

**ARRANGEMENT AGREEMENT BETWEEN**

**ARDEN HOLDINGS LTD.**

**- AND -**

**2567850 ONTARIO INC.**

**- AND -**

**KHAN RESOURCES INC.**

**March 22, 2017**

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## ARRANGEMENT AGREEMENT

THIS ARRANGEMENT AGREEMENT (this “**Agreement**”) dated as of March 22<sup>nd</sup>, 2017,

BETWEEN:

**ARDEN HOLDINGS LTD.**, a corporation existing under the laws of Turks and Caicos Islands (the “**Parent**”)

- and -

**2567850 ONTARIO INC.**, a corporation existing under the laws of the Province of Ontario (the “**Purchaser**”)

- and -

**KHAN RESOURCES INC.**, a corporation existing under the laws of the Province of Ontario (the “**Company**”)

**WHEREAS** the Parent desires to acquire all of the Shares (as hereinafter defined) through its wholly-owned subsidiary, the Purchaser;

**AND WHEREAS** the board of directors of the Company (the “**Board of Directors**”) has determined that the consideration to be received by the Shareholders (as hereinafter defined) pursuant to the Arrangement (as hereinafter defined) is fair and that the Arrangement is in the best interests of the Company and that the Board of Directors has resolved to support the Arrangement and to recommend that the Shareholders vote in favour of the Arrangement, all subject to the terms and the conditions contained herein;

**THIS AGREEMENT WITNESSES THAT** in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties (as hereinafter defined) hereto covenant and agree as follows:

### ARTICLE I INTERPRETATION

#### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

“**Acquisition Proposal**” means,

- (a) any take-over bid, issuer bid, amalgamation, plan of arrangement, business combination, merger, tender offer, reverse take-over, exchange offer, consolidation, recapitalization, reorganization, liquidation, dissolution or winding-up in respect of the Company or the Subsidiary;

- (b) any sale of assets (or any lease, long-term supply arrangement, licence or other arrangement having the same economic effect as a sale) of the Company or the Subsidiary representing 20% or more of the consolidated assets, revenues or earnings of the Company;
- (c) any sale or issuance of shares or other equity interests (or securities convertible into or exercisable for such shares or interests) in the Company or the Subsidiary representing 20% or more of the issued and outstanding equity or voting interests of the Company or the Subsidiary;
- (d) any similar transaction or series of transactions involving the Company or the Subsidiary;
- (e) any arrangement whereby effective operating or voting control of the Company is granted to another party; or
- (f) any inquiry, proposal, offer or public announcement of an intention to do any of the foregoing;

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

“**Arrangement**” means an arrangement under Section 182 of the OBCA on the terms and subject to the conditions set out in the Plan of Arrangement, subject to any amendments or variations thereto made in accordance with Section 9.11 of this Agreement or the Plan of Arrangement or made at the direction of the Court in the Final Order with the consent of the Company and the Purchaser, each acting reasonably;

“**Arrangement Resolution**” means the special resolution approving the Plan of Arrangement to be considered at the Company Meeting, to be substantially in the form and content of Schedule A hereto;

“**Articles of Arrangement**” means the articles of arrangement of the Company in respect of the Arrangement, required by the OBCA to be sent to the Director after the Final Order is made, which shall be in form and content satisfactory to the Company and the Purchaser, each acting reasonably;

“**Board of Directors**” has the meaning ascribed thereto in the recitals;

“**business**” means, unless the context otherwise requires, the activities of and relating to the winding up and discontinuance of the uranium exploration and mining business formerly carried on by the Company and its present and former subsidiaries;

“**business day**” means any day, other than a Saturday, a Sunday or a statutory or civic holiday in Toronto, Canada or Turks and Caicos Islands;

“**Certificate of Arrangement**” means the certificate of arrangement to be issued by the Director pursuant to Section 183(2) of the OBCA in respect of the Articles of Arrangement;

“**Change in Recommendation**” has the meaning ascribed thereto in Section 8.1(1)(c)(i);

“**Company Circular**” means the notice of the Company Meeting and accompanying management information circular, including all schedules, appendices and exhibits thereto, to be sent to, among others, the Shareholders in connection with the Company Meeting, as amended, supplemented or otherwise modified from time to time;

“**Company Disclosure Letter**” means the disclosure letter dated the date hereof regarding this Agreement that has been provided by the Company to the Parent and the Purchaser;

“**Company Employees**” means employees of the Company and the Subsidiary, including any consultant performing similar functions to that of an executive officer;

“**Company Intellectual Property**” shall mean any Intellectual Property that is owned by the Company and/or the Subsidiary;

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

“**Company Plans**” has the meaning ascribed thereto in paragraph (q)(i) of Schedule C;

“**Company’s Current Public Disclosure Record**” means (a) the condensed interim consolidated financial statements of the Company for the first quarter ended December 31, 2016, and the notes thereto; (b) the management discussion and analysis of the Company for the first quarter ended December 31, 2016; (c) the annual information form of the Company dated January 3, 2017 for the year ended September 30, 2016; (d) the audited consolidated financial statements of the Company for the years ending September 30, 2016 and September 30, 2015 and the notes thereto; (e) the management discussion and analysis of the Company for the year ended September 30, 2016; (f) the management information circular of the Company in respect of a special meeting of Shareholders dated October 5, 2015; and (g) the management information circular in respect of an annual and special meeting of Shareholders dated January 8, 2016;

“**Company’s Public Disclosure Record**” means all documents filed under the profile of the Company on the System for Electronic Document Analysis and Retrieval (SEDAR) after December 31, 2015;

“**Confidentiality Agreement**” means the letter agreement dated January 18, 2017 between the Parent and the Company;

“**Consideration**” means \$0.05 in cash per Share;

“**Court**” means the Ontario Superior Court of Justice (Commercial List);

“**D&O Insurance**” has the meaning ascribed thereto in Section 7.8(2);

“**Depository**” means TSX Trust, as depository, or any other bank, trust company or financial institution, as may be agreed to in writing by the Company and the Purchaser;

“**Diligence Documents**” means the documents provided in hard copy to the Parent and the responses to the Parent’s due diligence request list, the latter of which is appended to the Company Disclosure Letter;

“**Director**” means the Director appointed pursuant to Section 278 of the OBCA;

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

“**Effective Date**” means the date shown on the Certificate of Arrangement giving effect to the Arrangement;

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

“**Environmental Laws**” means any applicable Law relating to pollution or protection of human health (including worker health and safety) or the environment, or governing the handling, use, re-use, generation, treatment, storage, transportation, disposal, recycling, manufacture, distribution, formulation, packaging, labelling, Release or threatened Release of or exposure to Hazardous Materials;

“**Escrow Agreement**” means the escrow agreement dated the date hereof between the Parent, the Purchaser, the Company and Norton Rose Fulbright Canada LLP with respect to the Escrow Amount.

