

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 (CCAA TERMINATION)**

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File No. 273913

## AFFIDAVIT OF JERRAD BLANCHARD

Sworn November 16<sup>th</sup>, 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 and HCA Mountain Minerals (Moberly) Limited (“Moberly”, and collectively with Heemskirk Mining Pty. Ltd., the “NSC Companies”).
2. 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.
3. I am also employed as the Chief Financial Officer of the Purchaser (as defined below).
4. 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”**.
5. Information on the sale and investment solicitation process (“SISP”) that was followed in these *Companies’ Creditors Arrangement Act* (“CCAA”) proceedings (the “CCAA Proceedings”) and the stalking horse bid that was subsequently approved by this Court is described in 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”**.
6. 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”).

## B. HISTORY OF PROCEEDINGS

7. On June 30, 2020, QMetco Limited (“QMetco”) and Taurus Resources No. 2 B.V. (together with QMetco, the “Secured Lenders”) applied for and were granted an initial order in respect of the NSC Companies. The Secured Lenders applied for relief under the CCAA in their capacity as secured lenders of certain of the NSC Companies.
8. On July 10, 2020, the NSC Companies applied for and were granted an amended and restated initial order (the “ARIO”) that, *inter alia*, approved an interim financing agreement with Vitreo Minerals Ltd. (“Vitreo” and Vitreo in such capacity, the “Interim Lender”), an affiliate of the Secured Lenders, and granted an Interim Lender’s Charge (as defined in the ARIO).
9. The ARIO was further varied by an order granted on July 27, 2020 (as varied, the “Initial Order”) that approved a sales agent charge in favour of Whitehorn Merchant Capital, as sales agent.
10. In addition, on July 27, 2020, the NSC Companies applied for and were granted an order that, *inter alia*:
  - (a) approved the sale and investment solicitation process (the “SISP”); and
  - (b) approved the stalking horse bid made by Vitreo (Vitreo in such capacity, the “Purchaser”) pursuant to an asset purchase agreement dated July 21, 2020 (as subsequently amended by an amending agreement dated September 10, 2020) (together, the “APA”) and authorized the NSC Companies to execute the APA. Attached as **Exhibit “C”** is a copy of the APA.
11. On September 11, 2020, the NSC Companies applied for and were granted an approval and vesting order (“AVO”) that, *inter alia*:
  - (a) terminated the SISP;
  - (b) approved the APA submitted by the Purchaser as the Successful Bid (as defined in the SISP); and

- (c) authorized the NSC Companies that are parties to the APA (the “Sellers”) 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.
- 12. An amending agreement to the APA amended the Closing Date (as defined in the APA) to be October 20, 2020, or such other date as the Purchaser and Sellers agree to in writing. The Purchaser and Sellers subsequently agreed to extend the Closing Date to October 22, 2020.
- 13. On October 22, 2020 the NSC Companies applied for an order to authorize a new borrowing arrangement between Moberly and QMetco (the “October 22 Order”). Such relief was obtained for tax-related purposes in relation to the APA and can be characterized as an administrative step required in connection with the closing of transactions contemplated by the APA.
- 14. The transactions contemplated by the APA closed on October 22, 2020. The transactions resulted in the sale of substantially all of the NSC Companies’ assets to the Purchaser.

### **C. TRINITYRAIL DISPUTE**

- 15. Prior to these proceedings, Custom Bulk and TrinityRail Canada Inc. (“TrinityRail”) were parties to a railroad car lease dated June 14, 2018 (the “Rolling Stock Lease”). The Rolling Stock Lease was entered into connection with the transloading of sand from truck to rail.
- 16. As the Rolling Stock Lease is not currently necessary for the NSC Companies’ business, the NSC Companies delivered a notice of disclaimer of the Rolling Stock Lease to TrinityRail on or around July 14, 2020 (the “Notice of Disclaimer”).
- 17. On July 29, 2020, TrinityRail filed an application with the Court seeking to, among other things, set aside the Notice of Disclaimer.
- 18. All railroad cars are expected to be returned to TrinityRail on or before November 17, 2020.

19. Based on discussions between representatives of the NSC Companies and representatives of TrinityRail, I expect that TrinityRail will withdraw its application to set aside the Notice of Disclaimer after the railroad cars are returned.

**D. POST CLOSING MATTERS**

20. The NSC Companies are seeking an extension of the stay of proceedings (the “Stay Period”) up to and until the filing of a certificate by the Monitor confirming that the outstanding items described below are complete (the “Monitor’s Certificate”).
21. Such outstanding items are briefly described as follows:
- (a) NSC applied for and received a rent subsidy of approximately \$34,000 from the Federal Government (the “Rent Subsidy”). The Rent Subsidy is expected to be paid to NSC in the next month.
  - (b) Canadian Pacific Limited (“CP”) has not yet agreed to a form of assignment to assign to the Purchaser an agreement for private siding, dated January 1, 1980 between Canadian Pacific Limited, as railway company, and Mountain Minerals Co. Ltd. (now HCA Mountain Minerals (Moberly) Limited) and Custom Bulk Services Inc. (the “Siding Agreements”). Moberly expects to work with CP to facilitate an assignment of the Siding Agreements to the Purchaser in the coming weeks.
  - (c) The NSC Companies are working to transfer a number of remaining permits of various types to the Purchaser in accordance with the APA. I expect that such transfers will be completed over the next several weeks.
  - (d) The Purchaser intends to obtain new loan facilities with Alberta Treasury Branches (“ATB”) in the amounts of \$588,240 and \$576,269 to payout and discharge existing loans by ATB to Custom Bulk. I do not expect that the NSC Companies will play a material role in obtaining such facilities.

- (e) There are two outstanding letters of credit issued by the Canadian Imperial Bank of Commerce in favour of the BC Agricultural Land Commission in the aggregate amount of \$150,000. The letters of credit are in the name of Heemskirk Canada and are fully secured by cash collateral (“Cash Collateral”). Both letters of credit will be cancelled and the Cash Collateral will be returned to Heemskirk Canada. I expect that ATB will replace such letters of credit at the request of the Purchaser, if required.
- (f) There are a number of outstanding vendor invoices owed by the NSC Companies (“Outstanding Invoices”). The NSC Companies expect that the Monitor will pay the Outstanding Invoices out of the cash proceeds of the APA or from the NSC Funds (as defined below). The NSC Companies are working to provide the Monitor with all Outstanding Invoices and expect this to be done in the next month.
- (g) Any amounts received in relation to the Rent Subsidy, Cash Collateral and any other funds in the possession of the NSC Companies (the “NSC Funds”) will be paid to the Monitor. The Monitor will then pay the balance of the NSC Funds to the Purchaser after payment of the Outstanding Invoices and any remaining costs of administration of the CCAA Proceedings, including costs subject to the Charges (as defined in the Initial Order), if applicable.

#### **E. CANADA REVENUE AGENCY AUDIT**

- 22. On October 22, 2020, Canada Revenue Agency (“CRA”) advised NSC that it was conducting an audit in respect of NSC’s payroll from the period of June 30, 2018 to June 30, 2020 (the “Audit”).
- 23. On November 5, 2020, I am advised by NSC’s Controller, Greg Jackson, that he contacted CRA by phone to inquire about the Audit.
- 24. I am further advised by Mr. Jackson that:

- (a) Mr. Jackson informed CRA that NSC does not have any of its own employees and all of the group's employees are employed by Custom Bulk, Moberly, or Heemskirk Canada.
  - (b) CRA advised Mr. Jackson that both Custom Bulk and Moberly appeared to be in good standing with the CRA, and that the Audit may not be necessary. The CRA representative advised that CRA is in the process of assigning an auditor to complete the Audit. CRA further advised that if the Audit proceeds, it will be limited in scope to remittances to the CRA and will not extend to benefits or payroll related items.
25. As NSC did not have any employees during the relevant period, and accordingly had no obligation to remit funds to CRA, I do not anticipate the Audit resulting in any liability to NSC if the Audit proceeds.
26. The Purchaser will undertake to assist CRA with the Audit to the extent requested by CRA.

#### **F. EXTENSION OF THE STAY PERIOD**

27. The Stay Period granted by the AVO will expire on November 27, 2020.
28. As indicated above, the NSC Companies are seeking an extension of the Stay Period up to and until the filing of the Monitor's Certificate confirming that the outstanding items described herein are complete.
29. The NSC Companies are seeking that, upon the filing of the Monitor's Certificate, the Monitor be discharged of its duties as Monitor of the NSC Companies subject to incidental duties as may be required to complete the administration of the CCAA Proceedings, including additional professional fees and costs that may accrue in relation to same.
30. Since the AVO was granted on September 11, 2020, the NSC Companies have acted in good faith and with due diligence to:
- (a) obtain the October 22 Order and close the transactions contemplated by the APA on October 22, 2020;

- (b) disclaim a vehicle lease dated April 27, 2020, between NSC and Jack Carter Chevrolet Buick GMC Ltd.;
  - (c) disclaim a vehicle lease dated April 27, 2020, between Heemskirk Canada and Jack Carter Chevrolet Buick GMC Ltd.; and
  - (d) resolve the TrinityRail Dispute.
31. Having regard to the circumstances, I believe that the granting of an extension of the Stay Period to the filing of the Monitor's Certificate is necessary and in the best interests of the NSC Companies and their stakeholders.
  32. The Monitor, the Interim Lender and the Secured Lenders are supportive of the extension of the Stay Period sought by the NSC Companies.
  33. 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 during the proposed extension of the Stay Period.
  34. 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 no creditor will be prejudiced by the proposed extension of the Stay Period.
  35. I make this affidavit in support of the NSC Companies' application for the order substantially in the form attached as Schedule "A" to the application filed concurrently with this affidavit, *inter alia*:
    - (a) extending the Stay Period up to and including the date on which the Monitor files the Monitor's Certificate;
    - (b) ordering that upon the filing of the Monitor's Certificate, the CCAA Proceedings be terminated and granting ancillary relief for such termination;
    - (c) ordering that the NSC Companies pay the NSC Funds to the Monitor;



[illegible]

Jerrad Blanchard

**LOVEPREET SAINI**  
Barrister & Solicitor  
**A Commissioner for Oaths in and for Alberta**

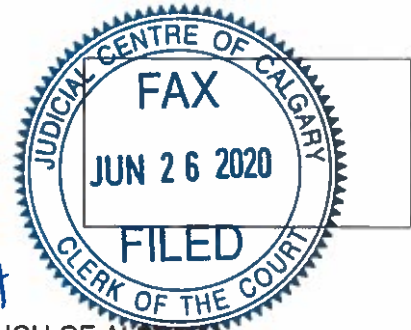
This is Exhibit "A" referred to in  
the Affidavit of Jerrad Blanchard,  
sworn before me this 16<sup>th</sup> day of  
November, 2020

A handwritten signature in blue ink, consisting of a stylized 'L' followed by a series of loops and a long horizontal stroke.

A Commissioner for Oaths in and for Alberta

**LOVEPREET SAINI**  
Barrister & Solicitor  
**A Commissioner for Oaths in and for Alberta**

Clerk's Stamp:



COURT FILE NUMBER  
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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

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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 (“ <b>First Samuel</b> ”)	\$5.6 million	No
HCA Moberly	QMetco	\$21.5 million	Yes
Custom Bulk	Alberta Treasury Branches (“ <b>ATB</b> ”)	\$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.

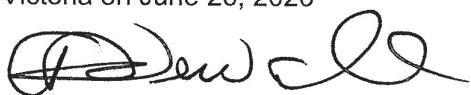
#### **L. PROCEDURAL MATTERS**

- 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

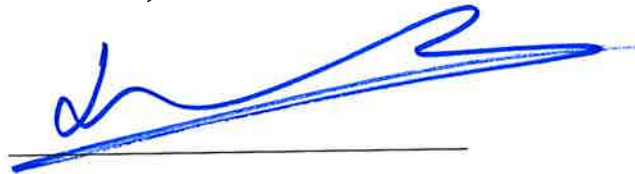
  
Martin Boland

Print Name: ADEWALE OLADEJO

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



This is Exhibit "B" referred to in  
the Affidavit of Jerrad Blanchard,  
sworn before me this 16<sup>th</sup> day of  
November, 2020



A Commissioner for Oaths in and for Alberta

**LOVEPREET SAINI**  
Barrister & Solicitor  
**A Commissioner for Oaths in and for Alberta**



90578

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 4<sup>th</sup> 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

This is Exhibit "C" referred to in  
the Affidavit of Jerrad Blanchard,  
sworn before me this 16<sup>th</sup> day of  
November, 2020

A handwritten signature in blue ink, consisting of a stylized 'L' followed by a series of loops and a long horizontal stroke.

A Commissioner for Oaths in and for Alberta

**LOVEPREET SAINI**  
Barrister & Solicitor  
**A Commissioner for Oaths in and for Alberta**

**ASSET PURCHASE AGREEMENT**

**BETWEEN**

**HCA MOUNTAIN MINERALS (MOBERLY) LIMITED and CUSTOM BULK SERVICES INC.  
and HEEMSKIRK CANADA HOLDINGS LIMITED and HEEMSKIRK CANADA LIMITED**

**- and -**

**VITREO MINERALS LTD.**

**- and -**

**ALVAREZ & MARSAL CANADA INC., IN ITS CAPACITY AS MONITOR**

**July 21, 2020**

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is dated as of July 21, 2020,

### BETWEEN:

**HCA MOUNTAIN MINERALS (MOBERLY) LIMITED**, a corporation incorporated under the laws of the Province of British Columbia

(“**Moberly**”)

- and –

**CUSTOM BULK SERVICES INC.**, a corporation incorporated under the laws of the Province of Alberta

(“**Custom Bulk**”)

- and –

**HEEMSKIRK CANADA HOLDINGS LIMITED**, a corporation incorporated under the laws of the Province of British Columbia

(“**Holdings**”)

- and –

**HEEMSKIRK CANADA LIMITED**, a corporation incorporated under the laws of the Province of Alberta

(“**Heemskirk Canada**” and collectively with Moberly, Custom Bulk, and Holdings, the “**Sellers**”)

- and –

**VITREO MINERALS LTD.**, a corporation incorporated under the laws of the Province of British Columbia

(together with its permitted assigns, the “**Buyer**”)

- and -

**ALVAREZ & MARSAL CANADA INC.**, in its capacity as Monitor of the Sellers

### CONTEXT:

- A. The Sellers own, collectively, all of the Purchased Assets and operate the Business.
- B. The CCAA Proceedings were commenced and the Initial Order was granted by the Court on the Filing Date.
- C. The Sellers and Monitor have determined that it is in the best interests of the stakeholders of each of the Sellers for the Monitor and the Sales Agent to administer a SISP and the Sellers intend to apply to the Court for the SISP Order.

- D. In order to provide customers, suppliers and Employees of the Sellers with assurance that the Business will continue to exist during and after the CCAA Proceedings, the Sellers and the Monitor have determined that it is in the best interests of the stakeholders of the Sellers that the Sellers enter into this Agreement which for the purposes of the SISP will constitute a stalking horse credit bid. It is intended that under the SISP Order, the Sellers and the Monitor will be authorized to enter into this Agreement with the Buyer whereby, provided that this Agreement constitutes the Successful Bid in the SISP, the Sellers will sell to the Buyer all of the Purchased Assets.
- E. The Transaction contemplated by this Agreement is subject to the approval of the Court and will be consummated only pursuant to the Approval and Vesting Order.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement, the following capitalized terms have the meanings set out or referred to below:

**"ABCA"** means the *Business Corporations Act* (Alberta).

**"Accounts Receivable"** means all accounts receivable, trade receivables, bills receivable, trade accounts, book debts, notes receivable, rebates, refunds and other amounts due, owing or accruing due to the Sellers in connection with the Business, whether current or overdue, together with all interest accrued on such items, without deduction or reserve for uncollectible amounts.

**"Administration Charge"** means a charge created under the Initial Order securing the Administration Obligations, subject to the limits set out in the Initial Order or in any other Order consented to by the Buyer and the CCAA Charges Beneficiaries that are the beneficiaries of such charge.

**"Administration Obligations"** means the unpaid professional fees and disbursements of the Monitor, counsel to the Monitor, and counsel to the Sellers, Heemskirk Mining Pty. Ltd. and Northern Silica Corporation in connection with the CCAA Proceedings that were and are incurred both before and after the granting of the Initial Order.

**"Affiliate"** has the meaning ascribed to such term in the ABCA.

**"Agreement"** means this agreement, including all Schedules, as it may be confirmed, amended, modified, supplemented or restated by written agreement between the Parties.

**"Allocation Schedule"** has the meaning ascribed to such term in Section 3.2(e).

**"Alternate Transaction"** means a Successful Bid made by one or more Persons other than the Buyer that is approved by the Court at the Approval Hearing and in respect of which the transactions contemplated thereby are consummated in accordance therewith.

**"Ancillary Agreements"** means any Assignment and Assumption Agreement, the Bill of Sale, such special or limited warranty deeds and additional assignment and conveyance documents and such other agreements, documents or instruments which each party agrees, acting reasonably, are required to consummate the Transaction.

**“Applicable Law”** or **“Applicable Laws”** means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, statutory rules, principles of law, published policies and guidelines, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, including general principles of common and civil law, and the terms and conditions of any grant or approval, permission, authority or licence of any Governmental Authority, that apply to a Person or Persons, or its or their business, undertaking or property, and emanate from a Governmental Authority having jurisdiction over the Person or Persons or its or their business, undertaking or property.

**“Approval and Vesting Order”** has the meaning ascribed to such term in Section 7.2.

**“Approval Hearing”** means the hearing to authorize some or all of the NSC Companies to enter into agreements with respect to the Successful Bid, as contemplated in the SISP.

**“Assets”** means, collectively, all of the present and after acquired undertaking, property and assets, real and personal, and all rights, privileges, benefits in respect thereof, of the Sellers of any nature or kind whatsoever and wherever situated, whether owned, leased, licensed or used by the Sellers, including the Purchased Assets and the Excluded Assets.

**“Assignable Contract”** means any Contract to which a Seller is a party that such Seller is (subject only to any required consent of any Person other than any Seller or an Affiliate of any Seller) permitted under Applicable Law to sell and assign, including without limitation any and all Contracts with respect to the Assumed Obligations.

**“Assigned Contracts”** means such Assignable Contracts to which a Seller is a party that such Seller assigns and conveys to the Buyer in accordance with the terms hereof.

**“Assignee”** has the meaning ascribed to such term in Section 11.3(a).

**“Assignment and Assumption Agreement”** means an assignment and assumption agreement evidencing the assignment to and assumption by the Buyer of the Assumed Obligations and of the rights and obligations under the specific Assigned Contracts.

**“Assumed Obligations”** has the meaning set forth in Section 2.3.

**“ATB Claims”** means the Obligations owing (whether for principal, interest, fees, recoverable costs or otherwise) to ATB Financial by Custom Bulk, as guaranteed by Heemskirk Canada Limited, at the date upon which the transactions contemplated by the Successful Bid, if any, are completed, under a Letter of Offer dated February 10, 2020 and accepted on February 12, 2020.

**“Auction”** has the meaning ascribed to such term in the SISP.

**“Bid Protection Fees”** has the meaning ascribed to such term Section 2.5(c).

**“Bill of Sale”** means a bill of sale in such form as the Buyer and Sellers agree, acting reasonable, which conveys to the Buyer all of the Sellers’ right, title and interest in and to the Purchased Assets.

**“Books and Records”** means all accounting and legal books, records, ledgers, files, lists, reports, plans, logs, correspondence, Tax Returns and other data and information, including all data and information stored on computer-related or other electronic media, maintained by or at the direction of the Sellers with respect to the Business.

**“Break Fee”** has the meaning ascribed to such term Section 2.5(c).

**“Buildings and Improvements”** means all of the right, title and interest of the Sellers in and to all plants, buildings, structures, erections, improvements, fixtures and appurtenances situated on, in, under or forming part of any of the Owned Lands or Leased Premises, including Operating Systems.

**“Business”** means, collectively, the Custom Bulk Business, the Heemskirk Canada Business, the Holdings Business, and the Moberly Business.

**“Business Day”** means any day excluding a Saturday, Sunday or statutory holiday in the Province of Alberta, and also excluding any day on which the principal chartered banks located in the City of Calgary are not open for business during normal banking hours.

