the reasonable satisfaction of the Lender that all PPSA registrations required by the Lender in respect of the Additional Guarantor have been made.

HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement

Schedule 3 Utilisation Request

From: HCA Mountain Minerals (Moberly) Limited (A company incorporated in British Columbia, Canada)

To: [Lender]

Dated:

Dear Sirs

HCA Mountain Minerals (Moberly) Limited – Unsecured Working Capital Facility Agreement

dated [] (the "Agreement")

- 1 We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement shall have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
- 2 We wish to borrow a Loan on the following terms:

Proposed Utilisation Date: [] (or, if that is not a Business Day, the next Business Day)

Currency of Loan: CAD

Amount: [] or, if less, the Available Commitment for that Facility
- 3 We confirm that each condition specified in clause 3 (*Conditions of utilisation*) is satisfied on the date of this Utilisation Request.
- 4 The proceeds of this Loan should be credited to [insert account details].
- 5 This Utilisation Request is irrevocable.

Yours faithfully

.....
Authorised Officer

HCA Mountain Minerals (Moberly) Limited

HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement Schedule 4 Form of Compliance Certificate

To: [Lender] as Lender

From: HCA Mountain Minerals (Moberly) Limited (A company incorporated in British Columbia, Canada) as Borrower

Dated:

Dear Sirs

HCA Mountain Minerals (Moberly) Limited – Unsecured Working Capital Facility Agreement

dated [] (the "Agreement")

- 1 We refer to the Agreement. This is a Compliance Certificate. Terms used in the Agreement shall have the same meaning in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
- 2 We confirm that no Default is continuing.*

Signed:

.....

Director
Of HCA Mountain Minerals (Moberly) Limited

.....

Director
Of HCA Mountain Minerals (Moberly) Limited

** if this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.*

HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement Schedule 5 Form of Resignation Letter

To: [] as Lender

From: [resigning Guarantor] and HCA Mountain Minerals (Moberly) Limited (A company incorporated in British Columbia, Canada)

Dated:

Dear Sirs

HCA Mountain Minerals (Moberly) Limited – US\$25 million Facility Agreement

dated [] (the "Agreement")

1. We refer to the Agreement. This is a Resignation Letter. Terms used in the Agreement shall have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to clause 22.4 (*Resignation of a Guarantor*), we request that [resigning Obligor] be released from its obligations as a Guarantor under the Agreement.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) clause 19.10 will still be complied with following the release.
4. This Resignation Letter may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Resignation Letter.
5. This Resignation Letter or any non-contractual obligation arising out of, or in connection with, it are governed by New South Wales law.

[Insert execution clause for Borrower]

[Insert execution clause for Subsidiary]

This Resignation Letter is accepted by the Lender and the resignation date is confirmed as [*].

[Insert execution clause for Lender]

[Insert execution clause for Lender]

HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement Schedule 6 Form of Accession Letter

To: [] as Lender

From: [Subsidiary] and HCA Mountain Minerals (Moberly) Limited (A company
incorporated in British Columbia, Canada)

Dated:

Dear Sirs

HCA Mountain Minerals (Moberly) Limited – US\$25 million Facility Agreement dated [] (the "Agreement")

- 1 We refer to the Agreement. This is an Accession Letter. Terms used in the Agreement shall have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
- 2 [Subsidiary] agrees to become an Additional Guarantor and to be bound by the terms of the Agreement as an Additional Guarantor pursuant to clause 22.2 (Additional Guarantors) of the Agreement.
- 3 [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction].
- 4 [Subsidiary's] administrative details are as follows:

Address:

Fax No:

Email address:

Department/officer:
- 5 This Accession Letter may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Accession Letter.
- 6 This Accession Letter or any non-contractual obligation arising out of or in connection with it are governed by New South Wales law.

This Accession Letter is executed as a deed.

[Insert execution clause for Borrower] [Insert execution clause for Subsidiary]

This Accession Letter is accepted by the Lender and the accession date is confirmed as
[*].

[Insert execution clause for Lender]

HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement Signing page

DATED: 6 December 2019

Borrower

IN WITNESS WHEREOF, the undersigned by its respective officer(s) or other representative(s) thereunto duly authorized have caused this deed to be duly executed and delivered as of the date stated at the beginning of this document.