“**Escrow Amount**” means the amount of \$175,000 held by Norton Rose Canada LLP in trust to be held and distributed in accordance the provisions of the Escrow Agreement;

“**Exchange**” means the Canadian Securities Exchange;

“**Fairness Opinion**” means the opinion of Blair Franklin Capital Partners, the financial advisor to the Company, addressed to the Board of Directors and the Special Committee to the effect that, as of the date of such opinion, the consideration to be received by the Shareholders under the Arrangement is fair, from a financial point of view, to such holders;

“**Filing Date**” has the meaning ascribed thereto in Section 2.8;

“**Final Order**” means the final order of the Court, after a hearing upon the fairness of the terms and conditions of the Arrangement, approving the Arrangement as such order may be amended by the Court (with the consent of both the Company and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is acceptable to both the Company and the Purchaser, each acting reasonably) on appeal;

“**Governmental Entity**” means any (a) supranational, multinational, federal, national, provincial, state, regional, municipal, local or other government, governmental or public department, ministry, central bank, court, tribunal, arbitral body, office, Crown corporation, commission, commissioner, board, bureau or agency, domestic or foreign; (b) subdivision, agent, commission, board or authority of any of the foregoing; or (c) quasi-governmental or private

body, including any tribunal, commission, stock exchange (including the Exchange), regulatory agency or self-regulatory organization, exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing and “**Governmental Entities**” means more than one Governmental Entity;

“**Hazardous Material**” means petroleum, petroleum hydrocarbons, petroleum products or petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, mold, lead or lead-containing materials, and polychlorinated biphenyls, and any other chemical, material, substance or waste in any amount or concentration (a) that is now or hereafter becomes defined as or included in the definition of “hazardous substances”, “hazardous materials”, “hazardous wastes”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “pollutants”, “deleterious substances”, “dangerous goods”, “corrosive substances”, “regulated substances”, “solid wastes” or “contaminants” or words of similar import under any Environmental Law; or (b) that is otherwise regulated under or for which liability can be imposed under Environmental Law;

“**IFRS**” means International Financial Reporting Standards as incorporated in the Handbook of the Canadian Institute of Chartered Accountants, at the relevant time applied on a consistent basis;

“**Indemnified Person**” has the meaning ascribed thereto in Section 7.8(1);

“**Intellectual Property**” means (a) all patents, patent applications, patent disclosures and inventions (whether or not patentable and whether or not reduced to practice), and including all provisional applications, substitutions, continuations, continuations-in-part, patents of addition, improvement patents, divisions, renewals, reissues, confirmations, counterparts, re-examinations and extensions thereof; (b) all trade-marks, service marks, trade dress, trade names, logos, domain names and corporate names, whether registered or existing at common law; (c) all registered and unregistered statutory and common law copyrights and industrial designs; (d) all registrations, applications and renewals for any of the foregoing; (e) all trade secrets, confidential information, ideas, formulae, compositions, know-how, improvements, innovations, discoveries, designs, manufacturing and production processes and techniques; and (f) all other intellectual property rights owned, licensed, controlled or used by a Person, in any and all relevant jurisdictions in the world;

“**Interim Order**” means the interim order of the Court in a form acceptable to the Company and the Purchaser, each acting reasonably, providing for, among other things, the calling and holding of the Company Meeting, as the same may be amended by the Court with the consent of the Company and the Purchaser, each acting reasonably;

“**Law**” or “**Laws**” means all federal, national, multinational, provincial, state, municipal, regional and local laws (statutory, common or otherwise), constitutions, treaties, conventions, by-laws, statutes, rules, regulations, principles of law and equity, orders, rulings, certificates, ordinances, judgments, injunctions, determinations, awards, decrees, legally binding codes or other requirements, whether domestic or foreign, and the terms and conditions of any grant of approval, permission, authority or licence or other similar requirement enacted, adopted,

promulgated, or applied by any Governmental Entity or self-regulatory authority (including the Exchange), and the term “applicable” with respect to such Laws and in a context that refers to one or more persons, means such Laws as are binding upon or applicable to such person or its assets;

“**Liens**” means any hypothecs, mortgages, liens, charges, security interests, prior claims, pledges, encroachments, options, rights of first refusal or first offer, occupancy rights, covenants, restrictions, encumbrances of any kind and adverse claims;

“**Matching Period**” has the meaning ascribed thereto in Section 7.2(5);

“**Material Adverse Effect**” means any effects or changes that, when considered individually or in the aggregate, are materially adverse to the assets, properties, liabilities, or financial condition (including any matters in respect of Taxes) of the Corporation and the Subsidiary, taken as a whole, other than any effect or change arising out of or resulting from:

- (a) general economic conditions, credit, capital or financial market conditions or political conditions, whether in Canada or elsewhere in the world, including with respect to interest rates, currency exchange rates or cost of capital;
- (b) any outbreak of hostilities, acts of war (whether or not declared), sabotage or terrorism,
- (c) any hurricane, tornado, flood, volcano, earthquake or other natural or man-made disaster, or any pandemic or widespread illness, occurring after the date of this Agreement;
- (d) any change in applicable Law or IFRS (or authoritative interpretation or enforcement thereof) which is proposed, approved or enacted on or after the date of this Agreement;
- (e) the negotiation, execution, announcement, performance or pendency of this Agreement or the consummation of the transactions contemplated hereby;
- (f) any correspondence, proposal, assessment, reassessment, claim, ruling, order, appeal or decision taken or made by or from any relevant tax authorities or other Governmental Entity in respect of any Taxes payable or purported to be payable by the Corporation or the Subsidiary in the Netherlands;
- (g) any action taken by the Company or the Subsidiary at Parent’s request or any other action required to be taken by any Party required by this Agreement; or
- (h) the identity of, or any facts or circumstances relating to the Parent or the Purchaser or any of their Affiliates,

provided, however, that the effect referred to in clause (a), (b), (c) or (d) above does not primarily relate only to (or have the effect of primarily relating only to) the Corporation and the Subsidiary, taken as a whole, or disproportionately adversely affect the Corporation and the