**“Buyer”** means Vitreo Minerals Ltd.

**“Cash Portion of the Purchase Price”** means, collectively, the amounts contemplated by Sections 3.2(c)(ii)(D), 3.2(c)(iii)(D), 3.2(c)(iv)(D), and 3.2(c)(v)(D).

**“Casualty”** has the meaning ascribed to such term in Section 6.7.

**“CCAA”** means the *Companies’ Creditors Arrangement Act*, R.S.C. 1958, c. C 36, as amended.

**“CCAA Charges”** means the Administration Charge, the DIP Charge, the D&O Charge; and the Sales Agent Charge.

**“CCAA Charges Allocation”** has the meaning ascribed to such term in Section 3.2(a), and shall be comprised of the Custom Bulk Allocation, the Heemskirk Canada Allocation, the Holdings Allocation, and the Moberly Allocation.

**“CCAA Charges Beneficiaries”** has the meaning ascribed to such term in Section 3.3(a).

**“CCAA Charges Payment”** has the meaning ascribed to that term in 3.2(c)(i).

**“CCAA Proceedings”** means the proceedings initiated by QMetco Limited and Taurus Resources No. 2 B.V. with the Court pursuant to an originating application under the CCAA.

**“Claim”** means any right or claim of any Person that may be asserted or made in whole or in part against a Seller or any of director or officer of a Seller, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or

commenced in the future, together with any other rights or claims of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (Canada) had a Seller become bankrupt.

**“Closing”** and the related term **“Close”** mean the completion of the asset purchase and sale pursuant to this Agreement.

**“Closing Date”** means the day that is five (5) Business Days after the Approval and Vesting Order is issued and entered by the Court, and in any event no later than October 30, 2020, or such other date as the Buyer and Sellers agree to in writing.

**“Closing Statement”** has the meaning ascribed to such term in Section 3.4.

**“Communication”** means any notice, demand, request, consent, approval or other communication which is required or permitted by this Agreement to be given or made by a Party.

**“Confidential Sales Information”** means any information obtained by the Monitor, the Sellers or the Sales Agent in administering the SISP that, in the opinion of the Monitor acting reasonably, if disclosed to the Buyer, would give the Buyer an unfair advantage over other bidders in the SISP, which information for greater certainty will include the terms and conditions of other bids, other bid prices and the identity of other bidders, but for greater certainty will not include information relating to any Event of Default.

**“Contract”** means any agreement, contract, understanding, undertaking, commitment or licence to which a Seller is a party or by which a Seller is bound, including Leases, Service Contracts, Purchase Orders, Inventory Purchase Orders, Warranties, whether written or oral, and any amendments, modifications or supplements thereto.

**“Contracts List”** has the meaning ascribed to such term in Section 6.3(b).

**“Counterparty Approval”** means any consent or approval required from a Seller's counterparty to a Contract in order to permit the assignment to and vesting in the Buyer of a Potential Assigned Contract on Closing.

**“Court”** means the Court of Queen's Bench of Alberta presiding over the CCAA Proceedings or any appeals court therefrom.

**“Cure Amounts”** means all amounts, costs and expenses required by counterparties to be paid by or on behalf of a Seller to obtain a Counterparty Approval in respect of the assignment and vesting of an Assigned Contract in favour of the Buyer pursuant to Applicable Laws.

**“Custom Bulk”** means Custom Bulk Services Inc.

**“Custom Bulk Allocation”** has the meaning ascribed to such term in Section 3.2(c)(iii)(A).

**“Custom Bulk Business”** means the business carried on by Custom Bulk, being the ownership and operation of assets related to a transloading facility in Penhold, Alberta, including the plant, real property, rail siding, rail cars, and other equipment.

**“Custom Bulk Purchase Price”** has the meaning ascribed to such term in Section 3.1(b).

**“Custom Bulk Purchased Assets”** means all of Custom Bulk's Assets, including the following properties, assets and rights of Custom Bulk:

- (a) all cash, bank balances, money in possession of banks and other depositories, term or time deposits and similar cash or cash equivalents of, owned or held by or for the account of Custom Bulk;
- (b) all Shares, notes, bonds or debentures of or issued by corporations or other Persons and all certificates or other evidences of ownership of the Shares, notes, bonds or debentures owned or held by or for the account of Custom Bulk;
- (c) Accounts Receivable;
- (d) Books and Records;
- (e) Documents;
- (f) Buildings and Improvements;
- (g) Assigned Contracts;
- (h) Fixed Assets and Equipment;
- (i) any interest of Custom Bulk in any Fixed Assets and Equipment subject to a Lease that is an Assigned Contract;
- (j) Goodwill;
- (k) Intellectual Property;
- (l) Inventories;
- (m) Owned Lands;
- (n) Permits;
- (o) Prepaid Amounts;
- (p) Real Property Leases; and
- (q) Warranties,

but excluding any property, assets and rights of Custom Bulk that are Excluded Assets.

**“D&O Charge”** means the charge over all of the NSC Companies’ present and future assets, property and undertakings of every nature and kind whatsoever, and wherever situate, including all proceeds thereof granted under the Initial Order to indemnify directors and officers of any of the NSC Companies in respect of liabilities they may incur during the CCAA proceedings in their capacities as directors and officers.

**“DIP Charge”** means the charge over all of the NSC Companies’ present and future assets, property and undertakings of every nature and kind whatsoever, and wherever situate, including all proceeds thereof granted under the Initial Order in connection with the DIP Financing.

**“DIP Financing”** means that certain Interim Financing Facility (Debtor-in-Possession) financing agreement entered into between the Sellers, certain affiliates of the Sellers, and the Buyer, as lender, in the maximum aggregate principal amount of \$3 million.

**“DIP Obligations”** means the Obligations owed by the Sellers to the Buyer under the DIP Financing which are secured by the DIP Charge.

**“Disclaimed Contract”** means any Contract for which a disclaimer notice is delivered by any Seller during the CCAA Proceeding.

**“Disclosure Schedule”** has the meaning ascribed to such term in the introductory paragraph of Article 4.

**“Documents”** means, with respect to a Seller, all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, Web pages, etc.), cost of pricing information, business plans, quality control records and procedures, blueprints, accounting and tax files, all files, customer files and documents (including credit information), personnel files for employees, supplier lists, records, literature and correspondence, including materials relating to Inventories, services, marketing, advertising, promotional materials, Intellectual Property and other similar materials to the extent related to, used in, held for use in, or with respect to, the Business or the Assets in each case whether or not in electronic form, whether or not physically located on any of the premises of such Seller, but excluding (i) personnel files for Employees of such Seller who are not Transferred Employees and (iii) any materials exclusively related to any Excluded Assets.

**“Employees”** means all personnel and independent contractors employed, engaged or retained by a Seller in connection with the Business, including any that are on medical or long-term disability leave or other statutory or authorized leave of absence.

**“Encumbrance”** means any Security Interest, lien, restriction, option, adverse claim, right of others or other encumbrance of any kind.

**“ETA”** means the *Excise Tax Act* (Canada).

**“Event of Default”** has the meaning ascribed to such term in section 19 of the DIP Financing.

**“Exchange Rate”** means the daily average exchange rate between US dollars and Canadian dollars as published by the Bank of Canada;

**“Excluded Assets”** has the meaning ascribed to such term in Section 2.2.

**“Excluded Obligations”** has the meaning ascribed to such term in Section 2.4.

**“Execution Date”** means the date on which this Agreement is fully executed and delivered by the Parties.

**“Filing Date”** means June 30, 2020.

**“Fixed Assets and Equipment”** means all machinery, equipment (including motor vehicles and all manufacturing and quality control equipment and office equipment including computer equipment), boilers, electrical substations, fixtures, furniture,



furnishings, vehicles, material handling equipment, implements, inventories of maintenance and spare parts, tools and tooling supplies, accessories and all other tangible or corporeal property of any kind used or held for use primarily in or in respect of the Business (other than Buildings and Improvements) whether located in or on the premises of a Seller or elsewhere and all rights, privileges, licences and entitlements to use same in the same manner as are and have been used by a Seller.

**“Goodwill”** means the goodwill of the Business, including all right, title and interest of a Seller in, to and in respect of all elements which contribute to the goodwill of the Business, including the goodwill represented by packaging, labelling, advertising, marketing and promotional materials, customer and supplier lists and any logos.

**“Governmental Authority”** means any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of any of them exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory, or taxing authority or power of any nature; and any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of them, and any subdivision of any of them.

**“GST/HST”** means the goods and services tax and the harmonized sales tax imposed under Part IX of the ETA.

**“Hazardous Substances”** means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Governmental Authority, and any "contaminants", "dangerous substances", "hazardous materials", "hazardous substance", "hazardous waste", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to or contemplated in any federal, provincial or municipal legislation, regulations, orders or ordinances relating to environmental, health or safety matters.

**“Heemskirk Canada”** means Heemskirk Canada Limited.

**“Heemskirk Canada Allocation”** has the meaning ascribed to such term in Section 3.2(c)(v)(A).

**“Heemskirk Canada Business”** means the business carried on by Heemskirk Canada, being that of acting as a holding company and owning computers, vehicles, and other administrative assets.

**“Heemskirk Canada Purchase Price”** has the meaning ascribed to such term in Section 3.1(d).

**“Heemskirk Canada Purchased Assets”** means all of Heemskirk Canada's Assets, including the following properties, assets and rights of Heemskirk Canada:

- (a) all cash, bank balances, money in possession of banks and other depositories, term or time deposits and similar cash or cash equivalents of, owned or held by or for the account of Heemskirk Canada;

- (b) all Shares, notes, bonds or debentures of or issued by corporations or other Persons and all certificates or other evidences of ownership of the Shares, notes, bonds or debentures owned or held by or for the account of Heemskirk Canada, except for shares of Custom Bulk and Moberly;
- (c) Accounts Receivable;
- (d) Books and Records;
- (e) Documents;
- (f) Buildings and Improvements;
- (g) Assigned Contracts;
- (h) Fixed Assets and Equipment;
- (i) any interest of Heemskirk Canada in any Fixed Assets and Equipment subject to a Lease that is an Assigned Contract;
- (j) Goodwill;
- (k) Intellectual Property;
- (l) Inventories;
- (m) Prepaid Amounts;
- (n) Real Property Leases; and
- (o) Warranties,

but excluding any property, assets and rights of Heemskirk Canada that are Excluded Assets.

**“Holdings”** means Heemskirk Canada Holdings Limited.

**“Holdings Allocation”** has the meaning ascribed to such term in Section 3.2(c)(iv)(A).

**“Holdings Business”** means the business carried on by Holdings, being the ownership of the Moberly Property.

**“Holdings Purchase Price”** has the meaning ascribed to such term in Section 3.1(c).

**“Holdings Purchased Assets”** means all of Holdings’ Assets, including the following properties, assets and rights of Holdings:

- (a) all cash, bank balances, money in possession of banks and other depositories, term or time deposits and similar cash or cash equivalents of, owned or held by or for the account of Holdings;
- (b) all Shares, notes, bonds or debentures of or issued by corporations or other Persons and all certificates or other evidences of ownership of the Shares, notes, bonds or debentures owned or held by or for the account of Holdings;
- (c) Accounts Receivable;

- (d) Books and Records;
- (e) Documents;
- (f) Buildings and Improvements;
- (g) Assigned Contracts;
- (h) Fixed Assets and Equipment;
- (i) any interest of Holdings in any Fixed Assets and Equipment subject to a Lease that is an Assigned Contract;
- (j) Owned Lands, including the Moberly Property;
- (k) Permits;
- (l) Prepaid Amounts; and
- (m) Warranties,

but excluding any property assets and rights of Holdings that are Excluded Assets.

**“IFRS”** means the international financial reporting standards applicable to publicly accountable enterprises under Part I of the CICA Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time.

**“Initial Order”** means the Order of the Honourable Madam Justice Horner in the CCAA proceedings made on June 30, 2020, amended and restated pursuant to the Order of the Honourable Madam Justice Romaine on July 10, 2020, pursuant to which, among other things, the Sellers were declared to be companies to which the CCAA applies, Alvarez & Marsal Canada Inc. was appointed as the Monitor of the NSC Companies, any proceedings against the NSC Companies were stayed, and the NSC Companies were authorized to enter into the DIP Financing with the Buyer as lender, as same may be amended, varied, supplemented, restated or otherwise modified from time to time.

**“Intellectual Property”** means all rights of a Seller in and to (a) patents, patent applications and patent disclosures, together with all re-issuances, continuations, continuations in part, revisions, extensions, re-examinations, provisionals, divisions, renewals, revivals, and foreign counterparts thereof and all registrations and renewals in connection therewith, (b) trademarks, service marks, trade dress, logos, trade names and corporate names and other indicia of origin and corporate branding, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (c) works of authorship, copyrightable works, copyrights and all applications, registrations and renewals in connection therewith, (d) mask works and all applications, registrations and renewals in connection therewith, (e) trade secrets, inventions and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, assembly, test, installation, service and inspection instructions and procedures, technical, operating and service and maintenance manuals and data, hardware reference manuals and engineering, programming, service and maintenance notes and logs), (f) Software, (g) Internet

addresses, uniform resource locaters, domain names, Websites and Web pages, (h) any and all other intellectual property and proprietary rights, (i) facility and company-wide telephone numbers, and goodwill related to any of the foregoing, in each case to the extent used or useful in the operation of the Business or related to the Purchased Assets.

**"Inventories"** means all inventories of every kind owned by the Sellers and pertaining to the Business including raw materials, supplies, packaging materials, work-in progress, finished goods, tooling, serviced parts now owned or hereafter acquired by the Sellers.

**"Inventory Purchase Orders"** means the outstanding orders or Contracts on the date of this Agreement relating to the Business for the purchase or sale, as applicable, of Inventories.

**"ITA"** means the *Income Tax Act* (Canada).

**"Leased Premises"** means all of the lands and premises which are leased by a Seller in connection with the Business, including without limitation those lands and premises listed on the Disclosure Schedule.

**"Leases"** means the leases relating to the Business other than the Real Property Leases.

**"Material Adverse Effect"** or **"Material Adverse Change"** means a state of facts, event, change or effect with respect to the Business, Assets, the Assumed Obligations or the enforceability of any Assigned Contract that results in a material adverse effect on the value of the Purchased Assets or the Business, taken as a whole, but excludes any state of facts, event, change or effect caused by events, changes or developments relating to (a) economic, regulatory or political conditions generally; (b) the usual, customary or ordinary consequences of the filing in relation to a debtor of a proceeding under the CCAA contemplating a reorganization, compromise or liquidation of the debtor's assets; or (c) any consequences to the Business resulting from the announcement of the SISP and the sale transaction contemplated by this Agreement and the procedures to obtain approval thereof, except to the extent that the foregoing clause (a) has a materially disproportionate impact on the Assets or the Business.

**"Material Contract"** means a Contract that:

- (a) involves or may result in the payment of money or money's worth by or to a Seller in relation to the Business in an amount in excess of \$100,000;
- (b) has an unexpired term of more than one (1) year (including renewals);
- (c) cannot be terminated by a Seller without penalty upon less than 45 days' notice;
- (d) is a Real Property Lease; or
- (e) the termination of which, or under which the loss of rights, would result in a Material Adverse Effect.

**"Material Permit"** means any Permit the loss or revocation of which would result in a Material Adverse Effect.

**"Mineral Tenures"** means the mineral claims, mining leases, recorded claims, leased claims, leases of recorded claims, locations, quartz claims, placer claims, placer leases, undersurface rights and other mining rights, tenures and concessions of which a Seller is

the recorded holder related to the Moberly Property, including those Mineral Tenures listed on the Disclosure Schedule.

**“Moberly”** means HCA Mountain Minerals (Moberly) Limited.

**“Moberly Allocation”** has the meaning ascribed to such term in Section 3.2(c)(ii)(A).

**“Moberly Business”** means the business carried on by Moberly, being the ownership, operation, and maintenance of the Moberly Mine and related assets, together with exploration activities conducted at the Moberly Mine.

**“Moberly Mine”** means the Moberly silica mine located near Golden, British Columbia, on the Moberly Property.

**“Moberly Property”** means the lands on which the Moberly Mine is situated, having a legal description of Lot A Section 29 Township 28 Range 22 West of the 5<sup>th</sup> Meridian Kootenay District Plan EPP30862, and includes the Mineral Tenures.

**“Moberly Purchase Price”** has the meaning ascribed to such term in Section 3.1(a).

**“Moberly Purchased Assets”** means all of Moberly’s Assets, including the following properties, assets and rights of Moberly:

- (a) all cash, bank balances, money in possession of banks and other depositories, term or time deposits and similar cash or cash equivalents of, owned or held by or for the account of Moberly;
- (b) all Shares, notes, bonds or debentures of or issued by corporations or other Persons and all certificates or other evidences of ownership of the Shares, notes, bonds or debentures owned or held by or for the account of Moberly;
- (c) Accounts Receivable;
- (d) Books and Records;
- (e) Documents;
- (f) Buildings and Improvements;
- (g) Assigned Contracts;
- (h) Fixed Assets and Equipment, including the Moberly Mine;
- (i) any interest of Moberly in any Fixed Assets and Equipment subject to a Lease that is an Assigned Contract;
- (j) Goodwill;
- (k) Intellectual Property;
- (l) Inventories;
- (m) Mineral Tenures
- (n) Permits;
- (o) Prepaid Amounts;

- (p) Real Property Leases; and
- (q) Warranties,

but excluding any property, assets and rights of Moberly that are Excluded Assets.

**"Monitor"** means Alvarez & Marsal Canada Inc., in its capacity as Court appointed monitor of the Property and Business (each as defined in the Initial Order) of the NSC Companies, including the Sellers, in the CCAA Proceedings.

**"Monitor's Certificate"** means the certificate filed with the Court by the Monitor certifying that all conditions of Closing in favour of the Sellers have been satisfied by the Buyer or waived by the Sellers.

**"NSC Companies"** means, collectively, the Sellers, Northern Silica Corporation, and Heemskirk Mining Pty. Ltd.

**"Obligations"** means any indebtedness, liabilities and obligations, whether present, future, direct, indirect, liquidated or contingent, whether due or to become due, owed by a Seller to any Person.

**"Order"** means an order of the Court in the CCAA Proceedings.

**"Owned Lands"** means all of the lands and premises owned by the Sellers, including without limitation those lands and premises listed on the Disclosure Schedule.

**"Operating Systems"** means all operating, mechanical or utility systems within the Property, including municipal utilities and services, plumbing, drainage, electrical, heating, ventilating, air-conditioning, fire protection and security, and includes all compactors, movators, escalators and lifting devices comprised in the Owned Lands or Leased Premises.

**"Parties"** means, collectively, the Sellers and the Buyer, and for the purposes of Sections Section 1.1, Article 7 and 10.1(a), 10.1(d) and 11.14. the Monitor, and **"Party"** means any of them.

**"Permits"** means all authorizations, registrations, permits, certificates of approval, approvals, grants, licences, quotas, consents, commitments, rights or privileges (other than those relating to the Intellectual Property) issued or granted by any Governmental Authority to the Sellers in respect of the Business.

**"Permitted Encumbrances"** means, as at the Closing Date:

- (a) unregistered liens for Taxes, assessments or similar charges incurred by a Seller in the ordinary course of the Business that are not yet due and payable or that are not in arrears;
- (b) inchoate mechanic's, construction and carrier's liens and other similar liens arising by operation of law or statute in the ordinary course of the Business for obligations which are not delinquent and will be paid or discharged in the ordinary course of the Business;
- (c) unregistered Encumbrances of any nature claimed or held by Her Majesty The Queen in Right of Canada, Her Majesty The Queen in right of any province of Canada in which the Owned Lands or Leased Premises are located, or by any

Governmental Authority under any Applicable Law, except for unregistered liens for unpaid realty Taxes, assessments and public utilities;

- (d) title defects which are of a minor nature and in the aggregate do not materially impair the value or use of the Owned Lands or the Leased Premises;
- (e) any right of expropriation conferred upon, reserved to or vested in Her Majesty The Queen in Right of Canada, Her Majesty The Queen in right of any province of Canada in which the Owned Lands or the Leased Premises are located, or by any Governmental Authority under any Applicable Law;
- (f) royalty agreements, zoning restrictions, easements and rights of way or other similar Encumbrances or privileges in respect of real property which in the aggregate do not materially impair the value or use of the Owned Lands or the Leased Premises for the Business and which are not violated in any respect by existing or proposed structures or land use;
- (g) Encumbrances created by others upon other lands over which there are easements, rights-of-way, licences or other rights of user in favour of the Owned Lands or Leased Premises and which do not materially impede the use of the easements, rights-of-way, licences or other rights of user for the purposes for which they are held;
- (h) any Encumbrance which the Buyer has expressly agreed to assume or accept pursuant to this Agreement;
- (i) the reservations, limitations, provisos, conditions, restrictions and exceptions in the letters patent or grant, as the case may be, from the Crown and statutory exceptions to title; and
- (j) those instruments registered on title to the Owned Lands or against the leasehold interest of a Seller in the Leased Premises and described in the Disclosure Schedule.