**HCA MOUNTAIN MINERALS
(MOBERLY) LTD.**

By: 

Name: *Scott Broughton*
Title: *CEO*

I have authority to bind the above.

Original Guarantors

IN WITNESS WHEREOF, the undersigned by its respective officer(s) or other representative(s) thereunto duly authorized have caused this deed to be duly executed and delivered as of the date stated at the beginning of this document.

NORTHERN SILICA CORPORATION.

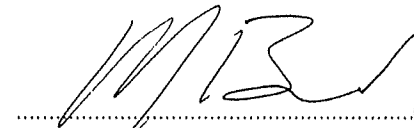
By: _____

Name:

Title:

I have authority to bind the above.

EXECUTED by HEEMSKIRK MINING
PTY LIMITED in accordance with
section 127(1) of the *Corporations Act*
2001 (Cth) by its director:



Signature of director

MARTIN BOLAND

Name of director (block letters)

By signing this document, the signatory
states that they are the sole director
and company secretary of
HEEMSKIRK MINING PTY LIMITED

IN WITNESS WHEREOF, the undersigned by its respective officer(s) or other representative(s) thereunto duly authorized have caused this deed to be duly executed and delivered as of the date stated at the beginning of this document.

**HEEMSKIRK CANADA HOLDINGS
LIMITED.**

By: _____

Name:

Title:

I have authority to bind the above.

Original Guarantors

IN WITNESS WHEREOF, the undersigned by its respective officer(s) or other representative(s) thereunto duly authorized have caused this deed to be duly executed and delivered as of the date stated at the beginning of this document.

NORTHERN SILICA CORPORATION.

By: _____

Name: Scott Broughton
Title: CEO

I have authority to bind the above.

**EXECUTED by HEEMSKIRK MINING
PTY LIMITED** in accordance with
section 127(1) of the *Corporations Act*
2001 (Cth) by its director:

.....
Signature of director

.....
Name of director (block letters)

By signing this document, the signatory
states that they are the sole director
and company secretary of
HEEMSKIRK MINING PTY LIMITED

IN WITNESS WHEREOF, the undersigned by its respective officer(s) or other representative(s) thereunto duly authorized have caused this deed to be duly executed and delivered as of the date stated at the beginning of this document.

**HEEMSKIRK CANADA HOLDINGS
LIMITED**

By: _____

Name: Scott Broughton
Title: CEO

I have authority to bind the above.

IN WITNESS WHEREOF, the undersigned by its respective officer(s) or other representative(s) thereunto duly authorized have caused this deed to be duly executed and delivered as of the date stated at the beginning of this document.

HEMSKIRK CANADA LIMITED.

By: _____

Name: Scott Broughton

Title: CEO

I have authority to bind the above.

Lender

IN WITNESS WHEREOF, each party by its respective officer(s) or other representative(s) thereunto duly authorized have caused this deed to be duly executed and delivered as of the date stated at the beginning of this document.

QMetco Limited

By: _____

Name: _____

Title: *SOHN FISHER-STAMP*
CHIEF FINANCIAL OFFICER

I have authority to bind the above.

EXHIBIT “D”

This is Exhibit “D” referred to in the Affidavit of
JERRAD BLANCHARD
Sworn before me this 20th day of October, 2020

COMMISSIONER FOR OATHS IN AND FOR ALBERTA

HCA Mountain Minerals (Moberly) Unsecured CAD Facility Agreement

Dated

HCA Mountain Minerals (Moberly) Limited ("**Borrower**")
QMetco Limited ("**Lender**")

King & Wood Mallesons

Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

Unsecured CAD Facility Agreement

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Unsecured CAD Facility Agreement

Details

Parties	Borrower and Lender	
Borrower	Name	HCA Mountain Minerals (Moberly) Limited
	Address	Suite 204, 1212-1 st Street SE, AB, T2G 2H8
Lender	Name	QMetco Limited
	ACN	008 124 025
	Address	Level 12, 300 Queen Street, Brisbane, Qld, 4000 Australia
Date of agreement	See signing page	

General terms

Part 1 Interpretation

1 Definitions and interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Amount Owed means the total of all amounts which are then due for payment (including as a result of a demand for payment), or which may become due for payment, by the Borrower in connection with any Transaction Document to the Lender.