Subsidiary, taken as a whole, compared to other companies of similar size and in similar circumstances;

“**material fact**” has the meaning ascribed thereto in the Securities Act;

“**MI 61-101**” means Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* of the securities regulatory authorities of Ontario and Quebec;

“**misrepresentation**” has the meaning ascribed thereto in the Securities Act;

“**OBCA**” means the *Business Corporations Act* (Ontario), as amended;

“**Ordinary Course of Business**” means, with respect to any action, inaction or decision of the Corporation and the Subsidiary, that such action, inaction or decision is consistent, in all material respects, with the past practices of the Corporation and the Subsidiary, is taken in the ordinary course of the normal day-to-day operations of the Corporation and the Subsidiary, and is not materially adverse to either the Corporation or the Subsidiary, having regard to the fact that the Corporation and the Subsidiary have no material assets other than cash or cash equivalents or intercompany receivables;

“**Outside Date**” means June 30, 2017, or such later date as the Purchaser and the Company may agree in writing;

“**Parties**” means collectively, the Company, the Parent and the Purchaser, and “**Party**” means any of them;

“**Permit**” means any licence, permit, certificate, consent, order, grant, approval, classification, registration or other authorization of and from any Governmental Entity;

“**person**” includes an individual, firm, limited or general partnership, limited liability company, limited liability partnership, trust, joint venture, venture capital fund, association, body corporate, unincorporated organization, trustee, executor, administrator, legal representative, government (including any Governmental Entity) or any other entity, whether or not having legal status;

“**Plan of Arrangement**” means the plan of arrangement, substantially in the form of Schedule B hereto, and any amendments or variations thereto made in accordance with Section 9.11 hereof or the Plan of Arrangement or made at the direction of the Court in the Final Order with the written consent of the Company and the Purchaser, each acting reasonably;

“**Proceeding**” means any claim, action, suit, proceeding, arbitration, mediation or investigation, assessment or reassessment, whether civil, criminal, administrative or investigative;

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

from Governmental Entities, in each case required to consummate the transactions contemplated by this Agreement;

“**Release**” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, depositing, spraying, burying, abandoning, seeping, dumping or disposing of a Hazardous Material;

“**Representatives**” has the meaning ascribed thereto in Section 7.2(1);

“**Securities Act**” means the *Securities Act* (Ontario), as amended;

“**Securities Authorities**” means the Ontario Securities Commission and the applicable securities commissions and other securities regulatory authorities in each of the provinces of British Columbia, Alberta, Saskatchewan and Manitoba;

“**Securities Laws**” means the Securities Act and all other applicable Canadian provincial and territorial securities laws, rules and regulations and published policies thereunder and the rules of the Exchange applicable to companies listed thereon;

“**Shareholder Rights Plan**” means the amended and restated shareholder rights plan agreement dated as of November 14, 2006 between the Company and Equity Transfer and Trust Company, as amended and restated from time to time;

“**Shareholders**” means the registered or beneficial holders of the Shares, as the context requires;

“**Shares**” means the common shares in the capital of the Company;

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

“**Subsidiary**” means Khan Resources B.V., a wholly-owned subsidiary of the Company incorporated under the laws of the Netherlands;

“**Superior Proposal**” means a *bona fide* Acquisition Proposal (substituting “50%” for each reference to “20%” contained in the definition of Acquisition Proposal) that is made in writing after the date hereof, provided that:

- (a) the proposal complies with Securities Laws and did not result from a contravention of Section 7.2;
- (b) the Board of Directors has determined in good faith, after consultation with its financial advisors and outside legal counsel, that (i) the proposal is reasonably capable of being completed without undue delay taking into account all financial, legal, regulatory and other aspects of such proposal and the person making such proposal, (ii) the proposal is fully funded with committed financing in place or confirmation from the sources of funding has been obtained that such financing is available subject to customary conditions; and (iii) the proposal would, if consummated in accordance with its terms (but not assuming away any risk of

non-completion), result in a transaction that is more favourable to the Shareholders, from a financial point of view, than the transaction contemplated by this Agreement; and

- (c) the proposal is not subject to any due diligence and/or access condition;

“**Tax Act**” means the *Income Tax Act* (Canada), as amended;

“**Tax Returns**” means all reports, forms, elections, declarations, designations, schedules, agreements, statements, estimates, declarations of estimated tax, information statements, returns and all other similar documents required by Law to be filed with or provided to a Governmental Entity with respect to Taxes or Tax information reporting, including any claims for refunds of Taxes, and any amendments or supplements of the foregoing;

“**Taxes**” means any and all domestic and foreign federal, state, provincial, municipal and local taxes, assessments, reassessments and other governmental charges, duties, impositions and liabilities of any kind imposed by any Governmental Entity, including tax instalment payments, unemployment insurance contributions and employment insurance contributions, Canada Pension Plan and provincial pension contributions (and similar foreign plans), worker’s compensation and deductions at source, and including taxes based on or measured by gross receipts, income, profits, sales, capital, use and occupation, and including goods and services, value added, ad valorem, sales, use, capital, transfer, franchise, non-resident withholding, customs, payroll, recapture, employment, excise and property duties and taxes, together with all interest, penalties, fines and additions imposed with respect to such amounts;

“**Termination Fee**” has the meaning ascribed thereto in Section 7.3(2); and

“**Termination Fee Event**” has the meaning ascribed thereto in Section 7.3(2).

## **1.2 Interpretation Not Affected by Headings**

The division of this Agreement into Articles, Sections, subsections, paragraphs, clauses and Schedules and the insertion of headings are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. Unless the contrary intention appears, references in this Agreement to an Article, Section, subsection, paragraph, clause or Schedule by number or letter or both refer to the Article, Section, subsection, paragraph, clause or Schedule, respectively, bearing that designation in this Agreement.

## **1.3 Number and Gender**

In this Agreement, unless the contrary intention appears, words importing the singular include the plural and *vice versa*, and words importing gender include all genders.

## **1.4 Date for Any Action**

If the date on which any action is required to be taken hereunder by a Party is not a business day, such action shall be required to be taken on the next succeeding day which is a business day. In

this Agreement, references from or through any date mean, unless otherwise specified, from and excluding that date and/or through and including that date, respectively.

### **1.5 Currency**

Unless otherwise stated, all references in this Agreement to sums of money are expressed in, and all payments provided for herein shall be made in, Canadian currency and “Cdn\$” or “\$” refers to Canadian dollars.