**“Person”** will be broadly interpreted and includes a natural person, whether acting in his or her own capacity, or in his or her capacity as executor, administrator, estate trustee, trustee or personal or legal representative, and the heirs, executors, administrators, estate trustees, trustees or other personal or legal representatives of a natural person; a corporation or a company of any kind, a partnership of any kind, a sole proprietorship, a trust, a joint venture, an association, an unincorporated association, an unincorporated syndicate, an unincorporated organization or any other association, organization or entity of any kind; and a Governmental Authority.

**“Personal Information”** means information about an individual who can be identified by the Person who holds that information, or as defined by Privacy Laws.

**“Phase I Bid Deadline”** has the meaning ascribed to such term in the SISP.

**“Plans”** means all plans that provide pension benefits for the benefit of Employees or former Employees, and their respective beneficiaries, and all Employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, change of control, compensation, retirement, salary continuation, stock option, stock purchase, stock appreciation, health, welfare, medical, dental, accident, disability, life insurance and other plans, arrangements, agreements, programs, policies, practices or

undertakings, whether oral or written, funded or unfunded, registered or unregistered, insured or self-insured:

- (a) that are sponsored or maintained or funded, in whole or in part, by a Seller, or to which a Seller contributes or is obligated to contribute for the benefit of Employees or former Employees, and their respective beneficiaries; or
- (b) under which a Seller has any liability or contingent liability.

**"Potential Assigned Contracts"** has the meaning ascribed to such term in Section 6.3(b).

**"Pre-Closing Reorganization"** has the meaning ascribed to such term in Section 11.1(a).

**"Prepaid Amounts"** means all prepaid expenses, other current assets of ongoing benefit to the Buyer, deposits and security deposits relating to the Business including all prepaid Taxes and water charges, all prepaid purchases of gas, oil and hydro, all prepaid Lease payments.

**"Priority Payables"** means except for the ATB Claims, any Obligations of a Seller secured by any Encumbrance that pursuant to Applicable Laws rank senior in priority to the Security Interests securing the Senior Secured Claims Amount Obligations and the DIP Obligations.

**"Privacy Laws"** means any Applicable Laws that regulate the collection, use, storage, protection, transfer, disclosure, disposal or other processing of Personal Information, including without limitation (i) the *Personal Information Protection and Electronic Documents Act* (Canada); (ii) the *Personal Information Protection Act* (British Columbia); (iii) the *Personal Information Protection Act* (Alberta); (iv) sections 52 and 52.01 of the *Competition Act* (Canada); and (v) *An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* (Canada), each as amended from time to time, and all regulations promulgated each thereunder.

**"Purchase Orders"** means the outstanding orders or Contracts (other than Excluded Assets) for the purchase or sale of personal property (other than Inventories) relating to the Business.

**"Purchase Price"** has the meaning ascribed to such term in Section 3.1.

**"Purchased Assets"** means, collectively, the Custom Bulk Purchased Assets, the Heemskirk Canada Purchased Assets, the Holdings Purchased Assets, and the Moberly Purchased Assets.

**"Qualified Bid"** has the meaning ascribed to such term in the SISP.

**"Real Property Leases"** means all leases for all Leased Premises, including any amendments, modifications, supplements, renewals, letter agreements, and assignments relating thereto.



**“Related Persons”** means any director, officer or employee or representative of the Buyer or the Sellers, as applicable, but for greater certainty, Related Persons of the Sellers does not include any shareholders of the Sellers.

**“Released Claims”** has the meaning ascribed to such term in Section 11.15.

**“Representatives”** means the advisors, agents, consultants, directors, officers, management, employees, subcontractors, and other representatives, including accountants, auditors, financial advisors, lenders and lawyers of a Party and of that Party's Affiliates.

**“Sales Agent”** means Whitehorn Merchant Capital Inc.

**“Sales Agent Charge”** means any charge that may be granted by the Court in favour of the Sales Agent, which charge shall not be greater in amount than \$150,000.

**“Security Interest”** means any mortgage, debenture, charge, security interest, pledge, assignment, hypothecation, title retention, finance lease, trust or deemed trust securing payment or performance of any Obligation.

**“Sellers”** has the meaning ascribed to such term in the preamble to this Agreement.

**“Senior Secured Claims”** means the secured Obligations owing (whether for principal, interest, fees, recoverable costs or otherwise) by the NSC Companies (as applicable) to the Buyer as at the Closing Date under (together, the **“Secured Facility Agreements”**):

- (a) the Secured Facility Agreement dated July 15, 2015, as novated and amended pursuant to Novation and Amendment Deed No. 1 dated February 10, 2016 and further amended and acceded by an Amending and Accession Deed dated December 21, 2018 between Taurus Resources No. 2 B.V., as lender, Moberly, as borrower, and Northern Silica Corporation, Heemskirk Mining Pty. Ltd. (through its predecessor Heemskirk Consolidated Limited), Heemskirk Canada and Holdings, as guarantors, with certain defaults waived under waiver letters dated December 18, 2017, February 2, 2018, July 4, 2019, and December 16, 2019 (the **“Taurus Facility”**); and
- (b) the Secured Working Capital Facility Agreement dated December 6, 2019, as amended pursuant to certain side letter deeds of amendments dated January 28, 2020, February 28, 2020, March 31, 2020, April 28, 2020 and May 26, 2020 between QMetco Limited, as lender, Moberly, as borrower, and Northern Silica Corporation, Heemskirk Mining Pty. Ltd., Heemskirk Canada and Holdings, as guarantors (the **“QMetco Facility”**).

**“Senior Secured Claims Amount”** means the aggregate amount of the Senior Secured Claims, expressed in Canadian dollars and calculated based on the Exchange Rate in effect as of the Business Day immediately preceding the Closing Date.

**“Service Contracts”** means all written service or maintenance contracts relating to the Owned Lands, the Fixed Assets and Equipment or the Operating Systems or relating to the furnishing of supplies or services, including management, maintenance, repair, safety, pest control, landscaping, snow removal, cleaning, sign rental and similar agreements.

**“SISP”** means the sale and investor solicitation procedures, including the procedure for the submission of Qualified Bids and the procedure for the conduct of the Auction should

Qualified Bids be received, which are substantially in the form attached as Schedule "A", with any material changes subject to the approval of the Buyer, such approval not to be unreasonably withheld, delayed or conditioned.

**"SISP Motion"** means an application to approve the SISP Order, which will be acceptable to the Buyer and Sellers, acting reasonably.

**"SISP Order"** has the meaning ascribed to such term in Section 7.1.

**"Shares"** means any and all shares, securities, interests, participations or other equivalents of capital in a corporation and any and all ownership interests in a Person (other than a corporation), including membership interests, partnership interests, joint venture interests and beneficial interests, and any and all warrants, options or other rights to purchase any of the forgoing.

**"Software"** means any computer program, operating system, application, system, firmware or software of any nature, point-of-entry system, peripherals, and data whether operational, active, under development or design, nonoperational or inactive, including all object code, source code, comment code, algorithms, processes, formulae, interfaces, navigational devices, menu structures or arrangements, icons, operational instructions, scripts, commands, syntax, screen designs, reports, designs, concepts, visual expressions, technical manuals, tests scripts, user manuals and other documentation therefor, whether in machine-readable form, virtual machine-readable form, programming language, modeling language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature, and all databases necessary or appropriate in connection with the operation or use of any such computer program, operating system, application, system, firmware or software.

**"Subsidiary"** means, with respect to any Person (in this definition, the **"Parent"**), at any time, any corporation, limited liability company, trust, partnership, limited partnership, association or other entity the accounts of which would be consolidated with those of the Parent in the Parent's consolidated financial statements if those financial statements were prepared in accordance with IFRS as of that date, as well as any other corporation, limited liability company, trust, partnership, limited partnership, association or other entity:

- (a) of which Shares representing more than 50% of the equity or economic interest in them or more than 50% of the ordinary voting power, or, in the case of a partnership, more than 50% of the general or limited partnership interests or the economic interest in them are, as at that time, owned, controlled or held by any combination of the Parent and one or more Subsidiaries of the Parent; or
- (b) that is, as at that time, otherwise controlled by any combination of the Parent and one or more Subsidiaries of the Parent.

**"Successful Bid"** has the meaning ascribed to such term in the SISP.

**"Successful Bidder"** has the meaning ascribed to such term in the SISP.

**"Taxes"** means all taxes including all income, sales, use, GST/HST, provincial sales tax, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health excise, franchise, real property, and personal property taxes and other taxes, customs, duties, fees, levies, imposts, and other assessments or similar charges in the nature of a tax including Canada Pension Plan and provincial pension plan

contributions, employment insurance, and unemployment insurance payments and workers' compensation premiums, together with any instalments with respect thereto, and any interest, fines, and penalties, in all cases imposed by any Governmental Authority in respect thereof and whether disputed or not.

**"Tax Returns"** means all returns, information returns, reports, elections, agreements, declarations, or other documents of any nature or kind required to be filed with any applicable Governmental Authority in respect of Taxes.

**"Tax Law"** means any Applicable Law including but not limited to the ITA, the ETA and the *Provincial Sales Tax Act* (British Columbia) that imposes Taxes or that deals with the administration or enforcement of liabilities for Taxes.

**"Trade Liabilities"** has the meaning ascribed to such term in Section 2.3(d).

**"Transferred Employees"** has the meaning ascribed to such term in Section 6.4(b).

**"Transaction Taxes"** has the meaning ascribed to such term in Section 3.5(a).

**"Transaction"** means transactions contemplated under this Agreement in connection with the Closing.

**"Warranties"** means all warranties, guarantees or contractual obligations, if any, which entitle a Seller to any rights against any contractor, manufacturer or supplier with respect to the Owned Lands or the Leased Premises, including the Operating Systems.

## **1.2 Certain Rules of Interpretation**

- (a) In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the words "including" or "includes" in this Agreement is to be construed as meaning "including, without limitation" or "includes, without limitation", respectively.
- (b) The division of this Agreement into Articles and Sections, the insertion of headings and the inclusion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (c) References in this Agreement to an Article, Section or Schedule are to be construed as references to an Article, Section or Schedule of or to this Agreement unless otherwise specified.
- (d) Unless otherwise specified in this Agreement, time periods within which or following which any calculation or payment is to be made, or action is to be taken, will be calculated by excluding the day on which the period begins and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.
- (e) Unless otherwise specified, any reference in this Agreement to any statute includes all regulations and subordinate legislation made under or in connection with that statute at any time, and is to be construed as a reference to that statute as amended, modified, restated, supplemented, extended, re-enacted, replaced or superseded at any time.

### 1.3 Schedules

The following is a list of Schedules to this Agreement:

<b>Schedule</b>	<b>Subject Matter</b>
Schedule "A"	SISP
Schedule "B"	Disclosure Schedule
Schedule "C"	SISP Order

## **ARTICLE 2 PURCHASE AND SALE**

### 2.1 Agreement of Purchase and Sale

On the terms and subject to the conditions set forth in this Agreement, on Closing if the conditions set out in Sections 8.1, 8.2, 8.3 and 8.4 have been satisfied or waived, the Buyer will, in accordance with the Approval and Vesting Order, purchase, acquire and accept from the Sellers, and each of the Sellers will sell, transfer, convey and deliver to the Buyer, all the right, title and interest of such Seller in, to and under the Purchased Assets, free and clear of all Encumbrances and Claims other than Permitted Encumbrances.

### 2.2 Excluded Assets

Notwithstanding anything to the contrary in this Agreement, the following property and assets will be excluded from and not form part of the Purchased Assets (such excluded property and assets being, collectively, the "**Excluded Assets**"):

- (a) any Asset that otherwise would constitute a Purchased Asset but for the fact that it is conveyed, leased or otherwise disposed of by a Seller in the ordinary course of Business prior to the Closing Date (provided that any proceeds arising from such conveyance, lease or other disposal shall not be an Excluded Asset);
- (b) any Books and Records that a Seller, acting reasonably, is required by Applicable Law to retain, and has advised the Buyer of its obligation to retain such Books and Records, provided, however, that at the request of the Buyer copies of such Books and Records will be provided by such Seller to the Buyer;
- (c) all Contracts that are not Assigned Contracts, including but not limited to Disclaimed Contracts, and any Accounts Receivable arising therefrom;
- (d) any interest of a Seller in any Fixed Assets and Equipment subject to a Lease that is not an Assigned Contract;
- (e) deposits held in trust accounts to secure payment of the reasonable fees and disbursements of the Monitor, the Sales Agent, and the professional advisors of the Sellers, Heemskirk Mining Pty. Ltd. and Northern Silica Corporation, and of the Monitor; and
- (f) all rights of the Sellers under this Agreement and the Ancillary Agreements.

## 2.3 Assumption of Obligations

Upon the terms and subject to the conditions of this Agreement, and subject to Section 2.4, the Buyer agrees, effective at the time of the Closing, to assume and be responsible for and thereafter pay, perform, honor and discharge, as and when due, the following Obligations (collectively, the **"Assumed Obligations"**):

- (a) the ATB Claims, which the Buyer has agreed to assume as of the Closing pursuant to an Assignment and Assumption Agreement, in partial satisfaction of the Custom Bulk Purchase Price;
- (b) the Obligations of any Seller under the Assigned Contracts pursuant to one or more Assignment and Assumption Agreements pertaining to such Assigned Contracts;
- (c) the Obligations of the Sellers in respect of the Mineral Tenures and the obligations of the Sellers under all permits and authorizations relating to the Mineral Tenures, including the Permits and the Material Permits;
- (d) all non-contingent trade liabilities incurred by a Seller in the ordinary course of business for the supply of goods and services to such Seller after the Filing Date (collectively, the **"Trade Liabilities"**);
- (e) all Obligations accruing or arising with respect to the Transferred Employees; and
- (f) all commitments as of the Closing to sell and deliver Inventory in connection with the Assigned Contracts.

## 2.4 Excluded Obligations

Other than the Assumed Obligations, the Buyer is not assuming or agreeing to assume and will not from and after Closing be obligated to pay, perform or discharge any Obligations of or Claims against any Seller of any kind whatsoever (collectively, the **"Excluded Obligations"**), including for certainty any of the following Obligations:

- (a) any Obligations under or in connection with any Disclaimed Contract;
- (b) the Senior Secured Claims;
- (c) any Obligations under or in connection with an Excluded Asset;
- (d) any Obligations owing in respect of any Employees who are not Transferred Employees, including liabilities for wages, vacation pay, termination and severance pay or benefit payments to insurers;
- (e) any Obligations owing to any Transferred Employees referred to in Section 6.4(d);
- (f) any Administration Obligations; and
- (g) any Obligations for Taxes payable or remittable by any Seller.

## 2.5 SISP

- (a) This Agreement will constitute a stalking horse credit bid for the purposes of the SISP and a Qualified Bid for the purposes of the SISP.

(b) The Sellers will comply with the procedures and time lines set out in the SISP and will not apply to the Court to materially amend, or consent to any application by any Person for a material amendment of the SISP without the prior written consent of the Buyer.

(c) In consideration for:

- (i) the Buyer's expenditures of time and money in acting as the bidder under the SISP, in preparing this Agreement and the Ancillary Agreements, and in performing due diligence pursuant to this Agreement; and
- (ii) the Buyer, by virtue of entering into this Agreement, providing assurance to the stakeholders of the Sellers that the Business will continue notwithstanding the outcome of the CCAA Proceedings or the SISP,

the Sellers will pay to the Buyer: (1) a break fee equal to \$1,250,000 (the "**Break Fee**"; and (2) a reimbursement of the Buyer's actual fees, expenses and disbursements relating to the preparation and execution of this Agreement up to a maximum amount of \$150,000 (collectively with the Break Fee, the "**Bid Protection Fees**") in the event that:

- (iii) an Alternate Transaction is completed; or
- (iv) the Transaction is not completed for any other reason other than as a result of a breach of this Agreement by the Buyer, provided that the conditions in Section 8.2 have been satisfied or waived; or
- (v) the non-satisfaction or waiver of the conditions contained in Sections 8.1, 8.3, and 8.4.

The Sellers will, jointly and severally, indefeasibly pay to the Buyer the Bid Protection Fees upon the earlier of the completion of the Alternate Transaction in accordance with Section 2.5(c)(iii) or upon the Buyer and the Monitor, acting reasonably, determining that the Transaction has failed to Close for the reasons set out in Sections 2.5(c)(iv) or 2.5(c)(v). This Section 2.5(c) will survive the termination of this Agreement under 10.1(b) and 10.1(c).

(d) In the event that the SISP is terminated, or this Agreement is the Successful Bid, or a Successful Bid by a bidder other than the Buyer is not approved by the Court or completed in accordance with the timelines established by the SISP, each of the Sellers and Buyer will take all commercially reasonable actions necessary to have this Agreement and the Transaction approved pursuant to the Approval and Vesting Order and to Close the Transaction within five (5) Business Days of the Approval and Vesting Order being made.

### **ARTICLE 3 PURCHASE PRICE**

#### **3.1 Purchase Price**

The purchase price payable by the Buyer to the Sellers for the Purchased Assets shall be comprised of (i) a portion of the Senior Secured Claims Amount, being US\$25,000,000 of the principal owing under the Taurus Facility (which will be converted to Canadian dollars using the Exchange Rate as at the Business Day prior to the Closing Date) and C\$4,350,000 of the principal

owing under the QMetco Facility, and (ii) the amount of the DIP Obligations as at the Closing Date. For illustrative purposes, using the Exchange Rate as at July 20, 2020 and assuming that the DIP Financing has been fully utilized, the purchase price payable by the Buyer expressed in Canadian dollars would be:

- (a) \$38,757,500 in respect of the Moberly Purchased Assets (the “**Moberly Purchase Price**”);
- (b) \$1,650,000 in respect of the Custom Bulk Purchased Assets (the “**Custom Bulk Purchase Price**”);
- (c) \$400,000 in respect of the Holdings Purchased Assets (the “**Holdings Purchase Price**”); and
- (d) \$400,000 in respect of the Heemskirk Canada Purchased Assets (the “**Heemskirk Canada Purchase Price**”);

(collectively, the “**Purchase Price**”).

### 3.2 Payment of the Purchase Price

- (a) At least five (5) Business Days prior to the Closing Date, the Sellers, with the assistance of the Monitor, shall provide the Buyer with a schedule detailing the amount of each of the CCAA Charges incurred to the date such schedule is delivered to the Buyer and specifying the allocation of those charges amongst the Sellers; and
- (b) At least five (5) Business Days prior to the Approval Hearing, the Sellers, with the assistance of the Monitor, shall provide the Buyer with final estimates of the amount of CCAA Charges needed to complete the CCAA Proceeding and specifying the allocation of those charges amongst the Sellers;

(collectively, the “**CCAA Charges Allocation**”).