Authorised Officer means in the case of any Party, a director or secretary of that Party, or any person who purports to be a “director”, “chief”, “counsel”, “executive”, “head”, “president” or “manager” (or a person performing, or purporting to perform, the functions of any of them) of that Party.

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in Brisbane, Australia.

Commitment means, for the Lender and the Facility, CAD15,500,000.

Corporations Act means the Corporations Act 2001 (Cwlth).

Costs includes costs, charges and expenses, including those incurred in connection with advisers.

Details means the section of this agreement headed “Details”.

Drawdown Date means the date on which a Drawing is, or is to be, made.

Drawdown Notice means a notice (which may be in any form, including an email) which contains the following information:

- (a) the proposed Drawdown Date; and
- (b) the proposed amount of the Drawing.

Drawing means the financial accommodation provided by the Lender to the Borrower in accordance with this agreement.

Event of Default means an event or circumstance so described in clause 8 (“Default”).

Existing Facility Agreement means the document titled “HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement” dated 6 December 2019 between the Borrower, Lender and others.

Facility means the facility made available under this agreement.

Governmental Agency means:

- (a) any government, parliament or legislature, any regulatory or administrative authority, agency, commission or board and any other statute, rule or regulation making entity having jurisdiction in the relevant circumstances,

- (b) any person acting under the authority of any of the foregoing or under a statute, rule or regulation thereof, and
- (c) any judicial, administrative or arbitral court, authority, tribunal or commission having jurisdiction in the relevant circumstances.

Outstanding Principal Balance means, on a given day, the greater of zero and:

- (a) the aggregate amount of all Drawings advanced by the Lender to the Borrower made until and including that given day; less
- (b) the sum of all repayments and prepayments on account of principal made by the Borrower to the Lender up to and including that given day.

Party means a party to this agreement.

Potential Event of Default means an event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Transaction Documents or any combination of the foregoing, as applicable) be an Event of Default.

Related Body Corporate means, with respect to any person, each other person that directly or indirectly (through one or more intermediaries or otherwise) controls, is controlled by, or is under common control with, such person; and a person shall be deemed to be "controlled by" any other person if such other person possesses, directly or indirectly, (a) the power to vote more than 50% of the securities (on a fully-diluted basis) having ordinary voting power for the election of directors or managing general partners, or (b) the power to direct or cause the direction of the management and policies of such person, whether by contract or otherwise, provided that a body corporate, trust or partnership shall not be precluded from being a related body corporate merely because it is formed or established outside Australia, and for the purpose of this document, includes, with respect to a specified person, another person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified, where "control" means the possession, directly or indirectly, of the power to direct or ensure the direction of the management or policies of a person, whether through the ability to exercise voting power, by contract or otherwise.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the net income of a Party.

Transaction Document means

- (a) this agreement;
- (b) any Drawdown Notice;
- (c) any document which the Parties agree in writing to be a Transaction Document; and
- (d) any other document connected with any of them.

1.2 General interpretation

- (a) Unless the contrary intention appears, any reference in a Transaction Document to:

- (i) “**assets**” or “**property**” includes present and future properties, revenues and rights of every description;
 - (ii) a “**Transaction Document**” or any other agreement or instrument is a reference to that **Transaction Document** or other agreement or instrument as amended, replaced or novated;
 - (iii) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (iv) a “**person**” or “**entity**” includes any person, firm, company, body corporate, government, state or agency of a state or any organisation, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and any reference to a particular person or entity (as so defined) includes a reference to that person’s or entity’s executors, administrators, successors, substitutes (including by novation) and assigns;
 - (v) a “**regulation**” includes any regulation, rule, official directive, treaty, request or guideline (whether or not having the force of law) of any Governmental Agency and if not having the force of law, with which responsible entities in the position of the relevant Party would normally comply;
 - (vi) the words “**including**”, “**for example**” or “**such as**” when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
 - (vii) a provision of law or a regulation is a reference to that provision as amended, consolidated, replaced or re-enacted;
 - (viii) C\$ or CAD denotes the lawful currency of Canada;
 - (ix) unless a contrary indication appears, a time of day is a reference to Brisbane time;
 - (x) “**law**” means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them);
 - (xi) a “**derivative transaction**” includes any derivative transaction entered into in connection with obtaining protection against, or a benefit from, fluctuation in any rate or price; and
 - (xii) a reference to any thing (including an amount) is a reference to the whole and each part of it.
- (b) Section, clause and schedule headings are for ease of reference only.
 - (c) Unless a contrary indication appears, a term used in any other Transaction Document or in any notice given under or in connection with any Transaction Document has the same meaning in that Transaction Document or notice as in this document.
 - (d) An Event of Default or Potential Event of Default is “**continuing**” if it has not been remedied to the satisfaction of the Lender or waived in writing.