### **1.6 Accounting Matters**

Unless otherwise stated, all accounting terms used in this Agreement shall have the meanings attributable thereto under IFRS and all determinations of an accounting nature required to be made hereunder shall be made in a manner consistent with IFRS.

### **1.7 Knowledge**

In this Agreement, unless otherwise stated, references to “the knowledge of the Company” means the actual knowledge, after reasonable internal inquiry in their capacity as officers of the Company and not in their personal capacity of the following officers of the Company: Chief Executive Officer and Chief Financial Officer.

### **1.8 Schedules**

The following Schedules are annexed to this Agreement and are incorporated by reference into this Agreement and form a part hereof:

Schedule A	-	Arrangement Resolution
Schedule B	-	Plan of Arrangement
Schedule C	-	Representations and Warranties of the Company
Schedule D	-	Representations and Warranties of the Parent and the Purchaser

### **1.9 Other Definitional and Interpretive Provisions**

- (a) References in this Agreement to the words “include”, “includes” or “including” shall be deemed to be followed by the words “without limitation” whether or not they are in fact followed by those words or words of like import.
- (b) The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.
- (c) Any capitalized terms used in the Company Disclosure Letter, any exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement.
- (d) References to any agreement, contract or plan are to that agreement, contract or plan as amended, modified or supplemented from time to time in accordance with

the terms hereof and thereof. Any reference in this Agreement to any person includes its heirs, administrators, executors, legal personal representatives, predecessors, successors and permitted assigns of that person.

- (e) References to a particular statute or Law shall be to such statute or Law and the rules, regulations and published policies made thereunder, as now in effect and as they may be promulgated thereunder or amended from time to time.

## **ARTICLE II THE ARRANGEMENT**

### **2.1 Arrangement**

The Company, the Parent and the Purchaser agree that the Arrangement shall be implemented in accordance with and subject to the terms and conditions contained in this Agreement and the Plan of Arrangement.

### **2.2 Interim Order**

The Company agrees that as soon as reasonably practicable after the date hereof, and in any event no later than April 28, 2017, the Company shall apply, in a manner acceptable to the Purchaser, acting reasonably, pursuant to Section 182 of the OBCA and, in co-operation with the Purchaser, prepare, file and diligently pursue an application for the Interim Order, the terms of which are acceptable to the Parent and the Purchaser, each acting reasonably, which shall provide, among other things:

- (a) for the class of persons to whom notice is to be provided in respect of the Arrangement and the Company Meeting and for the manner in which notice is to be provided;
- (b) that the requisite approval for the Arrangement Resolution shall be (i) two-thirds of the votes cast on the Arrangement Resolution by the Shareholders present in person or represented by proxy at the Company Meeting; and (ii) if required, such other approval as is required by MI 61-101;
- (c) that, in all other respects, the terms, restrictions and conditions of the Company's articles and by-laws, including quorum requirements and all other matters, shall apply in respect of the Company Meeting;
- (d) for the grant of the Dissent Rights;
- (e) for the notice requirements with respect to the presentation of the application to the Court for the Final Order;
- (f) that the Company Meeting may be adjourned or postponed from time to time by the Company without the need for additional approval of the Court; and

- (g) that the record date for Shareholders entitled to vote at the Company Meeting shall not change in respect of any adjournment(s) or postponement(s) of the Company Meeting, unless required by applicable Law.

### **2.3 The Company Meeting**

(1) Subject to the terms of this Agreement and the Interim Order and provided that this Agreement has not been terminated in accordance with its terms, the Company agrees to convene and conduct the Company Meeting in accordance with the Interim Order, the Company's articles and by-laws and applicable Laws on or before May 31, 2017 and not to propose to adjourn or postpone the Company Meeting without the prior written consent of the Purchaser:

- (a) except as required for quorum purposes or by applicable Law or by a Governmental Entity;
- (b) except as required under Section 7.1(2) or Section 7.2(9) of this Agreement or as otherwise permitted under this Agreement; or
- (c) except for an adjournment for the purpose of attempting to obtain the requisite approval of the Arrangement Resolution.

(2) Notwithstanding the receipt by the Company of a Superior Proposal in accordance with Section 7.2, a Change in Recommendation in accordance with Section 7.2(6) or any other intervening event and provided that this Agreement has not been terminated in accordance with its terms, unless otherwise agreed in writing by the Purchaser, the Company shall take all steps necessary to hold the Company Meeting and to cause the Arrangement Resolution to be voted on at the Company Meeting and shall not propose to adjourn or postpone the Company Meeting other than as contemplated by Section 2.3(1).

(3) Subject to the terms of this Agreement, the Company shall use its commercially reasonable efforts to solicit proxies in favour of the approval of the Arrangement Resolution, including, if so requested by the Purchaser, acting reasonably, using dealer and proxy solicitation services and cooperating with any persons engaged by the Purchaser to solicit proxies in favour of the approval of the Arrangement Resolution; *provided*, however, if the Company makes any Change in Recommendation in accordance with Section 7.2(6), it shall remain obligated to solicit proxies, but shall no longer be obligated to recommend approval of the Arrangement Resolution.

(4) The Company shall give notice to the Purchaser of the Company Meeting and allow the Purchaser's representatives and legal counsel to attend the Company Meeting.

(5) The Company shall advise the Purchaser as the Purchaser may reasonably request, and at least on a daily basis on each of the last ten business days prior to the date of the Company Meeting, as to the aggregate tally of the proxies received by the Company in respect of the Arrangement Resolution.

(6) The Company shall promptly advise the Purchaser of any written notice of dissent or purported exercise by any Shareholder of Dissent Rights received by the Company in relation to

the Arrangement Resolution and any withdrawal of Dissent Rights received by the Company and, subject to applicable Laws, any written communications sent by or on behalf of the Company to any Shareholder exercising or purporting to exercise Dissent Rights in relation to the Arrangement Resolution. The Company shall not make any payment or settlement offer, or agree to any such settlement, prior to the Effective Time with respect to any such notice of dissent or purported exercise of Dissent Rights unless the Purchaser shall have given its prior written consent to such payment, settlement offer or settlement as applicable.

## **2.4 The Company Circular**

(1) Subject to compliance by the Purchaser and/or the Parent with this Section 2.4, promptly after the execution of this Agreement, the Company shall prepare and complete the Company Circular together with any other documents required by the OBCA, Securities Laws and other applicable Laws in connection with the Company Meeting and the Arrangement, and the Company shall, as promptly as reasonably practicable after obtaining the Interim Order, cause the Company Circular and other documentation required in connection with the Company Meeting to be filed and to be sent to each Shareholder and other persons as required by the Interim Order and applicable Laws, in each case so as to permit the Company Meeting to be held within the time required by Section 2.3(1).