- (c) The Purchase Price will be satisfied by the Buyer on Closing as follows:
  - (i) first, by paying to the Monitor, in trust for the Sellers, or as directed by the Monitor and the Sellers, by certified cheque or bank draft, or by effecting a wire transfer in immediately available funds, the amount of the Obligations secured by the CCAA Charges as set out in the CCAA Charges Allocation, excluding the DIP Charge (the “**CCAA Charges Payment**”);
  - (ii) in respect of the Moberly Purchase Price:
    - (A) first, by making the CCAA Charges Payment, the portion of the CCAA Charges that is allocated to the Moberly Purchased Assets by the Court in the CCAA Proceedings as set out in the CCAA Charges Allocation (the “**Moberly Allocation**”);
    - (B) second, by way of set-off of the Moberly Purchase Price against the DIP Obligations allocated to the Moberly Purchased Assets by the Court in the CCAA Proceedings;
    - (C) third, by agreeing to pay, as and when they become due all accrued and unpaid Priority Payables attributable to Moberly;

- (D) fourth, by paying to Moberly, or as directed by Moberly, by certified cheque or bank draft, or by effecting a wire transfer in immediately available funds, an amount equal to the amounts itemized on the Closing Statement as payable on account of the Cure Amount and the accrued and unpaid, Trade Liabilities attributable to Moberly;
  - (E) fifth, by assuming the Assumed Obligations of Moberly pursuant to an Assignment and Assumption Agreement; and
  - (F) lastly, by way of set-off of the Moberly Purchase Price against the Senior Secured Claims Amount in an amount equal to the Moberly Purchase Price less the amounts applied towards the payment thereof pursuant to Sections 3.2(c)(ii)(A) through 3.2(c)(ii)(E);
- (iii) in respect of the Custom Bulk Purchase Price,
- (A) first, by making the CCAA Charges Payment the portion of the CCAA Charges that is allocated to the Custom Bulk Purchased Assets by the Court in the CCAA Proceedings as set out in the CCAA Charges Allocation (the “**Custom Bulk Allocation**”);
  - (B) second, by way of set-off of the Custom Bulk Purchase Price against the DIP Obligations allocated to the Custom Bulk Purchased Assets by the Court in the CCAA Proceedings;
  - (C) third, by agreeing to pay, as and when they become due, all accrued and unpaid Priority Payables attributable to Custom Bulk;
  - (D) fourth, by paying to Custom Bulk, or as directed by Custom Bulk, by certified cheque or bank draft, or by effecting a wire transfer in immediately available funds, an amount equal to the amounts itemized on the Closing Statement as payable on account of the Cure Amount and the accrued and unpaid Trade Liabilities attributable to Custom Bulk; and
  - (E) fifth, by assuming the Assumed Obligations of Custom Bulk pursuant to an Assignment and Assumption Agreement, which for the avoidance of doubt shall include all of the ATB Obligations;
- (iv) in respect of the Holdings Purchase Price,
- (A) first, by making the CCAA Charges Payment the portion of the CCAA Charges that is allocated to the Holdings Purchased Assets by the Court in the CCAA Proceedings as set out in the CCAA Charges Allocation (the “**Holdings Allocation**”);
  - (B) second, by way of set-off of the Holdings Purchase Price against the DIP Obligations allocated to the Holdings Purchased Assets by the Court in the CCAA Proceedings;
  - (C) third, by agreeing to pay, as and when they become due, all accrued and unpaid Priority Payables attributable to Holdings;



- (D) fourth, by paying to Holdings, or as directed by Holdings, by certified cheque or bank draft, or by effecting a wire transfer in immediately available funds, an amount equal to the amounts itemized on the Closing Statement as payable on account of the Cure Amount and the accrued and unpaid Trade Liabilities attributable to Holdings;
  - (E) fifth, by assuming the Assumed Obligations of Holdings pursuant to an Assignment and Assumption Agreement; and
  - (F) lastly, by way of set-off of the Holdings Purchase Price against the Senior Secured Claims Amount in an amount equal to the Holdings Purchase Price less the amounts applied towards the payment thereof pursuant to Sections 3.2(c)(iv)(A) through 3.2(c)(iv)(E); and
- (v) in respect of the Heemskirk Canada Purchase Price,
  - (A) first, by making the CCAA Charges Payment the portion of the CCAA Charges that is allocated to the Heemskirk Canada Purchased Assets by the Court in the CCAA Proceedings as set out in the CCAA Charges Allocation (the **"Heemskirk Canada Allocation"**);
  - (B) second, by way of set-off of the Heemskirk Canada Purchase Price against the DIP Obligations allocated to the Heemskirk Canada Purchased Assets by the Court in the CCAA Proceedings;
  - (C) third, by agreeing to pay, as and when they become due, all accrued and unpaid Priority Payables attributable to Heemskirk Canada;
  - (D) fourth, by paying to Heemskirk Canada, or as directed by Heemskirk Canada, by certified cheque or bank draft, or by effecting a wire transfer in immediately available funds, an amount equal to the amounts itemized on the Closing Statement as payable on account of the Cure Amount and the accrued and unpaid Trade Liabilities attributable to Heemskirk Canada;
  - (E) fifth, by assuming the Assumed Obligations of Heemskirk Canada pursuant to an Assignment and Assumption Agreement; and
  - (F) lastly, by way of set-off of the Heemskirk Canada Purchase Price against the Senior Secured Claims Amount in an amount equal to the Heemskirk Canada Purchase Price less the amounts applied towards the payment thereof pursuant to Sections 3.2(c)(v)(A) through 3.2(c)(v)(E).
- (d) The Sellers will pay on Closing from the Cash Portion of the Purchase Price any Cure Amounts in respect of Assigned Contracts and the accrued and unpaid Trade Liabilities and Administration Obligations, and on Closing the Sellers will irrevocably direct the Buyer to make payment to each of the Persons who are payees in respect of the forgoing Obligations, to the extent itemized on the Closing Statement.

- (e) The Moberly Purchase Price, the Custom Bulk Purchase Price, the Holdings Purchase Price, and the Heemskirk Canada Purchase Price shall be allocated among the Moberly Purchased Assets, the Custom Bulk Purchased Assets, the Holdings Purchased Assets and the Heemskirk Canada Purchased Assets, respectively, in the manner agreed by the Buyer and the Sellers at least five (5) business days prior to the Closing Date (the “**Allocation Schedule**”). The Sellers and the Buyer shall report an allocation of the Purchase Price in a manner entirely consistent with the Allocation Schedule and shall not take any position inconsistent therewith in the preparation of financial statements, the filing of any Tax Returns or in the course of any audit by any Governmental Authority, Tax review, or Tax proceeding relating to any Tax Returns.
- (f) The Monitor shall apply the full amount of the CCAA Charges Payment to satisfy the CCAA Charges other than the DIP Charge.

### 3.3 CCAA Charges

- (a) Upon making the CCAA Charges Payment and the payment and discharge of the CCAA Charges, the Buyer shall be fully subrogated to the rights, claims and security of the beneficiaries of the CCAA Charges (the “**CCAA Charges Beneficiaries**”) in the amount of the CCAA Charges Payment.
- (b) The Parties will seek as part of the Approval and Vesting Order terms confirming the subrogation of the Buyer in relation to the CCAA Charges in the amount of the CCAA Charges Payment.
- (c) After the completion of the CCAA Proceeding the Sellers, with the consent of the Buyer, shall seek an Order of the Court authorizing the Sellers to transfer their remaining Assets (except for Excluded Obligations) to the Buyer, including any remaining amount of the CCAA Charges Payment which was not used to satisfy the Obligations of the Sellers under the CCAA Charges, which Order shall be in form and substance satisfactory to the Buyer acting reasonably.

### 3.4 Closing Statement

Not less than ten (10) Business Days before the Closing Date, the Sellers, with the assistance of the Monitor, will deliver to the Buyer a statement which will itemize good faith estimates by the Sellers of the following as of the Closing Date:

- (a) the Cure Amounts;
- (b) the Trade Liabilities;
- (c) the accrued and unpaid Administration Obligations; and
- (d) the unpaid Priority Payables,

(such statement being the “**Closing Statement**”). The Closing Statement will be accompanied by a certificate of the chief financial officer of each of the Sellers, or other senior officer of each of the Sellers acceptable to the Buyer, to the effect that such officers and the Monitor have reviewed the Closing Statement and that the Closing Statement represents the best estimate, made in good faith, of the items summarized therein, and that the officer has no reason to believe that this estimate cannot be relied upon for purposes of the Closing. The Closing Statement will also be accompanied by a copy of the working papers of the Sellers used in its preparation, together with

any other evidence supporting the amounts specified in the Closing Statement as the Buyer may reasonably request.

### 3.5 Taxes and Tax Elections

- (a) All sales, use, goods and services, value-added and similar transfer Taxes in connection with the transfer of the Purchased Assets, and all recording and filing fees (collectively, "**Transaction Taxes**"), that are imposed by reason of the sale, transfer, assignment and delivery of the Purchased Assets will be borne by the Buyer. The Buyer and the Sellers will cooperate in a commercially reasonable manner to (a) determine the amount of Transaction Taxes payable in connection with the Transaction, (b) minimize Transfer Taxes; and (c) prepare and file any and all required Tax Returns for or with respect to such Transaction Taxes with any and all appropriate taxing Governmental Authorities.
- (b) If, under relevant Tax Laws, any Seller is required to collect any applicable Transaction Taxes, then the Buyer shall pay such amounts to such Seller, at the time of Closing, and the Seller shall cause those amounts to be remitted in the manner required by the relevant Tax Laws.
- (c) If applicable, at the Closing, each of the Sellers and the Buyer will jointly elect under subsection 167(1) of the ETA and under any other equivalent or corresponding provisions of any applicable Tax Laws, to have the purchase and sale of the Purchased Assets take place on a GST/HST-free basis under Part IX of the ETA. The Buyer will file the elections in the manner and within the time prescribed by the relevant Tax Laws. Notwithstanding anything to the contrary in this Agreement, the Buyer will indemnify and hold the Sellers harmless in respect of any GST/HST, penalties, interest and other amounts which may be assessed against any Seller as a result of the Transaction not being eligible for such elections or as a result of the Buyer's failure to file the elections within the prescribed time.
- (d) If applicable, to the extent permitted or required under subsection 228(4) of the ETA, the Buyer will self-assess and remit directly to the appropriate Governmental Authority any GST/HST and any similar value added or multi-staged tax imposed by the relevant Tax Laws payable in connection with the transfer of the Real Property. The Buyer shall make and file a return(s) in accordance with the requirements of subsection 228(4) of the ETA and any equivalent or corresponding provision under any applicable Tax Laws. Notwithstanding anything to the contrary in this Agreement, the Buyer will indemnify and hold the Sellers harmless in respect of any GST/HST, penalties, interest and other amounts which may be assessed against any Seller as a result of the Buyer's failure to self-assess GST/HST in accordance with subsection 228(4) of the ETA.
- (e) At the discretion of the Buyer, each of Sellers and the Buyer will jointly execute and file an election under section 22 of the ITA and under the equivalent or corresponding provisions of any applicable Tax Laws, within the prescribed time limits, with respect to the sale of the Accounts Receivable, and will designate in such elections an amount equal to the portion of the Purchase Price allocated to the Accounts Receivable sold by such Seller pursuant to the Allocation Schedule.
- (f) At the discretion of the Buyer, each of the Sellers and the Buyer will jointly execute and file an election under subsection 20(24) of the ITA in the manner required by subsection 20(25) of the ITA and under the equivalent or corresponding provisions

of any applicable Tax Laws, in the prescribed forms and within the prescribed time limits, as to such amount paid by such Seller to the Buyer for assuming future obligations. In this regard, the Buyer and such Seller acknowledge that a portion of the Purchased Assets transferred by the such Seller pursuant to this Agreement and having a value equal to the amount elected under subsection 20(24) of the ITA and the equivalent provisions of any applicable Tax Laws, is being transferred by such Seller as a payment for the assumption of such future obligations by the Buyer.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE SELLER**

Each Seller represents and warrants to the Buyer as follows, and acknowledges that the Buyer is relying upon these representations and warranties in connection with the purchase of the Purchased Assets (which representations and warranties are several in nature, such that each Seller will only have responsibility for representations and warranties that pertain to it), despite any investigation made by or on behalf of the Buyer. Each exception to the following representations and warranties that is set out in a disclosure schedule to be delivered by the Sellers to the Buyer (such schedule, as amended from time to time, being the “**Disclosure Schedule**”), which will be attached to and form part of this Agreement as Schedule “B” is identified by reference to one or more specific individual Sections of this Agreement and is only effective to create an exception to each specific individual Section listed. Any statement in this Agreement that is not expressly qualified by a reference to an exception in the Disclosure Schedule will prevail, despite anything to the contrary that is disclosed in the Disclosure Schedule.

Except as expressly set forth in this Article 4, the Sellers make no representation or warranty, express or implied, at law or in equity, in respect of the Purchased Assets, its Obligations (including the Assumed Obligations) or its operations, including, with respect to merchantability or fitness for any particular purpose, or non-infringement, and any such other representations or warranties are hereby expressly disclaimed and none will be implied at law or in equity.

The Buyer hereby acknowledges and agrees that the Buyer is purchasing the Purchased Assets on an “as is, where is” and “without recourse” basis with all defects, both patent and latent, and with all faults, whether known or unknown, presently existing or that may hereafter arise. The Buyer acknowledges and agrees that the Sellers have not made, do not make and specifically negate and disclaim any representation, warranty, promise, covenant, agreement or guaranty of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Purchased Assets. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Alberta) or the *Sale of Goods Act* (British Columbia) do not apply hereto and have been waived by the Buyer along with all rights and remedies (whether now existing or hereinafter arising and including all common law, tort, contractual and statutory rights and remedies) against Sellers in respect of the Purchased Assets. The Buyer acknowledges that no covenant, agreement, representation, warranty or condition is expressed or can be implied as to use, zoning, title, description, condition, size, cost, existence or non-existence of Hazardous Substances, latent defects, any environmental matter, nature, manner, quality, condition, value or quantity of the Purchased Assets, the validity or enforceability of any Assumed Contracts, the ability to transfer any Permits, the existence of any order of any Governmental Authority, the nature or quantum of the Assumed Liabilities, or any part thereof, or as to any other matter whatsoever save as expressly set forth in this Agreement. The Buyer further acknowledges that it is relying upon its own investigations and inspections in proceeding with the purchase contemplated in the Agreement and confirms that it shall complete and shall satisfy

itself regarding such investigations and inspections. All written and oral information obtained by the Buyer from the Sellers has been provided solely for the convenience of the Buyer. The Buyer acknowledges that the release and disclaimer described in Article 4 is intended to be very broad and the Buyer expressly waives and relinquishes any rights or benefits it may have under any Applicable Law designed to invalidate releases of unknown or unsuspected claims.

#### **4.1 Corporate Status**

Each Seller is a corporation duly incorporated and validly existing and in good standing under the laws of its jurisdiction of incorporation and has all requisite power and authority to own its properties and assets and to conduct its business as now conducted.

#### **4.2 Authorization, Execution and Delivery of Agreement**

Subject to issue and entry of the SISP Order and the Approval and Vesting Order:

- (a) Each Seller has, or at the time of Closing will have, all necessary corporate power and authority to execute and deliver this Agreement and any Ancillary Agreements to which such Seller is or will become a party and to perform its obligations hereunder and thereunder.
- (b) This Agreement has been, and each Ancillary Agreement will be, duly and validly executed and delivered by each Seller.
- (c) This Agreement and each Ancillary Agreement constitutes, or will constitute, when executed and delivered, valid and binding obligations of the Sellers enforceable against the Sellers in accordance with their respective terms, subject to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

#### **4.3 Residence of the Sellers**

Each Seller is not a non-resident of Canada for purposes of the ITA.

#### **4.4 GST/HST**

- (a) The Moberly Purchased Assets constitute all or substantially all of the property that can reasonably be regarded as being necessary for the Buyer to be capable of carrying on the Moberly Business. Moberly is registered for GST/HST under Part IX of the ETA and Moberly's GST/HST registration number is 836286740.
- (b) The Heemskirk Canada Purchased Assets constitute all or substantially all of the property that can reasonably be regarded as being necessary for the Buyer to be capable of carrying on the Heemskirk Canada Business. Heemskirk Canada is registered for GST/HST under Part IX of the ETA and Heemskirk Canada's GST/HST registration number is 835982349.
- (c) The Holdings Purchased Assets constitute all or substantially all of the property that can reasonably be regarded as being necessary for the Buyer to be capable of carrying on the Holdings Business. Holdings is registered for GST/HST under Part IX of the ETA and Holdings' GST/HST registration number is 836301945.
- (d) The Custom Bulk Purchased Assets constitute all or substantially all of the property that can reasonably be regarded as being necessary for the Buyer to be capable

of carrying on the Custom Bulk Business. Custom Bulk is registered for GST/HST under Part IX of the Eta and Custom Bulk's GST/HST registration number is 878384965.

#### **4.5 Regulatory, Transfer and Other Approvals**

Each of the Sellers acknowledges and agrees that time is of the essence in effecting the Closing and otherwise consummating the transactions contemplated herein, and that it will promptly and timely provide written requests, execute and deliver all required documents and materials and perform all necessary and required actions to obtain such consents, waivers, releases or approvals of any such issuers that are required in order to transfer the Permits to the Buyer, or to obtain replacement Permits where such consents, waivers, releases or approvals are unavailable.

### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER**

The Buyer represents and warrants to the Sellers as follows, and acknowledges that the Sellers are relying upon these representations and warranties in connection with the sale of the Purchased Assets despite any investigation made by or on behalf of the Sellers.

Except for the representations and warranties contained in this Article 5, the Buyer makes no other express or implied representation or warranty and any such other representations and warranties are hereby expressly disclaimed and none will be implied at law or in equity.

#### **5.1 Corporate Status**

The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the Province of British Columbia and has all requisite power and authority to own its properties and assets and to conduct its business as now conducted.

#### **5.2 Authorization and Validity**

The Buyer has, or at the time of Closing will have, all necessary corporate power and authority to execute and deliver this Agreement and any Ancillary Agreements to which the Buyer is or will become a party and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and any Ancillary Agreements to which the Buyer is or will become a party, and the performance of the Buyer's obligations hereunder and thereunder, have been, or at the time of execution will be, duly authorized by all necessary corporate action, and no other corporate proceeding on the part of the Buyer is necessary to authorize such execution, delivery and performance. This Agreement and each Ancillary Agreement to which the Buyer is or will become a party have been, or at the time of execution will be, duly executed by the Buyer and constitute, or will constitute, when executed and delivered, the Buyer's valid and binding obligations, enforceable against it in accordance with their respective terms except as may be limited by bankruptcy or other Applicable Laws affecting creditors' rights and by equitable principles.

#### **5.3 Absence of Conflict**

None of the execution and delivery of this Agreement, the performance by the Buyer of its obligations under this Agreement, or the completion of the Transaction, will result in or constitute a breach of any term or provision of, or constitute a default under, or violation of, (a) the notice of articles and articles of the Buyer, (b) any provision of any Applicable Laws, or (c) any agreement to which the Buyer is a party which could reasonably be expected to adversely affect the Buyer's ability to perform its obligations under this Agreement on a timely basis.

#### **5.4 Consents and Approvals**

No consent, waiver, authorization or approval of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Buyer of this Agreement and each Ancillary Agreement to which the Buyer is or will become a party, or the performance by the Buyer of its obligations hereunder or thereunder.

#### **5.5 Buyer's Qualification to Obtain Transfer Approvals and Hold Permits**

The Buyer is aware of no facts that would prevent the issuance of such consents, waivers, releases or approvals of any such issuers that are required in order to transfer the Permits to the Buyer, or to obtain replacement Permits where such consents, waivers, releases or approvals are unavailable.

#### **5.6 Litigation**

There is no action, suit, proceeding or claim that is pending or, to the Buyer's knowledge, threatened in any court or by or before any Governmental Authority that would adversely affect the Buyer's ability to perform their obligations under this Agreement on a timely basis.

#### **5.7 GST Registration**

The Buyer (or the Assignee or Assignees, as applicable) is or will be registered for GST/HST purposes under Part IX of the ETA.