1.3 Existing Facility Agreement

- (a) The Parties agree that in this agreement a reference to a clause or definition of the Existing Facility Agreement is taken to be a reference to the Existing Facility Agreement as at the date of this agreement, unless the Lender provides its express written consent to any subsequent amendment, waiver, consent or disclosure of the Existing Facility Agreement applying for the purposes of this agreement.
- (b) The Lender (in its capacity as “Lender” under the Existing Facility Agreement) hereby:
 - (i) provides its consent to this agreement and the indebtedness incurred under it for the purposes of; and
 - (ii) agrees that neither this agreement nor the implementation of any transaction contemplated within it will comprise a breach or default (however defined or described) under,

the Existing Facility Agreement (including, without limitation, for the purposes of clause 19.10 (“Incurring Financial Indebtedness”) of the Existing Facility Agreement) and each “Finance Document” as defined in the Existing Facility Agreement.

Part 2 The Facilities

2 Facility

2.1 Lender to provide financial accommodation

The Lender agrees to provide any financial accommodation requested by the Borrower in accordance with this agreement.

3 Using the Facility

3.1 Drawing down

- (a) The Borrower is not obliged to request a Drawing under the Facility. However, if the Borrower wants to use the Facility, the Borrower must provide a Drawdown Notice to the Lender requesting the Drawing.
- (b) Subject to clause 3.4 ("Conditions to Drawing"), only one Drawing may be made under this agreement.
- (c) If the Borrower wants to initiate a Drawing, the Borrower agrees to give a Drawdown Notice to the Lender by 5pm Sydney time on the second Business Day before the Drawing is to be made (or such other period as may be agreed between the Parties).

3.2 Amount and currency of Drawing

Drawings may only be denominated in Canadian dollars. The Drawing must be in the full amount of the Commitment.

3.3 Effect of a Drawdown Notice

A Drawdown Notice is effective when the Drawdown Notice is delivered by the Borrower to the Lender in accordance with this agreement and it is received in a legible form. An effective Drawdown Notice is irrevocable.

3.4 Conditions to Drawing

The Lender need not provide the Drawing until:

- (a) the Lender has received a certificate duly executed by a director of the Borrower, attaching:
 - (i) **constitutional documents:** a certified copy of the constitutional documents of the Borrower (if any);
 - (ii) **board resolution:** a certified extract of a resolution of the board of directors of the Borrower:
 - (A) approving the terms of, and the transactions contemplated by, this document and resolving that it execute this document;
 - (B) confirming that it is in the best interests to execute this document;
 - (C) authorising a specified person or persons to execute this document on its behalf;
 - (D) confirming that it is able to pay its debts as and when they become due; and

- (E) if applicable, authorising a specified person or persons, on its behalf, as Authorised Officers to sign and/or despatch all documents and notices (including, if relevant, any Drawdown Notice) to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is a party;
- (iii) this agreement has been fully signed;
- (b) a valid Drawdown Notice has been provided; and
- (c) it is satisfied that no Event of Default or Potential Event of Default is continuing on the date of the Drawdown Notice and on the Drawdown Date, or would result from the Drawing being provided.

Each condition under this clause is for the sole benefit of the Lender and may be waived by the Lender.

3.5 Application direction

- (a) The Borrower irrevocably directs the Lender to apply the proceeds of the Drawing directly against the amount owing by the Borrower to the Lender under the Existing Facility Agreement.
- (b) The Lender agrees to comply with the direction in clause 3.5(a) and undertakes, in its capacity as creditor under the Existing Facility Agreement, to apply the proceeds of the Drawing towards repayment of an equivalent amount outstanding under the Existing Facility Agreement.