(2) The Company shall ensure that the Company Circular complies in all material respects with all applicable Laws, and, without limiting the generality of the foregoing, that the Company Circular shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made (other than with respect to any information furnished by the Parent, the Purchaser or their affiliates) and shall provide the Shareholders with information in sufficient detail to permit them to form a reasoned judgment concerning the matters to be placed before them at the Company Meeting. Subject to Section 7.2(10), the Company Circular shall include the recommendation of the Board of Directors that the Shareholders vote in favour of the Arrangement Resolution.

(3) The Purchaser and its legal counsel shall be given a reasonable opportunity to review and comment on drafts of the Company Circular and other documents related thereto, and reasonable consideration shall be given to any comments made by the Purchaser and its counsel, provided that all information relating solely to the Purchaser, the Parent or their affiliates included in the Company Circular shall be in form and content satisfactory to the Purchaser, acting reasonably.

(4) The Purchaser and the Parent shall furnish to the Company all such information concerning the Purchaser, the Parent and their respective affiliates and any financing sources, as applicable, as may be reasonably required by the Company in the preparation of the Company Circular and other documents related thereto, and the Purchaser and the Parent shall ensure that no such information shall contain any untrue statement of a material fact or omit to state a material fact required to be stated in the Company Circular in order to make any information so furnished not misleading in light of the circumstances in which it is disclosed.

(5) The Purchaser and the Parent shall jointly and severally indemnify and save harmless the Company, the Subsidiary and their respective directors, officers, employees, agents, advisors and

representatives from and against any and all liabilities, claims, demands, losses, costs, damages and expenses to which the Company, the Subsidiary or any of their respective directors, officers, employees, agents, advisors or representatives may be subject or may suffer, in any way caused by, or arising, directly or indirectly, from or in consequence of:

- (a) any misrepresentation or alleged misrepresentation in any information included in the Company Circular that is provided by the Purchaser, the Parent or their affiliates in writing for the purpose of inclusion in the Company Circular; and
- (b) any order made, or any inquiry, investigation or proceeding by any Securities Authority or other Governmental Entity, to the extent based on any misrepresentation or any alleged misrepresentation in any information related solely to the Purchaser, the Parent or their affiliates and provided by the Purchaser, the Parent or their affiliates in writing for the purpose of inclusion in the Company Circular.

(6) The Company, the Purchaser and the Parent shall promptly notify each other if at any time before the Effective Date it becomes aware that the Company Circular contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made, or that otherwise requires an amendment or supplement to the Company Circular, and the Parties shall co-operate in the preparation of any amendment or supplement to the Company Circular, as required or appropriate, and the Company shall, subject to compliance by the Purchaser and/or the Parent with this Section 2.4, and, if required by the Court or applicable Laws, promptly mail or otherwise publicly disseminate any amendment or supplement to the Company Circular to the Shareholders and file the same with the Securities Authorities and as otherwise required.

## **2.5 Final Order**

If the Interim Order is obtained, the Arrangement Resolution is passed at the Company Meeting as provided for in the Interim Order and as required by applicable Law, and subject to the terms of this Agreement, the Company shall as soon as reasonably practicable thereafter take all steps necessary or desirable to submit the Arrangement to the Court and diligently pursue an application for the Final Order pursuant to Section 182 of the OBCA.

## **2.6 Court Proceedings**

Subject to the terms and conditions of this Agreement, the Purchaser and the Parent shall co-operate with, assist and consent to the Company seeking the Interim Order and the Final Order, including by providing to the Company on a timely basis any information required to be supplied by the Purchaser and the Parent concerning the Purchaser and the Parent or their respective affiliates in connection therewith. The Company shall provide legal counsel to the Purchaser with reasonable opportunity to review and comment upon drafts of all material to be filed with the Court in connection with the Arrangement and reasonable consideration shall be given to any comments made by the Purchaser and its legal counsel. The Company shall also provide legal counsel to the Purchaser on a timely basis with copies of any notice of appearance and evidence

served on the Company or its legal counsel in respect of the application for the Final Order or any appeal therefrom. In addition, the Company will not object to legal counsel to the Purchaser making such submissions on the hearing of the motion for the Interim Order and the application for the Final Order as such counsel considers appropriate, provided that the Company is advised of the nature of any submissions prior to the hearing and such submissions are consistent with this Agreement and the Plan of Arrangement.

## **2.7 Performance of the Purchaser**

The Parent unconditionally and irrevocably guarantees, and covenants and agrees to be jointly and severally liable with the Purchaser for, the due and punctual performance of each and every obligation, covenant and agreement of the Purchaser arising under this Agreement and the Arrangement, including providing the Depositary with sufficient funds under Section 2.9 to pay the aggregate Consideration for all of the Shares to be acquired pursuant to the Arrangement and any other amounts required to be paid by the Purchaser or the Parent in connection with the transactions contemplated by this Agreement and all related fees and expenses for which the Purchaser or Parent is responsible under the terms of this Agreement (all in accordance with the terms of this Agreement) and any amount of any judgment or award made against the Purchaser for the benefit of the Company. The Parent shall cause the Purchaser to comply with all of the Purchaser's obligations under or relating to the Arrangement and the transactions contemplated by this Agreement.

## **2.8 Articles of Arrangement and Effective Date**

The Articles of Arrangement shall implement the Plan of Arrangement. The Articles of Arrangement shall include the form of the Plan of Arrangement attached to this Agreement as Schedule B and any amendments or variations thereto made in accordance with Section 9.11 or the Plan of Arrangement or made at the direction of the Court in the Final Order with the consent of the Company and the Purchaser, each acting reasonably. On the second business day after the satisfaction or, where not prohibited, the waiver by the applicable Party or Parties in whose favour the condition is, and subject to applicable Law, of the conditions (excluding conditions that, by their terms, cannot be satisfied until the Effective Date and the condition in Section 6.3(d), but subject to the satisfaction or, where not prohibited, the waiver by the applicable Party or Parties in whose favour the condition is, of those conditions as of the Effective Date) set forth in Article VI, unless another time or date is agreed to in writing by the Parties, the Articles of Arrangement shall be filed by the Company with the Director, provided that the Company shall not be required to file the Articles of Arrangement with the Director unless the Company has received written confirmation, in form satisfactory to it, from the Depositary that it has received the funds referred to in Section 2.9. Subject to the terms hereof, the Company shall specify in a written notice to the Purchaser the date the Articles of Arrangement are to be filed (the "**Filing Date**"), which date shall not be less than two business days following the date that such notice is provided. From and after the Effective Time, the Plan of Arrangement shall have all of the effects provided by applicable Law, including the OBCA. The closing of the transactions contemplated hereby shall take place at the offices of Davies Ward Phillips and Vineberg LLP or at such other location as may be agreed upon by the Parties.