### **ARTICLE 6 COVENANTS**

#### **6.1 Conduct of Business Before Closing**

Each of the Sellers covenants to the Buyer that, subject to the requirements of the SISP and the SISP Order, during the period from and including the Execution Date through and including the Closing Date or the earlier termination of this Agreement:

- (a) **Cooperation.** Each Seller will take, or cause to be taken, all commercially reasonable actions and to do, or cause to be done, all things necessary or proper, consistent with Applicable Law, to consummate and make effective as soon as possible the Transaction. The Sellers will consult and cooperate with the Buyer in connection with proceedings under or relating to any filings, submissions, responses to information requests or the like made hereunder to a Governmental Authority in connection with the Transaction.
- (b) **Permits.** Each Seller will, without payment of funds to the issuers of Permits required to own or operate the Assets and the Business under Applicable Laws, use reasonable best efforts to assist the Buyer to conduct consultations, as applicable, and to obtain, and assist the Buyer to obtain, such consents, waivers, releases or approvals of any such issuers that are required in order to transfer the Permits to the Buyer, or in obtaining replacement Permits where such consents, waivers, releases or approvals are unavailable.
- (c) **Access to Records and Properties.**
  - (i) Each Seller will, subject to the execution of confidentiality agreements mutually acceptable to the Sellers and the Buyer, and subject to the Seller's

and Monitor's right to withhold Confidential Sales Information from the Buyer:

- (A) permit the Buyer and its authorized Representatives reasonable access during normal business hours to the Assets and the Seller's senior management and other Employees, and to the Books and Records of the Seller, including access to perform field examinations and inspections of the Assets;
  - (B) furnish the Buyer with any financial and operating data and other information with respect to the Seller, the Business or the Assets as the Buyer may reasonably request;
  - (C) provide the Buyer and their Representatives reasonable access to personnel files of Employees; and
  - (D) permit the Buyer to make such reasonable inspections and copies thereof as the Buyer may require, including to permit the Buyer to undertake (at the Buyer's sole cost and expense) a non-invasive environmental assessment of the Mineral Tenures, provided, however, that the Buyer will use its commercially reasonable efforts to prevent any such inspection from interfering with the operation of the Business or the duties of any Employee.
- (ii) Each Seller authorizes all Governmental Authorities having jurisdiction to release all information in their possession respecting the Business, and the Leased Premises, and the Owned Lands to the Buyer. The Sellers will execute any specific authorization pursuant to this Section 6.1(c)(ii) within three (3) Business Days after being requested to do so by the Buyer.
- (d) **Disclosure Schedules.** The Sellers will notify the Buyer of, and will supplement or amend the Disclosure Schedule with respect to, any matter that (a) arises after the initial delivery of the Disclosure Schedule in accordance with this Agreement and that, if existing or occurring at or prior to such delivery of the Disclosure Schedule would have been required to be set forth or described therein, or (b) makes it necessary to correct any information in the Disclosure Schedule or any representation and warranty of Sellers that has been rendered inaccurate thereby. Each such notification and supplementation, to the extent known, will be made no later than two (2) Business Days after discovery thereof and no later than three (3) Business Days before the date set for the Closing by the Parties. Notwithstanding the foregoing, any amendment, deletion or supplement to the Disclosure Schedule that is made by any of the Sellers is required to be satisfactory to the Buyer, in its sole discretion.

## 6.2 Pre-Closing Covenants of the Buyer

The Buyer covenants to the Sellers that, during the period from the Execution Date through and including the Closing Date or the earlier termination of this Agreement:

- (a) **Cooperation.** The Buyer will take, or cause to be taken, all commercially reasonable actions and to do, or cause to be done, all things necessary or proper, consistent with Applicable Law, to consummate and make effective as soon as



possible the Transaction; provided, that the foregoing will not require the Buyer to participate in the Auction.

- (b) **Orders.** The Buyer will take such actions as may be reasonably requested by the Sellers to assist Sellers in obtaining the Court's entry of the SISF Order, the Approval and Vesting Order, and any other Order reasonably necessary to consummate the Transaction.
- (c) **Permits.**
  - (i) The Buyer will use commercially reasonable efforts to cooperate with the Sellers in the performance by the Sellers of their obligations under Section 6.1(b) in respect of any Permits. To the extent that a Seller is unable to assign, transfer or replace a Material Permit, the Buyer will use its commercially reasonable efforts to obtain a replacement Permit, on terms no less materially favorable than such Permit, so as to permit the Buyer to operate the Business as a whole as currently operated in all material respects. If the Buyer is unable to do so by October 30, 2020, or such later date as the Parties may agree upon in writing, and such Permit constitutes a Material Permit, the Buyer in its sole discretion will have the option of terminating this Agreement pursuant to Section 10.1(c)(vi).
  - (ii) If the Buyer has the option of terminating this Agreement pursuant to Section 10.1(c)(vi) in the circumstances described in Section 6.2(c)(i), and the Buyer does not exercise such right within ten (10) Business Days of such right arising, then the Buyer will be deemed to have waived its right to terminate this Agreement under Section 10.1(c)(vi), and neither the Sellers nor the Buyer will be in breach of this Agreement nor will the Purchase Price be adjusted or the Closing delayed.

### 6.3 Assignment and Assumption of Contracts

- (a) Within ten (10) Business Days of the Execution Date, the Sellers will provide the Buyer with a schedule setting forth all estimated Cure Amounts in respect of any Assignable Contracts and any other Contracts.
- (b) Within fifteen (15) Business Days of the Execution Date and at least ten (10) Business Days prior to the date of the motion to seek the Approval and Vesting Order, the Buyer will provide to the Sellers a list of all Assignable Contracts that the Buyer wishes to assume, provided however, that such list shall include any and all Contracts with respect to the Assumed Obligations (the "**Potential Assigned Contracts**"), identifying the name, parties and date of each such Contract (the "**Contracts List**").
- (c) Notwithstanding anything contained herein to the contrary, this Agreement will not constitute an agreement to assign any Contract, to the extent that such Contract is not assignable under Applicable Law without a Counterparty Approval. If a Counterparty Approval is required in connection with a Contract, then Sections 6.3(e)(ii), 6.3(g) and 6.3(h) will apply to such Contract.
- (d) From and after the Execution Date, the Sellers will not disclaim or repudiate any Contract unless otherwise agreed to in writing by the Buyer.

- (e) Subject to the terms and conditions of this Section 6.3 and the Approval and Vesting Order:
  - (i) if no Counterparty Approval is required in order to assign to and vest in the Buyer a Potential Assigned Contract, on Closing such Potential Assigned Contract will constitute an Assigned Contract forming part of the Purchased Assets assigned to and vested in the Buyer; and
  - (ii) if a Counterparty Approval is required in order to assign to and vest in the Buyer a Potential Assigned Contract to the Buyer, then upon the Seller, in accordance with Section 6.3(g), either obtaining the Counter-Party Approval or an Order under section 11.3 of the CCAA assigning the rights and obligations under such Potential Assigned Contract, on Closing such Potential Assigned Contract will constitute an Assigned Contract forming part of the Purchased Assets assigned to and vested in the Buyer.
- (f) The Buyer will have the option of assuming the Assumed Obligations under the Assigned Contracts either pursuant to one or more general Assignment and Assumption Agreements to which the counterparties to the Assigned Contracts are not party, or pursuant to specific Assignment and Assumption Agreements relating to one or more Assigned Contract with the counterparties thereto.
- (g) In the circumstances contemplated by Section 6.3(e)(ii), the Sellers will use commercially reasonable efforts to obtain all necessary Counterparty Approvals in respect of Potential Assigned Contracts. If the Sellers are unable to obtain a necessary Counterparty Approval by no later than ten (10) Business Days prior to the motion to obtain the Approval and Vesting Order, then the Buyer may, but will not be obliged to, direct the Sellers to apply under section 11.3 of the CCAA for an Order of the Court assigning to the Buyer on Closing the rights and obligations of the Sellers under such Potential Assigned Contract, which application may form part of the motion for the Approval and Vesting Order, and the Closing Date shall be extended to permit for such application, but in any event shall be no later than October 30, 2020, or such later date as the Parties may agree upon in writing. The Sellers will provide timely and proper written notice of the motion seeking such Order to all counterparties to any such Potential Assigned Contract and will take all commercially reasonable actions necessary to cause such Potential Assigned Contracts to be assigned to the Buyer as of the Closing.
- (h) In the circumstances contemplated by Section 6.3(e)(ii), the Buyer will use commercially reasonable efforts, without being required to expend monies, to cooperate with the Sellers to obtain or consummate the assignment to the Buyer of any Potential Assigned Contracts and will support any motion by the Sellers under section 11.3 of the CCAA necessary to obtain such assignment. To the extent that a Potential Assigned Contract is not assignable by the Court under section 11.3 by reason of its nature, and the Sellers are unable to obtain any necessary Counterparty Approval, and such Potential Assigned Contract constitutes a Material Contract, the Buyer will use its commercially reasonable efforts to obtain a replacement Contract on terms no less materially favorable than such Potential Assigned Contract that would permit the Buyer to operate the Business as a whole as currently operated in all material respects.

- (i) If the Buyer has the option of terminating this Agreement pursuant to Section 10.1(c)(vi) in the circumstances described in Section 6.3(h), and the Buyer does not exercise such right within seven (7) Business Days of being able to do so under Section 6.3(h), then the Buyer will be deemed to have waived its right to terminate this Agreement under Section 10.1(c)(vi) and neither the Sellers nor the Buyer will be in breach of this Agreement nor will the Purchase Price be adjusted or the Closing delayed.

#### 6.4 Employment

- (a) The Buyer shall offer employment or engage as contractors all of the Employees, effective on the Closing Date, on terms and conditions that are substantially similar to those that are presently applicable to such Employees as of the Execution Date, including the terms of any Plans.
- (b) Any Employees who accept an offer of employment or engagement as contractors are referred to as “**Transferred Employees**”. The initial terms of employment offered to any Transferred Employees will be the same in terms of current title, compensation, benefits, hours of work and location, and with duties that are similar to the duties now being performed by such Employees.
- (c) The Sellers will deliver to the Buyer on or before the Closing Date all personnel files and employment records relating to the Transferred Employees, subject to applicable Privacy Laws.
- (d) Except as specified in this Agreement, or otherwise agreed in writing by the Buyer, the Buyer will not be obligated to provide any severance, separation pay, or other payments or benefits to any Employee who is not a Transferred Employee on account of any termination of such Employee’s employment on or before the Closing, or to pay any change of control or any other transfer bonuses for any Transferred Employees, and such payments and benefits (if any) will remain Obligations of the Sellers to be dealt with in accordance with the CCAA Proceedings.

#### 6.5 Personally Identifiable Information

The Buyer will comply with all applicable Privacy Laws respecting any information transferred, disclosed or made accessible by the Sellers to the Buyer, including with respect to the collection, use, transfer (including international transfer), disclosure and other processing of the Personal Information of the Employees and other individuals. Without limiting the foregoing:

- (a) the collection, use and disclosure of Personal Information by the Buyer before the Closing is restricted to those purposes that relate to determining whether to process with the Transaction and carrying out and completing the Transaction;
- (b) the Buyer will notify the Sellers in writing within twenty-four (24) hours of becoming aware of any incident involving the loss of or unauthorized access to or disclosure of the Personal Information prior to the Closing, will take reasonable steps to contain, mitigate and remediate the effects of such incident, and, at the Seller’s request, will assist the Seller with complying with any reporting and/or notification obligations pursuant to applicable Privacy Laws;

- (c) if the Transaction is not completed for any reason, the Buyer will return all Personal Information to the Sellers or permanently and irrevocably destroy such Personal Information within three (3) business days;
- (d) on or after Closing, the Buyer will use and disclose all Personal Information transferred to them under the terms of this Agreement solely for the purposes for which that Personal Information was collected or permitted to be used or disclosed before the Transaction was completed;
- (e) on or after Closing, the Buyer will neither use nor disclose any of the Personal Information for any purpose other than carrying on the Business;
- (f) on or after Closing, the Buyer will notify those individuals whose Personal Information has been disclosed or transferred by the Sellers to the Buyer that the Transaction has taken place and that their Personal Information has been disclosed by the Sellers to the Buyer;
- (g) the Buyer will protect the Personal Information using security safeguards appropriate to the sensitivity of the information; and
- (h) the Buyer will give effect to any withdrawal of consent by an individual to the continued collection, use, retention or disclosure of such individual's Personal Information.

#### **6.6 Post-Closing Access to Records and Accounts Receivable**

- (a) Following Closing, the Buyer and the Sellers agree to permit their respective Representatives to have access, at reasonable times and in a manner so as not to unreasonably interfere with their normal business operations, to the Books and Records acquired pursuant to this Agreement so as to enable the Buyer and the Sellers to prepare Tax, financial or court filings or reports, to respond to court orders, subpoenas or inquiries, investigations, audits or other proceedings of Governmental Authorities, to prosecute and defend legal actions or for other like purposes, and for the purposes of winding-down or administering the estate of the Sellers. If a Party desires to dispose of any such records, such Party will, prior to such disposition, provide the other Parties with a reasonable opportunity to remove such of the records to be disposed of at the removing Party's expense.
- (b) Any Accounts Receivable related to the Business collected by a Seller (or other proceeds collected or derived from a Purchased Asset by a Seller) from and after the Closing will be held in trust for the benefit of the Buyer, and such funds will not form part of such Seller's property or assets or otherwise be made available to such Seller's stakeholders, and will promptly be paid to, and for the benefit of, the Buyer.

#### **6.7 Casualty**

If between the date of this Agreement and the Closing, any of the Purchased Assets will be destroyed, damaged or rendered inoperable in whole or in a material part by fire, earthquake, flood, other casualty or any other cause (a "**Casualty**"), then the Buyer will either:

- (a) if as the result of a material Casualty where the Buyer cannot operate the Business as a whole as currently operated in all material respects, notify the Sellers that

such Casualty is material, in which case the Buyer will have the right to terminate this Agreement pursuant to Section 10.1(c)(vii) of this Agreement; or

- (b) acquire the Purchased Assets on an “as is” basis and take an assignment from the Sellers of all insurance proceeds payable to the Sellers in respect of the Casualty.

## **6.8 Transfer Taxes**

On the Closing Date, each Seller shall deliver to the Buyer a duplicate copy of a clearance certificate issued pursuant to section 187 of the *Provincial Sales Tax Act* (British Columbia) that all taxes exigible thereunder have been paid.

## **ARTICLE 7 COURT APPLICATIONS**

### **7.1 SISP Order**

As promptly as practicable after the Execution Date, the Sellers will file with the Court an application, served on such Persons as agreed to by the Sellers, the Monitor and the Buyer, each acting reasonably, seeking an Order approving (a) execution and delivery of this Agreement and the performance of those provisions applicable prior to Closing (with the intent that the performance of the provisions applicable on Closing be approved by the Approval and Vesting Order, (b) the Bid Protection Fees and their payment in accordance with Section 2.5(c); and (c) the SISP, which Order will be substantially in the form attached as Schedule “C” (with such changes thereto as the Buyer, the Sellers and Monitor approve in writing, such approval not to be unreasonably withheld, conditioned or delayed) (such order as approved being the “**SISP Order**”).

### **7.2 Approval and Vesting Order**

Within three (3) Business Days of the termination of the SISP, or three (3) Business Days of this Agreement being identified by the Monitor as the Successful Bid, the Sellers will file with the Court an application, served on such Persons as agreed to by the Sellers, the Monitor and the Buyer, each acting reasonably, to be heard as soon as practicable thereafter, seeking an Order approving the Transaction and the performance of those provisions of this Agreement applicable to Closing, and conveying and assigning to and vesting in the Buyer all of the right, title and interest of the Sellers in and to the Purchased Assets, free and clear of any Encumbrances or Claims other than Permitted Encumbrances, which Order will be substantially in the form agreed to by the Buyer, the Sellers and the Monitor, each acting reasonably (with such changes thereto as the Buyer, the Sellers and Monitor approve in writing, such approval not to be unreasonably withheld, conditioned or delayed) (such order as approved being the “**Approval and Vesting Order**”).

### **7.3 Procedure**

- (a) The Sellers, the Monitor and the Buyer will cooperate with filing and prosecuting the applications for the SISP Order and the Approval and Vesting Order, and obtaining the issuance and entry of the SISP Order and the Approval and Vesting Order, and the Monitor and the Sellers will deliver to the Buyer prior to filing, and as early in advance as is practicable to permit adequate and reasonable time for the Buyer and its counsel to review and comment, copies of all proposed pleadings, motions, responses to objections, notices, statements, schedules, applications, reports and other material papers to be filed by the Monitor and the Sellers in connection with such applications and the relief requested therein and any challenges thereto.

- (b) If the SISP Order or Approval and Vesting Order is appealed by any Person (or a petition for certiorari or motion for rehearing, re-argument or stay is filed with respect thereto), the Sellers will take all reasonable steps, and use their commercially reasonable efforts, to defend against such appeal, petition or motion, and the Buyer agrees to reasonably cooperate in such efforts. Each of the Parties agrees to use commercially reasonable efforts to obtain an expedited resolution of such appeal, petition or motion. Subject to the conditions set forth herein, nothing will preclude the Parties from agreeing to consummate the Transaction if the Approval and Vesting Order has been entered and has not been stayed, modified, revised or amended.

## **ARTICLE 8 CLOSING CONDITIONS**

### **8.1 Mutual Conditions**

The obligations of the Buyer and the Sellers to complete and consummate the Transaction are subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by Buyer and the Sellers:

- (a) the CCAA Proceedings will not have been terminated;
- (b) the SISP Order and the Approval and Vesting Order will have been issued and entered by the Court, and will not have been stayed, varied or vacated;
- (c) no order of any court or Governmental Authority will have been issued and no action or proceedings will be pending to restrain or prohibit the completion and consummation of the Transaction; and
- (d) this Agreement will have been determined to be the Successful Bid under the SISP.

### **8.2 Conditions Precedent to Performance by the Sellers**

The obligation of the Sellers to consummate the Transaction is subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by the Sellers in their sole discretion:

- (a) the representations and warranties of the Buyer made in this Agreement will be true and correct in all material respects; and
- (b) the Buyer will have performed in all material respects all obligations required under this Agreement or any Ancillary Agreements to which it is party that are to be performed by it on or before the Closing Date (except with respect to the obligation to pay the Purchase Price) in accordance with the terms of this Agreement.

### **8.3 General Conditions Precedent to the Performance by the Buyer**

The obligations of the Buyer to consummate the Transaction are subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by the Buyer in its sole discretion:

- (a) the representations and warranties of the Sellers made in this Agreement that are qualified by a materiality standard, in each case, will be true and correct, and the representations and warranties of each Seller made in this Agreement that are not

qualified by a materiality standard, in each case, will be true and correct in all material respects; and

- (b) the Sellers will have performed in all material respects all obligations required under this Agreement that are to be performed by them on or before the Closing Date (except with respect to any obligations qualified by materiality, which obligations will be performed in all respects as required under this Agreement).

The conditions set out in Section 8.3(a) will be deemed to be satisfied upon the expiry of the Phase I Bid Deadline, except with respect to (a) any matter of which any Seller was aware prior to the Execution Date that renders a representation or warranty of any Seller in this Agreement inaccurate or that ought to have been disclosed in the Disclosure Schedule and was not, or arises after the Execution Date that renders any such representation and warranty materially inaccurate, and (b) any matter in respect of which a Seller is required to provide notice to the Buyer under Section 6.1(d) and which constitutes a Material Adverse Change, in which event such condition must be satisfied in respect of such matters on the Closing Date.

#### **8.4 Conditions Precedent to the Performance by the Buyer**

The obligations of the Buyer to consummate the Transaction are subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by the Buyer in its sole discretion:

- (a) in respect of each Assigned Contract that is a Material Contract and that requires a Counterparty Approval, either the counterparty to such Assigned Contract will have provided the Counterparty Approval, in form and substance satisfactory to the Buyer, or an Order will have been made by the Court under section 11.3 of the CCAA assigning the rights and obligations of the Sellers under the Assigned Contract to the Buyer;
- (b) the Transferred Employees will have entered into employment agreements with the Buyer on substantially similar terms and conditions as those applicable as of the Execution Date; and
- (c) the Material Permits will have been transferred to the Buyer or substituted, amended or new Permits will have been issued to the Buyer in form and substance reasonably acceptable to the Buyer.

### **ARTICLE 9 CLOSING ARRANGEMENTS**

#### **9.1 Closing**

The Closing will be held electronically on the Closing Date at 10:00 a.m. (Calgary time), or at such other place and time as may be mutually agreed to in writing by the Parties. All proceedings to be taken and all documents to be executed and delivered by all Parties at the Closing will be deemed to have been taken and executed simultaneously and no proceedings will be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.