4 Interest

Subject to clause 10 ("Interest on overdue amounts"), the Parties acknowledge and agree that no interest accrues or is payable on the Outstanding Principal Balance.

5 Repaying and prepaying

5.1 Repayment

The Borrower agrees to pay and/or repay the Amount Owing (or any part of it) upon written demand by the Lender, provided that notwithstanding any provision of this agreement or any Transaction Document in no circumstance shall the Amount Owing (or any part of it) be payable in advance of any amount outstanding under the Existing Facility Agreement unless approved by the courts of the Province of British Columbia. For the avoidance of doubt, the Lender may make more than one demand from time to time, for payment and/or repayment of any part of the Amount Owing.

5.2 Voluntary prepayment

The Borrower may, at its sole discretion, prepay some or all of an Outstanding Principal Balance owed by the Borrower at any time prior to written demand by the Lender. There is no required minimum amount payable in respect of any such prepayment.

5.3 Not a revolving facility

The Borrower may not redraw an amount repaid or prepaid by the Borrower under the Facility.

6 Payments

- (a) Unless a provision of a Transaction Document expressly states otherwise, the Borrower agrees to make payments (including by way of reimbursement) under this agreement:
 - (i) on the due date (or, if that is not a Business Day, on the next Business Day unless that day falls in the following month, in which case, on the previous Business Day);
 - (ii) not later than 10.00 am in the place for payment;
 - (iii) in the currency in which such payment is due in immediately available funds;
 - (iv) in full without set-off or counterclaim, and without any deduction or withholding in respect of Taxes unless prohibited by law; and
 - (v) to the Lender by payment into the account nominated by the Lender, or by payment as the Lender otherwise directs.
- (b) If the Lender directs the Borrower to pay a particular person or in a particular manner, the Borrower is taken to have satisfied its obligation to the Lender by paying in accordance with the direction.
- (c) The Borrower satisfies a payment obligation only when the Lender or the person to whom it has directed payment receives the amount.

7 Undertakings

7.1 Undertakings

Each of the undertakings in clauses 18 ("Information Undertakings") and 19 ("General Undertakings") of the Existing Facility Agreement (including any undertakings which are incorporated into the Existing Facility Agreement with reference to another document) are undertakings for the purposes of this agreement as if set out in this agreement in full with any relevant changes and any relevant definitions incorporated, except to the extent that the Lender consents in writing, however:

- (a) excluding clauses 18.1 ("Financial Statements"), 18.2 ("Compliance Certificate"), 18.3 ("Requirements as to Financial Statements"), 18.5 ("Know your customer" checks), 19.8 ("Pari passu ranking"), 19.21 ("Event of Eminent Domain"); and
- (b) on the basis that all references to "Borrower", "Obligor" or "Obligors" are references to the Borrower, all references to "Lender" are references to the Lender, and all references to "Finance Documents" are references to the Transaction Documents (except, in the case of the Finance Document references, in relation to clause 19.3(c) ("Negative pledge") of the Existing Facility Agreement), all references to "Business Days" are references to Business Days, all references to an "Event of Default" are references to an Event of Default, all references to a "Default" are references to both Events of Default and Potential Events of Default, all references to "this document" are references to this document, and all references to "Commitment" are references to the Commitment.

Subject to the Borrower's receipt of the Lender's express written consent referred to in clause 1.3 ("Existing Facility Agreement"), despite any amendment, waiver, consent or disclosure provided under the Existing Facility Agreement, each

undertaking in this clause 7 is subject to any matter disclosed to, and accepted in writing by, the Lender.

7.2 Undertakings are continuing obligations

Each undertaking in this agreement continues for so long as there is any Commitment or Amount Owing.