## **2.9 Payment of Consideration**

On or prior to the Filing Date (and prior to the filing of the Articles of Arrangement), the Purchaser shall provide the Depositary with sufficient funds in escrow (the terms and conditions of such escrow to be satisfactory to the Company and the Purchaser, each acting reasonably and, in any event, be subject to the satisfaction or, where not prohibited, the waiver by the Party or Parties in whose favour the condition is, of the conditions set forth in Article VI at the Effective Time and receipt of the Certificate of Arrangement) to pay the aggregate Consideration for all of the Shares to be acquired pursuant to the Arrangement.

## **2.10 Tax Withholdings and Other Source Deductions**

Each of the Company, Parent, Purchaser and the Depositary shall be entitled to deduct and withhold from any amounts payable to any person pursuant to this Agreement and under the Plan of Arrangement such amounts as are required to be deducted or withheld with respect to such payment under the Tax Act or any provision of any other applicable Law. To the extent that amounts are so withheld or deducted and remitted to the applicable Governmental Entity, such withheld or deducted amounts shall be treated for all purposes of this Agreement and the Plan of Arrangement as having been paid to such person as the remainder of the payment in respect of which such deduction and withholding were made.

# **ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

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

(1) Except as disclosed in the Company Disclosure Letter, the Company hereby represents and warrants to and in favour of the Parent and the Purchaser as set forth in Schedule C and acknowledges that the Parent and the Purchaser are relying upon such representations and warranties in connection with the entering into of this Agreement.

(2) Except for the representations and warranties set forth in Schedule C, including the related disclosures in the Company Disclosure Letter, neither the Company nor any other person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of the Company, including any representation as to the accuracy or completeness of any information regarding the Company or any of its subsidiaries furnished or made available to the Parent, the Purchaser, or any officer, director, employee, representative (including any financial or other advisor) or agent of either the Parent, the Purchaser or any of their subsidiaries (including any information, documents or material made available in the Diligence Documents, information memoranda, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Company, or any representation or warranty arising in Law.

## **3.2 Company Disclosure Letter**

Contemporaneously with the execution and delivery of this Agreement, the Company is delivering to the Purchaser the Company Disclosure Letter required to be delivered pursuant to this Agreement, which sets out the disclosures, exceptions and exclusions contemplated or

permitted by this Agreement, including certain exceptions and exclusions to the representations and warranties and covenants of the Company contained in this Agreement. The disclosure of any item in the Company Disclosure Letter (other than in the index of documents appended thereto) shall constitute disclosure or, as applicable, exclusion of that item for the purposes of all representations and warranties or covenants contained in this Agreement, whether or not specifically cross referenced, where the relevance of that item as an exception to (or a disclosure for the purposes of) any representations and warranties and covenants is reasonably apparent. The Company shall be permitted to include an express cross-reference to an item in the Company's Public Disclosure Record in the Company Disclosure Letter provided that no qualification or disclosure shall be made by reference solely to the risk factors or forward-looking statements sections of the Company's Public Disclosure Record.

### **3.3 Survival of Representations and Warranties of the Company**

The representations and warranties of the Company contained in this Agreement shall not survive the completion of the Arrangement and shall expire and be terminated on the earlier of the Effective Time and the date on which this Agreement is terminated in accordance with its terms.

## **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE PARENT AND THE PURCHASER**

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

(1) Each of the Parent and the Purchaser hereby jointly and severally represents and warrants to and in favour of the Company as set forth in Schedule D and acknowledges that the Company is relying upon such representations and warranties in connection with the entering into of this Agreement.

(2) Except for the representations and warranties set forth in Schedule D, none of the Parent, the Purchaser nor any other person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of either the Parent or the Purchaser, including any representation as to the accuracy or completeness of any information regarding either the Parent or the Purchaser furnished or made available to the Company or its Representatives or as to the future revenue, profitability or success of either the Parent or the Purchaser, or any representation or warranty arising in Law.

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

The representations and warranties of the Parent and the Purchaser contained in this Agreement shall not survive the completion of the Arrangement and shall expire and be terminated on the earlier of the Effective Date and the date on which this Agreement is terminated in accordance with its terms.

**ARTICLE V  
COVENANTS OF COMPANY, THE PARENT AND THE PURCHASER**

**5.1 Covenants of the Company Regarding the Conduct of Business**

The Company covenants and agrees that, during the period from the date of this Agreement until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms, except: (a) as required or permitted by or arising out of this Agreement; (b) as required by applicable Law or by a Governmental Entity; or (c) with the prior written consent of the Purchaser (which consent shall not be unreasonably delayed, and in respect of Section 5.1(f), Section 5.1(h), Section 5.1(i), Section 5.1(j), Section 5.1(k), Section 5.1(o) or Section 5.1(r), which consent shall not be unreasonably withheld, conditioned or delayed, and in any event, the Purchaser shall respond within five business days of any request for consent), the Company shall, and shall cause the Subsidiary to, conduct its business in the Ordinary Course of Business and not make any material change in its business, assets, liabilities, operations, capital or affairs. Without limiting the generality of the foregoing, during such above-mentioned time period and subject to such above-mentioned exceptions, the Company shall not, nor shall it permit the Subsidiary to directly or indirectly:

- (a) amend its articles or by-laws or similar constating documents;
- (b) split, combine or reclassify any shares of the Company, or declare, set aside or pay any dividends or make any other distributions payable in cash, securities, property or otherwise;
- (c) redeem, repurchase, or otherwise acquire or offer to redeem, repurchase or otherwise acquire any shares of capital stock of the Company or the Subsidiary;
- (d) issue, deliver or sell, or grant any Lien with respect to, or authorize the issuance, delivery, sale or grant of any Lien with respect to, any shares of capital stock, or any options, warrants or similar rights exercisable or exchangeable for or convertible into such capital stock of the Company or the Subsidiary;
- (e) other than the current Plan of Liquidation and Distribution, as described below in paragraph (f), adopt a plan of liquidation or resolutions providing for the liquidation, dissolution, merger, consolidation, reorganization or winding up of the Company or the Subsidiary or reorganize, amalgamate or merge the Company or the Subsidiary with any other person;
- (f) take any further actions not already taken with respect to the Plan of Liquidation and Distribution approved by the Shareholders at the special meeting held on November 10, 2016, as more fully described in the Company's management information circular dated October 5, 2016, including, but not limited to, the appointment of a Liquidator, as defined in the Plan of Liquidation and Distribution;
- (g) acquire (by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, any assets, securities, properties, interests or businesses;