#### **9.2 Closing Deliveries**

- (a) At the Closing, the Sellers will deliver to the Buyer the following:

- (i) a certified copy of the issued and entered Approval and Vesting Order, pursuant to which the sale, transfer, assignment, conveyance and delivery by the Sellers of the Purchased Assets to the Buyer will be effected;
  - (ii) to the extent reasonably required by the Buyer, any Ancillary Agreements fully executed and delivered by the Sellers or by the Monitor for and on behalf of the Sellers;
  - (iii) by wire transfer to the Buyer, all cash, bank balances, money in possession of banks and other depositories, term or time deposits and similar cash or cash equivalents of, owned or held by or for the account of any Seller at the time of Closing, which amounts shall for greater certainty not include the Cash Portion of the Purchase Price;
  - (iv) where a Counterparty Approval is required in respect of an Assigned Contract, a Counterparty Approval fully executed and delivered by the relevant counterparty, or a certified copy of an issued and entered Order made under section 11.3 of the CCAA assigning to the Buyer the rights and obligations under such Assigned Contract;
  - (v) a duly executed receipt for the Purchase Price paid or delivered at Closing;
  - (vi) the elections referred to in Section 3.5, duly executed and delivered by the Sellers or the Monitor for and on behalf of the Sellers;
  - (vii) possession of the Purchased Assets (including all keys to the any Owned Land or Leases Premises which form part of the Purchased Assets, combinations to any safes thereon and passwords for all computers thereon and any security devices therein) on an "as is, where is" basis, provided that delivery will occur in situ wherever such Purchased Assets are located on the Closing Date;
  - (viii) the Monitor's Certificate;
  - (ix) any consents or approvals for the assignment or transfer of Permits as provided in Section 6.2(c) of this Agreement; and
  - (x) all such other documents and instruments as the Buyer may reasonably require.
- (b) At the Closing, the Buyer will deliver to the Sellers the following:
- (i) the payments referred to in Sections 3.2(c)(ii)(A), 3.2(c)(iii)(A), 3.2(c)(iv)(A), and 3.2(c)(v)(A);
  - (ii) the Ancillary Agreements to which the Buyer is party, duly executed and delivered by the Buyer;
  - (iii) the elections referred to in Section 3.5, duly executed and delivered by the Buyer;
  - (iv) Assignment and Assumption Agreements required hereunder in respect of the Assigned Contracts and the Assumed Obligations, duly executed and delivered by the Buyer; and



- (v) all such other documents and instruments as the Sellers may reasonably require.

## **ARTICLE 10 TERMINATION**

### **10.1 Conditions of Termination**

This Agreement may be terminated only in accordance with this Section 10.1 as follows:

- (a) by mutual written consent of the Sellers and the Buyer;
- (b) automatically and without any action or notice by either the Sellers to the Buyer, or the Buyer to the Sellers, immediately upon:
  - (i) the issuance of a final and non-appealable order, decree, or ruling or any other action by a Governmental Authority to restrain, enjoin or otherwise prohibit the transfer of the Purchased Assets contemplated hereby; or
  - (ii) the consummation of an Alternate Transaction;
- (c) by the Buyer:
  - (i) if the SISP Order will not have been issued and entered by August 7, 2020 or such other date as agreed to in writing by the Buyer;
  - (ii) if the Auction has not concluded by October 9, 2020 or such later date as agreed to in writing by the Buyer;
  - (iii) if the Court has not issued and entered the Approval and Vesting Order and the Transaction has not Closed (other than as a result of a breach of this Agreement by the Buyer) by October 30, 2020 or such later date as agreed to in writing by the Buyer;
  - (iv) if there has been a material violation or breach by any Seller of any obligation of such Seller under this Agreement and the Buyer has given written notice to the Sellers promptly upon becoming aware of such violation or breach, which (1) has rendered the satisfaction of any condition to the obligations of the Buyer impossible or is not curable or, if curable, has not been cured one day prior to the Closing Date, and (2) has not been waived by the Buyer;
  - (v) if, prior to the Closing Date, a receiver, receiver and manager, interim receiver, custodian, trustee in bankruptcy or similar official will be appointed with respect to any Seller or any Seller's Assets;
  - (vi) if there will be excluded from the Purchased Assets any Material Permit that is not assignable or transferable pursuant to Applicable Law without the consent of any Person other than the Sellers, to the extent that such consent or approval will not have been given prior to the Closing, and such Permit is required for the Buyer to operate the Business as currently operated in all material respects, subject to the Buyer having complied with its covenants in Section 6.2(c);
  - (vii) if there occurs a Casualty as provided in Section 6.7; or

- (viii) if the conditions set out in Sections 8.1, 8.3 and 8.4 are not satisfied or waived;
- (d) by the Sellers, with the consent of the Monitor:
  - (i) if there has been a material violation or breach by the Buyer of any agreement, or any representation or warranty of the Buyer in this Agreement is materially inaccurate, and the Sellers have given written notice to the Buyer promptly upon becoming aware of such violation, breach or inaccuracy, which (1) has rendered the satisfaction of any condition to the obligations of any Seller impossible or is not curable or, if curable, has not been cured on or one day prior to the Closing Date following receipt by the Buyer of written notice of such breach from Seller, and (2) has not been waived by the Sellers; or
  - (ii) if the Closing will not have occurred by October 30, 2020 and such failure to Close is not caused by or the result of Seller's breach of this Agreement or such later date as agreed to in writing by the Seller.

## 10.2 Effect of Termination

In the event of termination pursuant to Section 10.1, this Agreement will become null and void and have no effect and neither Party will have any liability to the other (other than those provisions of Sections 2.5(c) and 6.5, or any other provisions that expressly survive termination or obligations to be performed on or after the Closing).

## ARTICLE 11 GENERAL

### 11.1 Pre-Closing Reorganization

- (a) 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; provided, however:
  - (i) that the Sellers need not effect a Pre-Closing Reorganization which would:
    - (A) impede or materially delay the consummation of the Transaction; or
    - (B) materially prejudice the rights or interests of any of Seller's creditors, employees or other stakeholders; and
  - (ii) the Sellers shall be required to pay professional fees of no greater than \$75,000 to effect the Pre-Closing Reorganization and shall not be required to pay any other costs.
- (b) In the event that there arises any dispute between the Buyer and the Sellers or the Monitor as to whether a Pre-Closing Reorganization would impede or materially delay the consummation of the Transaction or materially prejudice the rights or interests of any of Seller's creditors, employees or other stakeholders, the Buyer acknowledges that the Sellers or the Monitor shall be entitled to bring an

application to the Court for advice and direction with respect to the resolution of such dispute.

- (c) Without limitation and other than as set forth in Section 11.1(a), the Sellers shall use their commercially reasonable efforts to obtain all necessary consents, approvals, and/or waivers from any persons to effect each Pre-Closing Reorganization, and the Sellers shall cooperate with the Buyer in structuring, planning, and implementing any such Pre-Closing Reorganization. The Buyer shall provide timely written notice to the Sellers of any proposed Pre-Closing Reorganization. In addition:
  - (i) any Pre-Closing Reorganization shall not unreasonably interfere in any Seller's material operations prior to the Closing Date; and
  - (ii) any Pre-Closing Reorganization shall not require any Seller to contravene any Applicable Law, its organizational documents or any Material Contract.
- (d) The Buyer and the Sellers shall work cooperatively and use commercially reasonable efforts to prepare prior to the Closing Date all documentation necessary and do such other acts and things as are necessary to give effect to any Pre-Closing Reorganization provided for in Section 11.1(a).

## **11.2 Survival**

No representations, warranties, covenants and agreements of the Sellers and the Buyer made in this Agreement will survive the Closing Date except where, and only to the extent that, the terms of any such covenant or agreement expressly provide for rights, duties or obligations extending after the Closing, including the Buyer's assumption of the Assumed Obligations or as otherwise expressly provided in this Agreement.

## **11.3 Successors and Assigns**

- (a) The Buyer will have the right to assign to an Affiliate any of its rights or obligations in whole or in part (including the right to acquire any of the Purchased Assets) (such assignee being an "**Assignee**"). Further, the Buyer shall have the right to direct that on Closing title to any of the Purchased Assets shall be registered in the name of such persons as the Buyer shall direct. In the event of any assignment pursuant to this Section 11.3(a), (i) the Assignee will thereafter perform all of the obligations of the Buyer under this Agreement to the extent of such assignment, including executing and delivering all agreements, instruments and other documents contemplated by 9.2(b) and will have all of the rights, benefits and remedies of the Buyer under this Agreement, provided that the Buyer will remain liable for any breach by the Assignee of any such obligations, and (ii) the Assignee will assume such of the obligations of the Buyer under this Agreement as are set forth pursuant to a written assumption agreement with the Sellers and the Monitor, will be upon its execution and delivery of such assumption agreement a Party to this Agreement.
- (b) The Sellers will not assign this Agreement or any of its rights or obligations hereunder and any such assignment will be void and of no effect.
- (c) This Agreement will inure to the benefit of and will be binding upon the successors and permitted assigns of the Parties, including any trustee in bankruptcy, receiver,

receiver and manager, interim receiver, custodian or similar official appointed with respect to any Seller or its property.

#### **11.4 Governing Law**

This Agreement will be construed, performed and enforced in accordance with, and governed by, the Laws of the Province of Alberta and the federal laws of Canada applicable therein, without giving effect to the principles of conflicts of laws thereof.

#### **11.5 Submission to Jurisdiction**

Each of the Parties irrevocably and unconditionally submits and attorns to the exclusive jurisdiction of the Court to determine all issues, whether at law or in equity arising from this Agreement. To the extent permitted by Applicable Law, each of the Parties:

- (a) irrevocably waives any objection, including any Claim of inconvenient forum, that it may now or in the future have to the venue of any legal proceeding arising out of or relating to this Agreement in the Court, or that the subject matter of this Agreement may not be enforced in the Court;
- (b) irrevocably agrees not to seek, and waives any right to, judicial review by any court which may be called upon to enforce the judgment of the Court, of the substantive merits of any suit, action or proceeding; and
- (c) to the extent a Party has or may acquire any immunity from the jurisdiction of any court or from any legal process, whether through service or notice, attachment before judgment, attachment in aid of execution, execution or otherwise, with respect to itself or its property, that Party irrevocably waives that immunity in respect of its obligations under this Agreement.

#### **11.6 Expenses**

Except as contemplated in the SISP and as otherwise provided in this Agreement, each of the Parties will pay their own expenses in connection with this Agreement and the Transaction including any legal and accounting fees and commissions or finder's fees, whether or not the Transaction is consummated. Notwithstanding any other provision of this Agreement, the Buyer will pay the cost of all surveys, title insurance policies and title reports ordered by the Buyer, and all recording costs associated with transferring the Mineral Tenures in accordance with Applicable Law.

#### **11.7 Payment and Currency**

Any money to be advanced, paid or tendered by one Party to another under this Agreement must be advanced, paid or tendered by bank draft, certified cheque or wire transfer of immediately available funds payable to the Person to whom the amount is due. Unless otherwise specified, the word "dollar" and the "\$" sign refer to Canadian currency, and all amounts to be advanced, paid, tendered or calculated under this Agreement are to be advanced, paid, tendered or calculated in Canadian currency.

#### **11.8 Tender**

Any tender of documents or money under this Agreement may be made upon the Parties or their respective counsel.

## 11.9 Time of Essence

Time is of the essence in all respects of this Agreement.

### 11.10 Notices

Any Communication must be in writing and either delivered personally or by courier, or transmitted by facsimile, e-mail or functionally equivalent electronic means of transmission, charges (if any) prepaid. Any Communication must be sent to the intended recipient at its address as follows:

(a) to the Sellers at:

c/o Northern Silica Corporation  
Suite 204, 1212 – 1<sup>st</sup> Street S.E.  
Calgary, AB T2G 2H8

Attention: Jerrad Blanchard, Chief Financial Officer  
E-mail: [jblanchard@nothernsilica.com](mailto:jblanchard@nothernsilica.com)

with a copy to:

McMillan LLP  
Suite 1700, TD Canada Trust Tower  
421 7<sup>th</sup> Avenue S.W.  
Calgary, AB T2P 4K9

Attention: Adam Maerov  
Email: [adam.maerov@mcmillan.ca](mailto:adam.maerov@mcmillan.ca)

(b) to the Monitor at:

Alvarez & Marsal Canada Inc.  
Suite 1110, 250 6<sup>th</sup> Avenue S.W.  
Calgary, AB T2P 3H7

Attention: Orest Konowalchuk  
E-mail: [okonowalchuk@alvarezandmarsal.com](mailto:okonowalchuk@alvarezandmarsal.com)

with a copy to:

Torys  
5225 – 8th Avenue S.W.  
46th Floor  
Eighth Avenue Place East  
Calgary, AB T2P 1G1

Attention: Kyle Kashuba  
E-mail: [kkashuba@torys.com](mailto:kkashuba@torys.com)

(c) to the Buyer at:

c/o QMetco Limited  
Level 12  
300 Queen Street

Brisbane QLD 4000  
Australia

Attention: John Fisher-Stamp (CFO)  
Email: John.Fisher-Stamp@qmetco.com.au

with a copy to:

Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West  
888 3<sup>rd</sup> Street S.W.  
Calgary, AB T2P 5C5

Attention: Jeff Oliver  
E-mail: joliver@cassels.com

or at any other address as any Party may at any time advise the other by Communication given or made in accordance with this Section 11.10. Any Communication delivered to the Party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that Party's address, provided that if that day is not a Business Day then the Communication will be deemed to have been given or made and received on the next Business Day. Any Communication transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the Communication is transmitted on a day which is not a Business Day or after 5:00 pm (local time of the recipient), the Communication will be deemed to have been given or made and received on the next Business Day.

#### **11.11 Amendments: Waivers**

This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the Buyer and the Sellers, or in the case of a waiver, by the Party waiving compliance. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, will not be deemed to be or construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

#### **11.12 Entire Agreement**

This Agreement and the Ancillary Agreements contain the entire understanding between the Parties with respect to the Transaction and replace all prior and contemporaneous agreements and understandings, oral or written, with regard to the Transaction. All Schedules and any documents and instruments delivered pursuant to any provision of this Agreement are expressly made a part of this Agreement as fully as though completely set forth herein.

#### **11.13 Sellers Disclosures**

After notice to and consultation with the Buyer, the Sellers will be entitled to disclose, if required by Applicable Law or by Order of the Court, including the SISP Order, this Agreement and all information provided by the Buyer in connection herewith to the Court, the Monitor, parties in interest in the CCAA Proceedings and other Persons bidding on assets of the Sellers. Other than statements made in the Court (or in pleadings filed therein), the Sellers will not issue (prior to, on or after the Closing) any press release or make any public statement or public communication

with respect to the Agreement or transactions contemplated thereby without the prior written consent of the Buyer, which will not be unreasonably withheld or delayed; provided, however, that the Sellers, without the prior consent of the Buyer, may issue such press release or make such public statement as may, upon the advice of counsel, be required by Applicable Law, any Governmental Authority with competent jurisdiction or any listing agreement with any national securities exchange, provided further that the Sellers will act reasonably in permitting the Buyer to comment on such release or public statement, and in considering any such comments.

#### 11.14 Monitor

- (a) The Parties acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the Court without independent investigation upon receiving confirmation from the Sellers that all conditions of Closing in favour of the Sellers have been satisfied by the Buyer or waived by the Sellers, and the Monitor will have no liability to the Sellers or the Buyer or any other Person as a result of filing the Monitor's Certificate upon receiving such confirmation.
- (b) Except with respect to Article 7, Alvarez & Marsal Canada Inc. has executed and delivered this Agreement in its capacity as Monitor and not in its personal capacity, and none of the terms, provisions, covenants or conditions of this Agreement (other than in Article 7) will be enforceable against the Monitor. With respect to Article 7, the Monitor has executed this Agreement as a Party to this Agreement, in its capacity as Monitor and not in its personal capacity, but is not a party to this Agreement in any other respect.

#### 11.15 Mutual Release

Effective upon the Closing, each Seller, on behalf of itself and its estate, acknowledges that it has no claim, counterclaim, setoff, recoupment, action or cause of action of any kind or nature whatsoever against the Buyer and any of its Related Persons, that directly or indirectly arise out of, are based upon, or in any manner are connected with the pre-Filing Date agreements to which the Buyer (or its Affiliates) and the Sellers were parties and all transactions referred to in such agreements (the "**Released Claims**"). Should any Released Claims nonetheless exist, each Seller hereby (i) releases and discharges each of the Buyer and its Related Persons from any liability whatsoever on such Released Claims and (ii) releases, waives and discharges all such Released Claims against any of the Buyer and its Related Persons.

Effective upon the Closing, Buyer, on behalf of itself and its estate, acknowledges that it has no claim, counterclaim, setoff, recoupment, action or cause of action of any kind or nature whatsoever against any Seller and any of its Related Persons, that directly or indirectly arise out of, are based upon, or in any manner are connected with the pre-Filing Date agreements to which the Buyer (or its Affiliates) and any Seller were parties and all transactions referred to in such agreements (the "**Buyer Released Claims**"). Should any Buyer Released Claims nonetheless exist, Buyer hereby (i) releases and discharges each Seller and its Related Persons from any liability whatsoever on such Buyer Released Claims and (ii) releases, waives and discharges all such Buyer Released Claims against any of the Buyer and its Related Persons. Notwithstanding the above, any claim which the Buyer may have against any Seller for the payment of any unsecured amounts owing to the Buyer under the Secured Facility Agreements not satisfied by the payment of the Purchase Price shall not constitute Buyer Released Claims.

#### **11.16 Further Assurances**

Each Party will, at the requesting Party's cost and expense, execute and deliver any further agreements and documents and provide any further assurances, undertakings and information as may be reasonably required by the requesting Party to give effect to this Agreement and, without limiting the generality of this Section 11.16, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide any assurances, undertakings and information as may be required at any time by all Governmental Authorities.

#### **11.17 No Broker**

Each Party represents and warrants to the other Party that all negotiations relating to this Agreement and the Transaction have been carried on between them directly, without the intervention of any other Person on behalf of any Party in such manner as to give rise to any valid Claim against the Buyer or the Sellers for a brokerage commission, finder's fee or other similar payment.

#### **11.18 Severability**

Each Section of this Agreement is distinct and severable. If any Section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that Section, in whole or in part, will not affect the legality, validity or enforceability of the remaining Sections of this Agreement, in whole or in part, or the legality, validity or enforceability of that Section, in whole or in part, in any other jurisdiction.

#### **11.19 Independent Legal Advice**

Each of the Parties to this Agreement acknowledges that it has had the time and opportunity to obtain independent legal advice with respect to the execution of this Agreement, or has waived that opportunity, and each of the Parties to this Agreement has read, understands and agrees with all of the terms and conditions contained in this Agreement.

#### **11.20 Counterparts and Electronic Delivery**

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

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



Each of the Parties has executed and delivered this Agreement as of the date noted at the beginning of the Agreement.

**HCA MOUNTAIN MINERALS (MOBERLY)  
LIMITED**

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

**CUSTOM BULK SERVICES INC.**

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

**HEEMSKIRK CANADA HOLDINGS  
LIMITED**

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

**HEEMSKIRK CANADA LIMITED**

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

**VITREO MINERALS LTD.**

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

**ALVAREZ & MARSAL CANADA INC.**, in its  
capacity as Monitor and not in its personal  
capacity

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

## SCHEDULE “A”

### Sale and Investment Solicitation Process

#### INTRODUCTION

##### Overview

On June 30, 2020, Northern Silica Corporation (“**NSC**”), Heemskirk Mining Pty. Ltd. (“**Heemskirk Australia**”), Custom Bulk Services Inc. (“**Custom Bulk**”), Heemskirk Canada Limited (“**Heemskirk Canada**”), Heemskirk Canada Holdings Limited (“**Heemskirk Holdings**”) and HCA Mountain Minerals (Moberly) Limited (“**Moberly**”) (collectively, the “**Applicants**”) were granted an initial order (as amended or amended and restated from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**” and the “**CCAA Proceedings**”) by the Alberta Court of Queen’s Bench (the “**Court**”). The Initial Order, as amended and restated on July 10, 2020, among other things:

- (a) stays all proceedings against the Applicants, their assets and their respective directors and officers;
- (b) appoints Alvarez & Marsal Canada Inc. as the monitor of the Applicants (in such capacity, the “**Monitor**”); and
- (c) authorizes the Applicants to enter into a debtor-in-possession financing agreement (the “**DIP Financing**”) with Vitreo Minerals Ltd. (“**Bidco**” or the “**DIP Lender**”) whereby Bidco agreed to provide a maximum principal amount of \$3 million in financing to the Applicants for their benefit, and grants a corresponding charge (the “**DIP Charge**”) over all of the Applicants’ present and future assets, property and undertakings of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”).