8 Default

8.1 Events of Default

The occurrence of each of the events or circumstances specified as an “Event of Default” in clause 20 (“Default”) of the Existing Facility Agreement is an “Event of Default” for the purposes of this agreement as if set out in this agreement in full with any relevant changes and any relevant definitions incorporated, except to the extent that the Lender consents in writing, however:

- (a) excluding clauses 20.6 (“Prior claims”) and 20.12(e),(f) and(g) (“Finance Documents”); and
- (b) on the basis that all references to “Borrower”, “Obligor” or “Obligors” are references to the Borrower, all references to “Lender” are references to the Lender, all references to “Finance Documents” are references to the Transaction Documents, all references to “Business Days” are references to Business Days, all references to an “Event of Default” are references to an Event of Default, all references to a “Default” are references to both Events of Default and Potential Events of Default, all references to “this document” are references to the Existing Facility Agreement and all references to “Commitment” are references to the Commitment.

Subject to the Borrower’s receipt of the Lender’s express written consent referred to in clause 1.3 (“Existing Facility Agreement”), despite any amendment, waiver, consent or disclosure provided under the Existing Facility Agreement, each Event of Default in this clause 8 is subject to any matter disclosed to, and accepted in writing by, the Lender.

8.2 Consequences of default

If an Event of Default is continuing then the Lender may declare at any time by notice to the Borrower that:

- (a) an amount equal to the Amount Owing is:
 - (i) payable on demand; or
 - (ii) immediately due for payment; and/or
- (b) the Lender’s obligation to make Drawings under this agreement is terminated and the Lender’s Commitments are cancelled.

The Lender may make either or both of these declarations. The making of either of them gives immediate effect to its provisions.

9 Costs

The Borrower agrees to pay or reimburse:

- (a) the Lender’s reasonable Costs in connection with exercising, enforcing or preserving any of its rights in connection with the Amount Owing under the Transaction Documents; and

- (b) stamp duty, registration and similar Taxes or fees paid or payable, in connection with:
 - (i) any Drawing;
 - (ii) a payment in relation to the Amount Owing; or
 - (iii) any receipt by the Lender of any Amount Owing paid by the Borrower,(including any fines and penalties in connection with any of these amounts).

The Borrower agrees to pay amounts due under this clause on demand from the Lender.

10 Interest on overdue amounts

10.1 Obligation to pay

- (a) If the Borrower does not pay any Amount Owing by it on the due date for payment, the Borrower agrees to pay interest on that amount at the rate of 2% per annum.
- (b) The interest accrues daily from (and including) the due date to (but excluding) the date of actual payment, compounds monthly, and is calculated on actual days elapsed and a year of 365 days. For the purposes of the *Interest Act* (Canada) in the case of a leap year, the annual interest rate corresponding to the interest calculated on the basis of a 365 day year is equal to the interest rate thus calculated multiplied by 366 and divided by 365.
- (c) The Borrower agrees to pay interest owing by the Borrower under this clause on demand from the Lender.

However, under no circumstances shall the interest payable (or any amount considered interest under the law) exceed the maximum interest amount permitted by law. As applicable, the interest amount will be reduced so as not to exceed this maximum.

10.2 Compounding

Interest payable by the Borrower under clause 10.1 ("Obligation to pay") which is not paid by the Borrower when due for payment may be added to the overdue amount by the Lender at intervals which the Lender determines from time to time or, if no determination is made, every 30 days. Interest is payable on the increased overdue amount at the interest rate in the manner set out in clause 10.1 ("Obligation to pay").

11 Application of payments

The Lender may apply amounts paid by the Borrower in respect of the Amount Owing (including by way of prepayment) towards satisfaction of the Borrower's obligations under the Transaction Documents in the manner it sees fit in relation to that Amount Owing unless the Transaction Documents expressly provide otherwise. This appropriation overrides any purported appropriation by the Borrower or any other person.

12 Dealing with interests

12.1 Borrower may not assign or novate

The Borrower may not assign or otherwise deal with its rights under this agreement or allow any interest in it to arise or be varied, in each case, without the Lender's consent.

12.2 Lender may assign or novate

The Lender may assign or otherwise deal with its rights under this agreement or allow any interest in it to arise or be varied, in each case, without the Borrower's consent.

13 Notices and other communications

13.1 Form - all communications

Any notice or other communication to be made under or in connection with the Transaction Documents, including any request, demand, consent or approval, to or by a Party must be given in accordance with the notice requirements of the Existing Facility Agreement (including any such requirements which are incorporated into the Existing Facility Agreement with reference to another document).