- (h) sell, lease or otherwise transfer, any assets, securities, properties, interests or businesses;
- (i) make any loans, advances, capital contributions, or investments;
- (j) prepay any long-term indebtedness before its scheduled maturity or create, incur, assume or otherwise become liable, in one transaction or in a series of related transactions, with respect to any indebtedness for borrowed money or guarantees thereof in an amount, on a per transaction or series of related transactions basis;
- (k) except as may be required by applicable Law or the terms of any existing Company Plan or any existing agreement in writing as of the date hereof: (i) increase any severance, change of control, bonus or termination pay to (or amend any existing arrangement with) any Company Employee or any director or officer of the Company or the Subsidiary; (ii) increase the benefits payable under any existing severance or termination pay policies or employment agreements with any current or former director or officer of the Company or, other than in the Ordinary Course of Business, any Company Employee (other than a director or officer); (iii) enter into any employment, deferred compensation or other similar agreement (or amend any such existing agreement) with any director or officer of the Company or, other than in the Ordinary Course of Business, any Company Employee (other than a director or officer); (iv) increase compensation, bonus levels or other benefits payable to any director or officer of the Company or the Subsidiary or, other than in the Ordinary Course of Business, any Company Employee (other than a director or officer); (v) loan or advance money or other property by the Company or the Subsidiary to any of their present or former directors, officers or Company Employees; (vi) establish, adopt, enter into, amend or terminate any Company Plan (or any plan, agreement, program, policy, trust, fund or other arrangement that would be a Company Plan if it were in existence as of the date hereof) or collective bargaining agreement; (vii) grant any equity or equity-based awards; or (viii) increase, or agree to increase, any funding obligation or accelerate, or agree to accelerate, the timing of any funding contribution under any Company Plan;
- (l) make any material change in the Company's methods of accounting, except as required by IFRS or pursuant to written instructions, comments or orders from any applicable Securities Authority, which instructions, comments, or orders shall have been disclosed to the Purchaser;
- (m) waive, release, assign, settle or compromise any Proceeding in a manner that could require a payment by, or release another person of an obligation to, the Company or the Subsidiary;
- (n) (i) fail to duly and timely file, in accordance with applicable Laws, all Tax Returns required to be filed by it on or after the date hereof; (ii) fail to timely withhold, collect, remit and pay all Taxes which are to be withheld, collected, remitted or paid by it to the extent due and payable except for any Taxes

contested in good faith pursuant to applicable Laws; (iii) make or rescind any material election relating to Taxes; (iv) make a request for a tax ruling; (v) settle or compromise any material claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy relating to Taxes; and (vi) change in any material respect any of its methods of reporting income, deductions or accounting for income tax purposes from those employed in the preparation of its income tax return for the tax year ending September 30, 2016, except as may be required by applicable Laws;

- (o) enter into any material contract (other than the renewal of a contract in existence on the date hereof on terms materially consistent with terms in existence on the date hereof) or terminate, fail to renew, cancel, waive, release, assign, grant or transfer any rights of material value or amend, modify or change in any material respect any existing material contract;
- (p) make an application to amend, terminate, allow to expire or lapse or otherwise modify any of its material Permits;
- (q) for greater certainty, except as contemplated in Section 7.8, amend, modify or terminate in any material respect any material insurance policy of the Company and the Subsidiary, taken as a whole, in effect on the date of this Agreement, except for scheduled renewals of any insurance policy of the Company or the Subsidiary in effect on the date hereof in the Ordinary Course of Business;
- (r) make or commit to make any material capital expenditures; or
- (s) agree, resolve or commit to do any of the foregoing,

provided that for greater certainty, in the case of the foregoing clauses (d), (g), and (s) as it pertains to clauses (d) and (g), that dealing with an Acquisition Proposal or Superior Proposal as permitted by and in accordance with Section 7.2 shall not require the consent of the Purchaser.

## **5.2 Covenants of the Company Regarding the Performance of Obligations**

Subject to the terms and conditions of this Agreement, the Company shall and shall cause **the Subsidiary** to perform all obligations required or desirable to be performed by the Company or the Subsidiary under this Agreement, and co-operate with the Parent and the Purchaser in connection therewith, in order to consummate and make effective, as soon as reasonably practicable, the Arrangement and, without limiting the generality of the foregoing, the Company shall and, where appropriate, shall cause the Subsidiary to:

- (a) use commercially reasonable efforts to obtain the requisite approvals of the Shareholders to the Arrangement Resolution including submitting the Arrangement Resolution for approval by the Shareholders at the Company Meeting in accordance with Section 2.3(1), except to the extent that the Board of Directors has withdrawn, modified or qualified its recommendation to the Shareholders in accordance with the terms of this Agreement;

- (b) promptly advise the Purchaser orally and, if then requested, in writing of any event, change or development that has or is reasonably expected to have a Material Adverse Effect in respect of the Company or resulted in any material adverse change in any fact set forth in the Company Disclosure Letter;
- (c) use commercially reasonable efforts to assist in effecting the resignations of the directors and officers of the Company and the Subsidiary effective immediately following the issuance of the Certificate of Arrangement;
- (d) use commercially reasonable efforts to obtain all third person and other consents, waivers, permits, exemptions, orders, approvals, agreements, amendments and modifications to any contracts that are necessary to permit the consummation of the transactions contemplated by this Agreement or required in order to maintain such contracts in full force and effect following completion of the Arrangement, in each case on terms satisfactory to the Purchaser, acting reasonably and without paying or providing a commitment to pay any consideration in respect thereof without the prior written consent of the Purchaser;
- (e) at the reasonable request of the Purchaser from time to time, deliver to the Purchaser any lists of non-objecting beneficial owners and registered holders of the Shares and any geographical reports prepared by its transfer agent in the possession of the Company, as well as a security position listing from each depository, including CDS Clearing and Depository Services Inc., and deliver any such lists to the Purchaser promptly following the date hereof and promptly deliver to the Purchaser upon demand thereafter supplemental lists setting out changes thereto; and
- (f) use commercially reasonable efforts to defend and upon request of the Purchaser take all commercially reasonable steps to resolve, in consultation with the Purchaser, all lawsuits or other legal, regulatory or other proceedings or disputes relating to this Agreement or the Arrangement, including any proceedings or disputes with respect to any dissident Shareholder or proxy solicitation matters to which it or the Subsidiary is a party or by which it or they are affected, and will consult with and permit the Purchaser to participate in any discussions with and in formulating strategies for responding to any dissident Shareholders provided that the Company shall not enter into any settlement of any such matters without the Purchaser's prior written consent.