On July [X], 2020, the Applicants obtained an Order (the “**SISP Order**”) that, among other things, (i) approved the sale and investment solicitation process described herein (the “**SISP**”), and (ii) authorized the Applicants to enter into a fully binding and conditional acquisition agreement (the “**Stalking Horse Agreement**”) between the Applicants and Bidco (the “**Stalking Horse Bidder**”) pursuant to which the Stalking Horse Bidder through, among other things, a credit bid and assumption of certain indebtedness, made an offer to purchase the Purchased Assets (as defined in the Stalking Horse Agreement).

Under the SISP, all qualified interested parties will be provided with an opportunity to participate in the SISP. The SISP is intended to find the highest and/or best offer for a restructuring and/or refinancing of the Applicants, a sale of the Property on a going concern basis, or a combination thereof, which may include a merger, reorganization, recapitalization, primary equity issuance or other similar transaction (the “**Transaction**”).

The SISP Order, the procedures in respect of the SISP as contained herein (the “**SISP Procedures**”) and any subsequent order issued by the Court pertaining to the SISP Procedures shall exclusively govern the process for soliciting and selecting bids for the Transaction.

## Defined Terms

All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Initial Order. In addition, in these SISP Procedures:

**“ATB Claims Amount”** means the aggregate amount owing (whether for principal, interest, fees, recoverable costs or otherwise) to ATB Financial by Custom Bulk, as guaranteed by Heemskirk Canada, at the date upon which the transactions contemplated by the Successful Bid, if any, are completed, under a Letter of Offer dated February 10, 2020 and accepted on February 12, 2020.

**“Priority Claims Amount”** means the aggregate amount owing (whether for principal, interest, fees, recoverable costs or otherwise) by the Applicants at the date upon which the transactions contemplated by the Successful Bid, if any, are completed, under:

- (i) the DIP Financing;
- (ii) any court-ordered charges granted over the Property in the CCAA Proceedings; and
- (iii) any other claims against the Property which, in accordance with applicable laws, rank senior in priority to the Senior Secured Claims Amount;

**“Sales Agent”** means Whitehorn Merchant Capital Inc.;

**“Senior Secured Claims Amount”** means the aggregate secured amount owing (whether for principal, interest, fees, recoverable costs or otherwise) by the Applicants (as applicable) as at the date upon which the transactions contemplated by the Successful Bid, if any, are completed, under:

- (i) Secured Facility Agreement dated July 15, 2015, as novated and amended pursuant to the Novation and Amendment Deed No. 1 dated February 10, 2016 and further amended and acceded by an Amending and Accession Deed dated December 21, 2018 between Taurus Resources No. 2 B.V., as lender, Moberly, as borrower, and NSC, Heemskirk Australia (through its predecessor Heemskirk Consolidated Limited), Heemskirk Canada and Heemskirk Holdings, as guarantors, with certain defaults waived under waiver letters dated December 18, 2017, February 2, 2018, July 4, 2019, and December 16, 2019; and
- (ii) Secured Working Capital Facility Agreement dated December 6, 2019, as amended pursuant to certain side letter deeds of amendments dated January 28, 2020, February 28, 2020, and March 31, 2020, April 28, 2020, and May 26, 2020 between QMetco Limited, as lender, Moberly, as borrower, NSC, Heemskirk Australia, Heemskirk Canada and Heemskirk Holdings, as guarantors.

**“Superior Offer”** shall mean an offer that is made by a Qualified Bidder (as defined herein) that:

- (a) is credible, reasonably certain, and financially viable and on terms which are more favourable and no more burdensome or conditional than the terms contained in the Stalking Horse Agreement;
- (b) provides for a minimum cash consideration in an amount equal to the aggregate of (i) the Senior Secured Claims Amounts of USD \$25,000,000 and CDN \$4,350,000

referenced in paragraph 3.1 of the Stalking Horse Agreement, and the ATB Claims Amount (unless assumed by the Qualified Bidder pursuant to subparagraph (c) below), which amounts are to be indefeasibly received by the Monitor for immediate distribution to the holders of the Senior Secured Claims Amount and ATB Claims Amount (as applicable) in full satisfaction of the amounts owing thereto; (ii) the Priority Claims Amount; (iii) a break fee in the amount of \$1,250,000 (the “**Break Fee**”); (iv) a reimbursement of Bidco’s actual fees, expenses and disbursements relating to the preparation and execution of the Stalking Horse Agreement up to a maximum amount of \$150,000 (collectively with the Break Fee, the “**Bid Protection Fees**”); and (v) an incremental overbid increment above the amounts set out in (i) to (iv) of \$250,000; and

- (c) provides for (i) the assumption, at a minimum, of the Assumed Obligations (as defined in the Stalking Horse Agreement); and (ii) if not paid in full pursuant to subparagraph (b) above, the assumption of the ATB Claims Amount.

### **Solicitation Process**

The SISP Procedures set forth herein describe, among other things, the Property available for sale and the opportunity for an investment in the Applicants, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Property and the Applicants, the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, the receipt and negotiation of bids received, the process for an Auction, if any, the ultimate selection of a Successful Bidder, if any (each as defined below), and the Court’s approval thereof. The SISP shall be conducted by the Applicants and the Sales Agent, under the supervision and with the assistance of the Monitor, as provided for herein. In the event that there is disagreement as to the interpretation or application of these SISP Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute.

### **Sale and Investment Opportunity**

A teaser package describing the opportunity to acquire all or substantially all of the Property or invest in the Applicants will be made available by Sales Agent to prospective purchasers or prospective strategic or financial investors. Those prospective purchasers that have expressed an interest in the opportunity will have executed a confidentiality agreement with the Applicants and be provided additional information considered relevant to the potential Transaction (the “**Confidential Information Memorandum**”) and access to a virtual data room (the “**VDR**”) that will be hosted by the Sales Agent. One or more Qualified LOIs (as defined below) for less than substantially all of the Property will not be precluded from consideration as a Superior Offer.

### **“As Is, Where Is”**

The sale of the Property or investment in the Applicants will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Sales Agent, the Applicants, or any of their agents or estates, except to the extent set forth in the definitive sale or investment agreement with a Successful Bidder.

### **Free of Any and All Claims and Interests**

In the event of a sale, all of the rights, title and interests of the Applicants in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the “**Claims and**

**Interests**") pursuant to section 36(6) of the CCAA, such Claims and Interests to attach to the net proceeds of the sale of such Property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant sale agreement with a Successful Bidder.

An investment in the Applicants may, at the option of the Successful Bidder, include one or more of the following: a restructuring, recapitalization or other form of reorganization of the business and affairs of the Applicants as a going concern; a sale of the Property to a newly formed acquisition entity on terms described in the above paragraph; or a plan of compromise or arrangement pursuant to the CCAA or any applicable corporate legislation which compromises the Claims and Interests as set out therein.

### **Phase I – Initial Timing**

For a period of approximately five (5) weeks following the date of the SISP Order, or for such shorter period as the Monitor may determine appropriate ("**Phase 1**"), 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 ("**Non-Binding LOIs**").

### **Publication Notice**

As soon as reasonably practicable after granting of the SISP Order approving these 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.

### **Participation Requirements**

Unless otherwise ordered by the Court or as otherwise determined by the Monitor, in order to participate in the SISP, each person (a "**Potential Bidder**") must deliver to the Sales Agent, with a copy to the Monitor, at the address specified in Schedule "A" hereto (including by e-mail or fax transmission):

- (a) prior to the distribution of any confidential information by the Monitor, the Sales Agent or the Applicants (including the Confidential Information Memorandum), an executed confidentiality agreement in form and substance satisfactory to the Monitor and the Applicants, which shall inure to the benefit of any purchaser of the Property or any investor in the Applicants under these SISP Procedures; and
- (b) on or prior to the Phase I Bid Deadline, as defined below, specific indication of the anticipated sources of capital for the Potential Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Monitor and its legal advisors to make, in their reasonable business or professional judgement, a determination as to the Potential Bidder's financial and other capabilities to consummate the Transaction.

A Potential Bidder that has executed a confidentiality agreement, as described above, and delivers the documents described above, whose financial information and credit quality support or enhancement demonstrate to the satisfaction of the Monitor, in its reasonable business

judgement, is likely (based on availability of financing, experience and other considerations) to be able to consummate a Sale Proposal (as defined below) or an Investment Proposal (as defined below) will be deemed a "**Qualified Bidder**".

The determination as to whether a Potential Bidder is a Qualified Bidder will be made as promptly as practicable after a Potential Bidder delivers all of the materials required above. If it is determined that a Potential Bidder is a Qualified Bidder, the Sales Agent will promptly notify the Potential Bidder that it is a Qualified Bidder.

### **Due Diligence**

The Sales Agent shall provide any person seeking to become a Qualified Bidder that has executed a confidentiality agreement with a copy of a confidential information package providing the Confidential Information Memorandum and access to the VDR. The Monitor, the Sales Agent and the Applicants and their respective contractors, advisors and consultants make no representation or warranty as to the information contained in the Confidential Information Memorandum or the information to be provided through the due diligence process in Phase 2 or otherwise, except, in the case of the Applicants, to the extent expressly contemplated under any definitive sale or investment agreement with a Successful Bidder executed and delivered by the Applicants.

For greater certainty, Qualified Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Applicants in connection with their participation in the SISP and any Transaction they enter into with the Applicants.

## **PHASE I**

### **Seeking Non-Binding Letters of Interest from Qualified Bidders**

Qualified Bidders that desire to participate in Phase I (a "**Bidder**") 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 at the addresses specified in Schedule "**A**" hereto (including by e-mail or fax transmission), so as to be received by it 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 (the "**Phase I Bid Deadline**"):

- (a) the Qualified Non-Binding LOI may be an offer to (i) acquire all, substantially all or a portion of the Property (a "**Sale Proposal**"), or (ii) make an investment in, restructure, reorganize or refinance the Applicants (an "**Investment Proposal**"), but in either case must, in the reasonable business judgement of the Monitor and Applicants, constitute a Superior Offer;
- (b) in the case of a Sale Proposal, it identifies or contains the following:
  - i. the purchase price in Canadian dollars, including details of any liabilities to be assumed by the Qualified Bidder and key assumptions supporting the valuation;
  - ii. a description of the Property that is expected to be subject to the Transaction and any of the Property expected to be excluded;
  - iii. a specific indication of the financial capability of the Qualified Bidder and the expected structure and financing of the Transaction;

- iv. a description of the conditions and approvals required for a final and binding offer, including any required regulatory approvals and any other factors affecting the speed, certainty and value of the Transaction;
- v. an outline of any additional due diligence required to be conducted in Phase II (as defined below), if any, in order to submit a final and binding offer; and
- vi. any other terms or conditions of the Sale Proposal that the Qualified Bidder believes are material to the Transaction;

(c) in the case of an Investment Proposal, it identifies the following:

- i. the direct or indirect investment target;
- ii. a description of how the Qualified Bidder proposes to structure the proposed investment;
- iii. the aggregate amount of the equity and/or debt investment to be made in the Applicants in Canadian dollars;
- iv. the underlying assumptions regarding the pro forma capital structure (including the anticipated debt levels, debt service fees, interest, and amortization);
- v. the equity, if any, to be allocated to the Senior Secured Claims, the Priority Claims, or any other secured or unsecured creditors of the Applicants;
- vi. a specific indication of the financial capability of the Qualified Bidder and the expected structure and financing of the Transaction;
- vii. a description of the conditions and approvals required for a final and binding offer, including any required regulatory approvals and any other factors affecting the speed, certainty and value of the Transaction;
- viii. an outline of any additional due diligence required to be conducted in Phase II (as defined below), if any, in order to submit a final and binding offer; and
- ix. any other terms or conditions of the Investment Proposal that the Qualified Bidder believes are material to the Transaction;

(d) in the case of either of a Sale Proposal or an Investment Proposal, it:

- i. contains such other information as reasonably requested by the Applicants and/or the Monitor to allow them to determine, among other things, whether it has a reasonable prospect of resulting in a Superior Offer;
- ii. fully discloses the identity of each entity or person that will be entering into the Transaction, that is participating in, or benefiting from, such bid, including any equity holders; and



- iii. contemplates closing the Transaction set out therein on or before October 30, 2020 (the “**Outside Closing Date**”) or such other date as may be agreed upon by the parties with the DIP Lender’s consent.

The Applicants, with the approval of the Monitor, may waive strict compliance with any one or more of the foregoing requirements and deem such non-compliant bids to be a Qualified Non-Binding LOI.

### **Advance to Phase II**

Within three (3) business days following the Phase I Bid Deadline, or by such other later date as may be agreed by the Monitor and the Applicants, the Monitor will, in consultation with the Applicants and the Sales Agent, assess the Qualified Non-Binding LOIs received during Phase I, if any, and determine whether there is a reasonable prospect of obtaining a Superior Offer. If the Monitor determines that there is such a reasonable prospect, the Monitor will recommend to the Applicants and the Sales Advisor that the SISP continue into Phase II in accordance with these SISP Procedures (“**Phase II**”). If the Applicants accept such recommendation, the SISP will immediately thereafter continue to Phase II. If the Applicants do not accept such recommendation, the Monitor will report to the Court that the Applicants do not accept such recommendation, and will seek advice and directions from the Court with respect to the SISP.

If the Monitor, in consultation with the Applicants and the Sales Agent, determines that there is no reasonable prospect of a Qualified Non-Binding LOI resulting in a Superior Offer, the Monitor will forthwith advise the DIP Lender of such determination.

### **Terminate the SISP**

The Sales Agent shall recommend to the Applicants 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.

If the Applicants or the Monitor do not accept the Sales Agent’s recommendation to terminate the SISP at the end of Phase I, the Monitor shall advise the Court and seek advice and directions of the Court with respect to the SISP. If the SISP is terminated pursuant to the Sales Agent’s recommendation or pursuant to Court Order, the Applicants shall promptly take steps to complete the Transaction contemplated by the Stalking Horse Agreement and the Sales Agent shall notify each Qualified Bidder that submitted a Qualified Non-Binding LOI that the SISP has been terminated.

## **PHASE II**

### **Seeking Qualified Bids by Qualified Bidders**

During Phase II, each Qualified Bidder that is not eliminated from the SISP in accordance with these SISP Procedures shall have such due diligence access to materials and information relating to the Property and the Applicants as the Sales Agent, in its reasonable business judgement and in consultation with the Applicants, deems appropriate, having regard to the advance to Phase II

and the requirements of a Qualified Purchase Bid (defined below) and a Qualified Investment Bid (defined below) including, as appropriate, meetings with senior management of the Applicants.

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 at the address specified in Schedule "A" hereto (including by e-mail or fax transmission) so as to be received by it 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 (a "**Foreign Qualified Bidder**") 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 (the "**Phase II Bid Deadline**"). Any such Foreign Qualified Bidder who anticipates requiring time beyond September 24, 2020 to complete due diligence activities within Canada may request an extension of the Phase II Bid Deadline applicable to such Foreign Qualified Bidder by informing the Sales Agent and the Monitor in writing by no later than September 10, 2020 (a "**Foreign Qualified Bidder Extension Request**"). Upon receipt of a Foreign Qualified Bidder Extension Request, the Applicants, the Monitor and the DIP Lender shall consult about an extension of the Phase II Bid Deadline beyond September 24, 2020, and if agreed among the Applicants, the Monitor and the DIP Lender, each acting reasonably, the Phase II Bid Deadline applicable to such Foreign Qualified Bidder may be extended to not later than October 1, 2020.

### **Qualified Purchase Bids**

A bid submitted to acquire all or substantially all or a portion of the Property will be considered a Qualified Purchase Bid only if (i) the bid is submitted by a Qualified Bidder who submitted a Qualified Non-Binding LOI on or before the Phase I Bid Deadline; (ii) the Qualified Bidder was not eliminated from the SISP in accordance with these SISP Procedures; and (iii) the Bid complies with all of the following (a "**Qualified Purchase Bid**"):

- (a) it is on substantially the same terms as the Qualified Non-Binding LOI submitted by such Qualified Bidder in Phase I of these SISP procedures and constitutes, in the reasonable business judgement of the Monitor and Applicants, a Superior Offer;
- (b) it includes a letter stating that the Qualified Bidder's offer is irrevocable until the earlier of (x) the selection of the Successful Bidder, and (y) thirty (30) days following the Phase II Bid Deadline, provided that if such Qualified Bidder is selected as the Successful Bidder its offer shall remain irrevocable until the closing of the sale to the Successful Bidder;
- (c) it includes a duly authorized and executed acquisition agreement, including the purchase price for assets proposed to be acquired, expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such agreements);
- (d) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed Transaction, that will allow the Sales Agent, the Monitor and the Applicants to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the Transaction contemplated by the bid;

- (e) it is not conditioned on (i) the outcome of unperformed due diligence by the Qualified Bidder and/or (ii) obtaining financing;
- (f) it fully discloses the identity of each entity that will be sponsoring or participating in the bid, and the complete terms of any such participants;
- (g) it includes an acknowledgement and representation that the Qualified Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its bid; and (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in the purchase agreement;
- (h) it includes evidence, in form and substance reasonably satisfactory to the Sales Agent, the Applicants and the Monitor, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Transaction contemplated by the bid;
- (i) it outlines any anticipated regulatory and other approvals required to close the Transaction and the anticipated timeframe and any anticipated impediments for obtaining such approvals;
- (j) it may not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement, termination or similar type of fee or payment. Further, a Qualified Bidder shall be deemed to irrevocably waive any right to pursue a claim in any way related to the submission of its bid or this SISP;
- (k) it is accompanied by a Good Faith Deposit (defined below) in the form of a wire transfer (to a bank account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of the Monitor, in trust, in an amount equal to not less than 10% of the Purchase Price, to be held and dealt with by the Monitor in accordance with these SISP Procedures; and
- (l) it contains other information reasonably requested by the Applicants, in consultation with the Sales Agent and the Monitor.

### **Qualified Investment Bids**

A bid submitted to make an investment in the Applicants will be considered a Qualified Investment Bid only if (i) the bid is submitted by a Qualified Bidder who submitted a Qualified Non-Binding LOI on or before the Phase I Bid Deadline, (ii) the Qualified Bidder was not eliminated from the SISP in accordance with these SISP Procedures, and (iii) the bid complies with all of the following (a **"Qualified Investment Bid"**):

- (a) it is on substantially the same terms as the Qualified Non-Binding LOI submitted by such Qualified Bidder in Phase I of these SISP procedures and constitutes, in the reasonable business judgment of the Monitor, the Sales Agent and the Applicants, a Superior Offer;

- (b) it includes a duly authorized and executed term sheet describing the terms and conditions of the proposed Transaction, including details regarding the proposed equity and debt structure of the Applicants following completion of the proposed Transaction (the “**Term Sheet**”);
- (c) it includes a letter stating that the Qualified Bidder’s offer is irrevocable until the earlier of (x) the selection of the Successful Bidder and (y) thirty (30) days following the Phase II Bid Deadline, provided that if such bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the investment by the Successful Bidder;
- (d) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed Transaction, that will allow the Sales Agent, the Monitor and the Applicants to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to consummate the Transaction contemplated by the bid;
- (e) it is not conditioned on (i) the outcome of unperformed due diligence by the Qualified Bidder and/or (ii) obtaining financing;
- (f) it fully discloses the identity of each entity that will be sponsoring or participating in the bid, and the complete terms of any such participation;
- (g) it includes an acknowledgement and representation that the Qualified Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid; and (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Applicants or the completeness of any information provided in connection therewith except as expressly stated in the Term Sheet;
- (h) it includes evidence, in form and substance reasonably satisfactory to the Sales Agent, the Applicants and the Monitor, of authorization and approval from the Qualified Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Transaction contemplated by the bid;
- (i) it outlines any anticipated regulatory and other approvals required to close the Transaction and the anticipated timeframe and any anticipated impediments for obtaining such approvals;
- (j) it may not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement, termination or similar type of fee or payment. Further, a Qualified Bidder shall be deemed to irrevocably waive any right to pursue a claim in any way related to the submission of its bid or this SISP;
- (k) it is accompanied by a refundable deposit (the “**Good Faith Deposit**”) in the form of a wire transfer (to a bank account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of the Monitor, in trust, in an amount equal to not less than 10% of the total investment contemplated by such Qualified Investment Bid, to be held and dealt with in accordance with these SISP Procedures; and
- (l) it contains other information reasonably requested by the Applicants, in consultation with the Sales Agent and the Monitor.