13.2 Reliance

Any notice sent under this clause 13 can be relied on by the recipient if the recipient reasonably believes the notice to be genuine and if it bears what appears to be the signature (original or facsimile) of an Authorised Officer of the sender (without the need for further enquiry or confirmation). Each Party must take reasonable care to ensure that no forged, false or unauthorised communications are sent to another Party.

14 General

Clause 23.1 ("General") of the Existing Facility Agreement applies to this agreement as if set out in this agreement in full with any relevant changes and any relevant definitions incorporated, however on the basis that all references to "Borrower", "Obligor" or "Obligors" are references to the Borrower, all references to "Lender" are references to the Lender, all references to "Finance Documents" are references to the Transaction Documents, all references to "Business Days" are references to Business Days, all references to an "Event of Default" are references to an Event of Default, all references to a "Default" are references to both Events of Default and Potential Events of Default, all references to "this document" are references to this document, all references to "this Agreement" are references to this document, and all references to "Party" are references to a Party.

14.1 Disclosure of confidential information

The Lender may disclose:

- (a) to any person to (or through) whom the Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights or obligations under a Transaction Document;
- (b) to any person with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments may be made by reference to a Transaction Document or the Borrower;

- (c) to any person with (or through) whom that Lender enters into (or may potentially enter into) derivative transaction relating to any Obligor or any of their Related Bodies Corporate;
- (d) to any person in connection with an exercise of rights under a Transaction Document;
- (e) to any person in connection with an exercise of rights under a Transaction Document;
- (f) to any Party or any Related Bodies Corporate, officers, employees, agents and attorneys, legal and other advisers and auditors;
- (g) to rating agencies to the extent required by them; or
- (h) to any person to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation,

any information about the Borrower and the Transaction Documents as that Lender shall consider appropriate, however in the case of disclosure under paragraphs (a), (b), or (c), only after the discloser has agreed in writing to be bound by confidentiality obligations which are consistent with this clause 14.1.

14.2 Counterparts

This document may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this document to produce or account for more than one such counterpart. Delivery of an executed counterpart of a signature page of this document by telecopy or by sending a scanned copy by electronic mail shall be as effective as delivery of a manually executed counterpart of this document.

14.3 Governing law

This document shall be governed by, and constated in accordance with, the laws of the Province of British Columbia and the federal laws of Canada applicable therein.

14.4 Jurisdiction

- (a) Each Party irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the courts of the Province of British Columbia, in any action or proceeding arising out of or relating to this document or any other Transaction Document, or for recognition or enforcement of any judgment, and each of the Parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each Party hereby irrevocably waives, to the fullest extent it may effectively do so, the defence of inconvenient forum to the maintenance of such action or proceeding. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this document or in any other Transaction Document shall affect any right that the Lender may otherwise have to bring any action or proceeding relating to this document or any other Transaction Document against the Borrower or its properties in the courts of any jurisdiction.
- (b) The Borrower irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to

this document or any other Transaction Document in any court referred to in this section. Each of the Parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defence of an inconvenient forum to the maintenance of such action or proceeding in any such court.

- (c) The Parties agree that those courts are the most appropriate and convenient courts to settle disputes and accordingly no Party will argue to the contrary.
- (d) Each Party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an forum, where that venue falls within paragraph 14.4(a).
- (e) This clause 14.4 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

EXECUTED as an agreement.

Unsecured CAD Facility Agreement

Signing page

DATED: _____

Borrower

IN WITNESS WHEREOF, the undersigned by its respective officer(s) or other representative(s) thereunto duly authorized have caused this Agreement to be duly executed and delivered as of the date stated at the beginning of this Agreement.

**HCA MOUNTAIN MINERALS (MOBERLY)
LTD.**

By: _____

Name:

Title:

I have authority to bind the above.

Unsecured CAD Facility Agreement

Lender

IN WITNESS WHEREOF, the undersigned by its respective officers or other representatives thereunto duly authorized have caused this Agreement to be duly executed and delivered as of the date first written above.

EXECUTED by **QMETCO LIMITED** in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)

.....)
Signature of director)

.....)
Name of director (block letters))

.....)
Signature of director/company)
secretary*)
*delete whichever is not applicable)

.....)
Name of director/company secretary*)
(block letters))
*delete whichever is not applicable)