Qualified Purchase Bids and Qualified Investment Bids shall hereinafter be referred to as “**Qualified Bids**” and each, a “**Qualified Bid**”. For greater certainty, the Stalking Horse Agreement shall be deemed to be a Qualified Bid. The Applicants and the Monitor may aggregate separate bids from unaffiliated Qualified Bidders to create one Qualified Bid.

If, at any point during Phase II, the Applicants, the Sales Agent and the Monitor collectively determine that a Successful Bid (as defined below) is not reasonably likely to be obtained by the Phase II Bid Deadline, or if no Qualified Bids are received on or before the Phase II Bid Deadline, the Applicants shall promptly take steps to complete the Transaction contemplated by the Stalking Horse Agreement and the Monitor shall notify each Qualified Bidder that submitted a bid that the SISP has been terminated.

Following the Phase II Bid Deadline, including any extensions thereof for a Foreign Qualified Bidder, the Applicants, the Sales Agent and the Monitor will assess the bids received. The Monitor shall, exercising its reasonable business judgement, approve the Applicants’ disqualification of any Bids that are deemed not to be Qualified Bids. Only Qualified Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

Without limiting the foregoing, Qualified Bids, including any Subsequent Bids (as defined below), will be evaluated upon many factors, including, among other things, the:

- (a) Purchase Price;
- (b) identity, circumstances, and ability of the Qualified Bidder to successfully complete the Transaction;
- (c) proposed Transaction documents;
- (d) factors affecting the speed, certainty, and value of the Transaction, including but not limited to any required regulatory approvals;
- (e) assets included or excluded from the Qualified Bid;
- (f) whether the Qualified Bid is for all, or substantially all, or a portion of the Property;
- (g) the tax implications on any of the Applicants or their directors and officers arising out of the Transaction; and
- (h) likelihood and timing of consummating such Transaction.

In the event that the Applicants determine that all bids received in Phase II are to be disqualified, but the Monitor, exercising its reasonable business judgement, does not approve the disqualification of all such bids, the Monitor shall advise the Court and seek advice and directions of the Court with respect to such Bids that the Monitor believes should be Qualified Bids. If as a result, the Court determines that any such bids are Qualified Bids, the SISP shall proceed to the Monitor’s consideration of the same under the Auction Procedures (set out below). If, however, the Court determines that any such bids are not Qualified Bids, the Applicants shall promptly take steps to complete the Transaction contemplated by the Stalking Horse Agreement and the Monitor shall notify each Qualified Bidder that a submitted a bid that the SISP has been terminated.

## Auction Procedures

If the Monitor determines, in its reasonable business judgement, that one or more of the Qualified Bids is a Superior Offer, the Monitor will conduct an auction (the “**Auction**”) (which the Applicants intend to transcribe) at 9:00 AM (Mountain Time) on September 29, 2020 by videoconference or at such location as shall be timely communicated by the Monitor to all entities entitled to attend the Auction. In the event that the Phase II Bid Deadline is extended beyond September 24, 2020, including for the purpose of accommodating one or more Foreign Qualified Bidders, the Monitor may reschedule the Auction to a date and time not later than October 6, 2020, and shall promptly notify all entities entitled to attend the Auction of such new time.

The Auction shall be conducted in accordance with the following procedures:

- (a) only the Applicants, the Monitor, the Sales Agent, the Stalking Horse Bidder, and any Qualified Bidders who submitted Qualified Bids that represent Superior Offers (such as Qualified Bidders, “**Auction Bidders**”), in each case along with their representatives and advisors, shall be entitled to attend the Auction;
- (b) only the Stalking Horse Bidder and Auction Bidders will be entitled to participate as bidders in, or make any subsequent bids at, the Auction; provided that all such Auction Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Auction Bidder attending the Auction in person;
- (c) each Auction Bidder shall be required to confirm that it has not engaged in any collusion with respect to any aspect of these SISP Procedures;
- (d) at least one (1) business day prior to the Auction, each Auction Bidder must inform the Monitor whether it intends to attend the Auction; provided that in the event an Auction Bidder elects not to attend the Auction, such Auction Bidder’s Qualified Bid shall, subject to the terms of the Stalking Horse Agreement, nevertheless remain fully enforceable against such Auction Bidder until (i) the date of the selection of the applicable Successful Bidder (as defined below) at the conclusion of the Auction, or (ii) if selected as the Successful Bidder, until three (3) months after the execution of the applicable Stalking Horse Agreement;
- (e) no later than one (1) day prior to the start of the Auction, the Monitor will provide copies of the Qualified Bid or Qualified Bids that the Monitor believes, in its discretion, is the Superior or otherwise best offer for the Property or Applicants (the “**Starting Bid**”) to the Stalking Horse Bidder and all other Auction Bidders;
- (f) the Monitor, after consultation with its advisors, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are: (i) not inconsistent with these SISP procedures, the CCAA, any order of the Court; (ii) provide that bids be made and received on an open basis, with all material terms of each bid to be fully disclosed to the Stalking Horse Bidder and other Auction Bidders; and (iii) are disclosed to the Stalking Horse Bidder and Auction Bidders at the Auction;
- (g) bidding at the Auction will begin with the Starting Bids and continue in bidding increments (each, a “**Subsequent Bid**”) providing a net value to the Applicants of at least an additional \$250,000 above the prior bid. After the first round of bidding and between each

subsequent round of bidding, the Monitor shall announce the bid (including the identity of the bidder or bidders and the value of such bid) that they believe to be the highest or otherwise best offer (the “**Superior Bid**”);

- (h) a round of bidding will conclude after the Stalking Horse Bidder and Auction Bidders have had the opportunity to submit a Subsequent Bid with full knowledge of the then Superior Bid;
- (i) the Auction will end once a round of bidding concludes with no Subsequent Bid being submitted;
- (j) for the purposes of evaluating the value of the consideration provided by the Subsequent Bids (including any Subsequent Bid by the Stalking Horse Bidder), the Monitor will give effect (on a dollar for dollar basis) to any applicable Bid Protection Fees payable to the Stalking Horse Bidder, as well as any additional liabilities to be assumed by an Auction Bidder and any additional costs which may be imposed on the Applicants;
- (k) if the Stalking Horse Bidder bids at the Auction, it will be entitled to credit bid (on a dollar for dollar basis) the DIP Financing and any applicable Bid Protection Fees; and
- (l) the Auction may be adjourned as the Monitor deems appropriate; provided that reasonable notice of such adjournment and the time and place for the resumption of the Auction shall be given to the Stalking Horse Bidder and the Auction Bidders.

Following the conclusion of the Auction, the Monitor shall recommend to the Applicants that the Superior Bid, as established in the last round of the Auction, be selected and that a definitive agreement be negotiated and settled in respect of that Superior Bid, conditional upon Court approval and conditional on the Superior Bid closing within **[14]** days of Court approval, or such longer period as shall be agreed to by the Monitor and DIP Lender. In the event the Applicants do not wish to proceed with the Superior Bid, the Monitor shall so advise the Court and seek its advice and directions with respect to the SISP.

Once a definitive agreement has been negotiated and settled in respect of the Superior Bid, which has been selected by the Monitor or by Court Order (the “**Selected Superior Offer**”) in accordance with the provisions hereof, the Selected Superior Offer shall be the “**Successful Bid**” hereunder and the person(s) who made the Selected Superior Offer shall be the “**Successful Bidder**” hereunder. In the event the Selected Superior Offer is not the Stalking Horse Agreement (as amended pursuant to the outcome of the Auction), the Deposit paid by the Successful Bidder shall be applied first to pay the Bid Protection Fees to the Stalking Horse Bidder, with the remaining balance to be dealt with in accordance with the definitive documents for the Transaction contemplated by such Successful Bid.

### **Approval Motion**

The hearing to authorize some or all of the Applicants to enter into agreements with respect to the Successful Bid (the “**Approval Motion**”) will be held on a date to be scheduled by the Court upon application by the Applicants. The Approval Motion may be adjourned or rescheduled by the Applicants with the consent of the DIP Lender, without further notice by an announcement of the adjourned date at the Approval Motion. All Qualified Bids (other than the Successful Bid) shall be deemed rejected on and as of the date of approval of the Successful Bid by the Court.

## **Deposits**

All deposits shall be held by the Monitor in a single interest-bearing account designated solely for such purpose. If there is a Successful Bidder, the Deposit (plus accrued interest) paid by the Successful Bidder whose bid is approved at the Approval Motion will be applied to the purchase price to be paid or investment amount to be made by the Successful Bidder upon closing of the approved transaction and will be non-refundable upon Court approval. A Good Faith Deposit paid by a Qualified Bidder shall be dealt with in accordance with these SISP Procedures. Deposits, and any interest earned thereon, paid by Qualified Bidders not selected as a Successful Bidder, and interest earned thereon, shall be returned to such Qualified Bidders within seven business days of Court approval of the Successful Bid. At no time shall the Stalking Horse Bidder be required to submit any Good Faith Deposit or other form of deposit.

## **Confidentiality and Access to Information**

All discussions regarding a Transaction, Sale Proposal, Investment Proposal, Bid or Successful Bid should be directed through the Sales Agent or the Monitor. Under no circumstances should any members of management, employees, customers, suppliers, or other creditors of the Applicants be contacted by a Bidder directly without the prior consent of the Sales Agent and the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP at the discretion of the Monitor.

Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Qualified Bidders, Bidders, Qualified Bids, the details of any Bids or Qualified Bids submitted or the details of any confidential discussions or correspondence between the Applicants, the Monitor and such other Bidders or Qualified Bidders in connection with the SISP, except to the extent that the Applicants and the Monitor, with the consent of the applicable participants, are seeking to combine separate Bids into a single Bid.

Notwithstanding the foregoing, under no circumstances will the Applicants, the Sales Agent or the Monitor share any material information concerning any of the Bids with any person.

## **Supervision of the SISP**

The Monitor shall oversee, in all respects, the conduct of the SISP by the Applicants and the Sales Agent and, without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out in this SISP Procedure and is entitled to receive all information in relation to the SISP.

This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between the Applicants, the Sales Agent, the Monitor and any Qualified Bidder or any other party, other than as specifically set forth in a definitive agreement that may be signed with the Applicants.

Without limiting the preceding paragraph, the Applicants, the Sales Agent and the Monitor shall not have any liability whatsoever to any person or party, including without limitation any Qualified Bidder, Bidder, the Successful Bidder, the Applicants, the DIP Lender or any other creditor or other stakeholder of the Applicants, for any act or omission related to the process contemplated by this SISP Procedure, except to the extent such act or omission is the result of such party's gross negligence or wilful misconduct. By submitting a bid, each Bidder, Qualified Bidder or Successful Bidder shall be deemed to have agreed that it has no claim against the Monitor for



any reason whatsoever, except to the extent that such claim is the result of the gross negligence of, or wilful misconduct by, the Monitor.

Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a Transaction.

Without prejudice to the rights of the Stalking Horse Bidder under the terms of the Stalking Horse Agreement, the Applicants and the Monitor shall have the right to modify the SISP (including, without limitation, pursuant to the Bid Process Letter) if, in their reasonable business judgement, such modification will enhance the process or better achieve the objectives of the SISP, provided that the Service List in these CCAA Proceedings shall be advised of any substantive modification to the procedures set forth herein.

**Schedule "A"**

**Addresses**

**To the Monitor**

Alvarez & Marsal Canada Inc.  
250 6 Ave SW Suite 1110, Calgary, AB  
T2P 3H7

Attn.: Orest Konowalchuk, CPA, CA, CIRP, LIT  
Tel: (403) 538-4736  
Email: okonowalchuk@alvarezandmarsal.com

**To the Sales Agent**

Whitehorn Merchant Capital Inc.

333 24 Ave SW #270, Calgary, AB T2S 3E6

Attn.: Andrew Tavendar  
Tel: (403) 680-4066  
Email: atavender@whmcapital.com

**SCHEDULE "B"**  
**Disclosure Schedule**

**Lands and Premises**

<b>Municipal Address</b>	<b>Interest</b>
1725 Blaeberry River Road East, Golden, BC V0A 1H1	Registered owner in fee simple: Heemskirk Canada Holdings Limited
1725 Blaeberry River Road East, Golden, BC V0A 1H1	Leased by HCA Mountain Minerals (Moberly) Limited pursuant to a lease agreement dated July 13, 2015 between Heemskirk Canada Holdings Limited and HCA Mountain Minerals (Moberly) Limited.
920 Fleming Avenue, Penhold, AB T0M 1R0	Registered owner in fee simple: Custom Bulk Services Inc.

**Mineral Tenures**

<b>Recorded Holder</b>	<b>Title Interest</b>	<b>Title Number</b>
HCA Mountain Minerals (Moberly) Limited	Claim	213089
HCA Mountain Minerals (Moberly) Limited	Claim	213090
HCA Mountain Minerals (Moberly) Limited	Claim	213099
HCA Mountain Minerals (Moberly) Limited	Claim	213195
HCA Mountain Minerals (Moberly) Limited	Claim	338588
HCA Mountain Minerals (Moberly) Limited	Lease	344488
HCA Mountain Minerals (Moberly) Limited	Claim	576995
HCA Mountain Minerals (Moberly) Limited	Claim	1070999

**Instruments registered on title to the Owned Lands**

Legal Land Description:

LOT A SECTION 29 TOWNSHIP 28 RANGE 22 WEST OF THE 5TH MERIDIAN  
KOOTENAY DISTRICT PLAN EPP30862

Registered Owner	Nature	Registration Number	Registration Date
THE CROWN IN RIGHT OF BRITISH COLUMBIA	UNDERSURFACE AND OTHER EXC & RES	CA3503443	2013-12-11
TAURUS RESOURCES NO. 2 B.V.	MORTGAGE	CA5058473	2016-03-22
TAURUS RESOURCES NO. 2 B.V.	ASSIGNMENT OF RENTS	CA5058474	2016-03-22
BRITISH COLUMBIA HYDRO AND POWER AUTHORITY	STATUTORY RIGHT OF WAY	CA5059767	2016-03-23
TELUS COMMUNICATIONS INC.	STATUTORY RIGHT OF WAY	CA5059768	2016-03-23
QMETCO LIMITED	MORTGAGE	CA8289187	2020-07-08
QMETCO LIMITED	ASSIGNMENT OF RENTS	CA8289188	2020-07-08

Legal Land Description:

PLAN 9120596  
LOT 7  
EXCEPTING THEREOUT ALL MINES AND MINERALS

- and -

PLAN 8020947  
LOT 2  
EXCEPTING THEREOUT ALL MINES AND MINERALS

Registered Owner	Nature	Registration Number	Registration Date
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Alberta Treasury Branches	MORTGAGE	062 384 277	2006-08-29
Alberta Treasury Branches	MORTGAGE	122 268 071	2012-08-16
Alberta Treasury Branches	AMENDING AGREEMENT	132 194 298	2013-06-27

**SCHEDULE "C"**  
**SISP Order**

Clerk's Stamp:

COURT FILE NUMBER 2001-07984

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE OF CALGARY

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 **ORDER (SISP, STALKING HORSE AGREEMENT, SALES AGENT ENGAGEMENT)**

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

<b>DATE ON WHICH ORDER WAS PRONOUNCED:</b>	July 27, 2020
<b>NAME OF JUDGE WHO MADE THIS ORDER:</b>	The Honourable Justice K.M. Horner
<b>LOCATION OF HEARING:</b>	Calgary Courts Centre

**UPON** the application of Northern Silica Corporation ("**NSC**"), Heemskirk Mining Pty. Ltd., 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 "**Debtors**"), **AND UPON** having read the Application, the Affidavit of Jerrad Blanchard sworn July 21, 2020 (the "**Blanchard Affidavit**"), filed, the Affidavit of Martin Boland, sworn June 26, 2020, filed (the "**Boland Affidavit**"), and the Affidavit of Service, filed; **AND UPON** reading the first report of the Monitor, Alvarez & Marsal Canada Inc. (in such capacity, the "**Monitor**") dated July 3, 2020, and the second report of the Monitor dated July 21, 2020; **AND UPON** hearing counsel for the Debtors, counsel for the Monitor, counsel for QMetco Limited, Taurus Resources No. 2 B.V. and Vitreo Minerals Ltd., and other counsel present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the notice of application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable today.

**SALES AND INVESTMENT SOLICITATION PROCESS, STALKING HORSE BID**

2. The sale and investment solicitation process ("**SISP**") in the form attached as Exhibit "D" to the Blanchard Affidavit is hereby approved.
3. The Debtors and the Monitor are hereby authorized and empowered to implement the SISP and to proceed, carry out, and implement any corresponding sales, marketing, or tendering processes, including any and all actions related thereto, substantially in accordance with the proposed SISP, and, furthermore, the Debtors and the Monitor are hereby authorized to enter into any resulting agreement(s) or transaction(s) (collectively, the "**Sale Agreements**") which may arise in connection thereto, as the Debtors and the Monitor determine are necessary or advisable in connection with or in order to complete any or all of the various steps, as contemplated by the SISP.

4. The Asset Purchase Agreement dated July 21, 2020 between Custom Bulk, Heemskirk Canada, Heemskirk Holdings, and HCA Moberly, as sellers, Vitreo Minerals Ltd., as purchaser (in such capacity, the **"Stalking Horse Bidder"**), and the Monitor, substantially in the form attached as Exhibit "E" to the Blanchard Affidavit (the **"APA"**), is hereby approved, the APA is designated as the stalking horse bid as contemplated by the SISP, and the Debtors and the Monitor are authorized and directed to entered into the APA and complete the various transactions contemplated thereby in accordance with the terms and conditions of the APA. The parties to the APA are further authorized to make non-material amendments to the APA as may be agreed to by each of the Debtors, the Stalking Horse Bidder, and the Monitor.
5. The Bid Protection Fees (as such term is defined in the APA) is hereby approved and the Debtors are authorized to incur and pay the Bid Protection Fees pursuant to and in accordance with the terms of the APA.
6. Nothing herein shall act as authorization or approval of the transfer or vesting of any or all of the Debtors' property, assets, or undertakings under any Sale Agreements, the APA, or otherwise. Such transfer and vesting shall be dealt with and shall be subject to further Order of this Court.
7. The Debtors and the Monitor are hereby authorized and empowered to apply to this Court to amend, vary, or seek any advice, directions with regard to the SISP or with regard to the approval or vesting of any transactions, in connection with the SISP.
8. The Debtors, the Monitor, and Whitehorn Merchant Capital Inc., as sales agent, and their respective affiliates, partners, directors, employees, advisors, agents, shareholders and controlling persons shall have no liability of any nature or kind to any person in connection with or as a result of the SISP or the actions taken in respect of the SISP, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of any of the foregoing in performing their obligations under the SISP (as determined by this Court). The Stalking Horse Bidder (solely in its capacity as the Stalking Horse Bidder) and its directors, employees, advisors and agents (solely in connection with the APA and the SISP) shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the APA, except to the extent of such losses, claims, damages or liabilities



resulting from the gross negligence or willful misconduct of any of the foregoing in performing their obligations under the SISP (as determined by this Court).

9. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the Debtors, the Sales Agent and the Monitor may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property, including the Stalking Horse Bidder, and to their advisors, but only to the extent desirable or required to carry out the SISP and to attempt to complete a transaction for some or all of the Property. Each prospective purchaser or bidder, including the Stalking Horse Bidder, and their respective advisors to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of a transaction for some or all of the Property (as defined in the SISP), and if it does not complete such a transaction, shall return all such information to the Debtors, or in the alternative destroy all such information. The purchaser of any of the Property (as defined in the SISP) shall be entitled to continue to use the personal information provided to it, and related to such property, in a manner that is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Debtors, or ensure that all other personal information is destroyed.

#### **GENERAL**

10. Service of this Order shall be deemed good and sufficient by:
  - (a) serving the same on the persons listed on the service list created in these proceedings; and
  - (b) posting a copy of this Order on the Monitor's website at [www.alvarezandmarsal.com/northernsilica](http://www.alvarezandmarsal.com/northernsilica)and service on any other person is hereby dispensed with.
11. Subject to Rules 11.25 and 11.26 this Order shall constitute an order for substituted service pursuant to Rule 11.28 of the *Alberta Rules of Court*.

12. The Debtors and the Monitor are at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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Justice of the Court of Queen's Bench of Alberta