### **5.3 Certain Covenants of the Parent**

- (a) Subject to the terms and conditions of this Agreement, the Parent shall, and shall cause the Purchaser, to perform all obligations required to be performed by Parent or the Purchaser under this Agreement, co-operate with the Company in connection therewith, and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing or the obligations in Section 2.9 of this

Agreement, the Parent shall ensure that the Purchaser will, by the Effective Date, have sufficient funds to pay the aggregate Consideration for all Shares pursuant to the Arrangement in accordance with the terms of this Agreement, and to make all other payments required to be made by the Parent or the Purchaser in connection with the transactions contemplated by this Agreement and to pay all related fees and expenses required to be paid by the Parent or Purchaser in accordance with the terms hereof.

- (b) The Parent shall use commercially reasonable efforts to cause the election or appointment of replacement directors and officers of the Company and the Subsidiary effective immediately following the issuance of the Certificate of Arrangement.
- (c) Following the Effective Date, in furtherance of and in connection with the winding-up and discontinuance of the business of the Company, the Parent shall cause the Company to be wound-up and dissolved in accordance with the OBCA.

#### **5.4 Mutual Covenants**

(1) Subject to the terms and conditions of this Agreement, each of the Parent, the Purchaser and the Company shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Law to consummate the Arrangement and the transactions contemplated by this Agreement as soon as practicable, including:

- (a) preparing and filing as promptly as practicable and in any event prior to the expiration of any legal deadline all necessary documents, registrations, statements, petitions, filings and applications to obtain any Regulatory Approvals;
- (b) using their commercially reasonable efforts to obtain and maintain all approvals, clearances, consents, registrations, Permits, authorizations and other confirmations required to be obtained from any Governmental Entity that are necessary to permit the consummation of the transactions contemplated by this Agreement, including the Regulatory Approvals;
- (c) using commercially reasonable efforts to oppose, lift or rescind any injunction or restraining or other order seeking to stop, or otherwise adversely affecting its ability to consummate, the Arrangement and to defend, or cause to be defended, any Proceedings to which it is a party or brought against it or its directors or officers challenging this Agreement or the consummation of the transactions contemplated hereby;
- (d) using commercially reasonable efforts to satisfy (or cause the satisfaction) of the conditions precedent to its obligations hereunder as set forth in Article VI to the extent the same is within its control; and
- (e) carrying out the terms of the Interim Order and Final Order applicable to it and using commercially reasonable efforts to comply promptly with all requirements

which applicable Laws may impose on it or its subsidiaries or affiliates with respect to the transactions contemplated hereby.

(2) The Parties shall not take any action, refrain from taking any commercially reasonable action, or permit any action to be taken or any commercially reasonable action not to be taken, which is inconsistent with this Agreement or which would reasonably be expected to significantly impede, delay or impair the completion of the transactions contemplated under this Agreement (including the satisfaction of any condition set forth in Article VI) or any Regulatory Approval except as specifically permitted by this Agreement.

(3) The Parties shall co-operate in the preparation of any application for the Regulatory Approvals and any other orders, clearances, consents, rulings, exemptions, no-action letters and approvals reasonably deemed by either the Purchaser or the Company to be necessary to discharge their respective obligations under this Agreement or otherwise advisable under applicable Laws in connection with the Arrangement and this Agreement. In connection with the foregoing, each Party shall furnish, on a timely basis, all information as may be reasonably required by the other Parties or by any Governmental Entity to effectuate the foregoing actions, and each covenants that, to its knowledge, no information so furnished by it in writing shall contain a misrepresentation.

(4) The Parties shall consult with, and consider in good faith any suggestions or comments made by, the other Parties with respect to the documentation relating to the Regulatory Approvals process, provided that, to the extent any such document contains any information or disclosure relating to a Party or any affiliate of a Party, such Party shall have approved such information or disclosure prior to the submission or filing of any such document (which approval shall not be unreasonably withheld or delayed).

(5) Subject to applicable Laws, the Parties shall co-operate with and keep each other fully informed as to the status of and the processes and proceedings relating to obtaining the Regulatory Approvals, and shall promptly notify each other of any communication from any Governmental Entity in respect of the Arrangement or this Agreement, and shall not make any submissions or filings, participate in any meetings or any material conversations with any Governmental Entity in respect of any filings, investigations or other inquiries related to the Arrangement or this Agreement unless it consults with the other Parties in advance and, to the extent not precluded by such Governmental Entity, gives the other Parties the opportunity to review drafts of any submissions or filings, or attend and participate in any communications or meetings. Notwithstanding the foregoing, submissions, filings or other written communications with any Governmental Entity may be redacted as necessary before sharing with the other Parties to address reasonable attorney-client or other privilege or confidentiality concerns, provided that external legal counsel to the Purchaser and the Company shall receive non-redacted versions of drafts or final submissions, filings or other written communications to any Governmental Entity on the basis that the redacted information shall not be shared with their respective clients.

(6) Each of the Purchaser and the Company shall promptly notify the other if at any time before the Effective Time it becomes aware that:

- (a) any application for a Regulatory Approval or other filing under applicable Laws made in connection with this Agreement, the Arrangement or the transactions contemplated herein contains a misrepresentation; or
- (b) any Regulatory Approval or other order, clearance, consent, ruling, exemption, no-action letter or other approval applied for as contemplated herein which has been obtained contains or reflects or was obtained following submission of any application, filing, document or submission as contemplated herein that contained a misrepresentation,

such that an amendment or supplement to such application, filing, document or submission or order, clearance, consent, ruling, exemption, no-action letter or approval may be necessary or advisable. In such case, the Parties shall co-operate in the preparation of such amendment or supplement as required.

(7) Notwithstanding anything in this Agreement to the contrary, if any objections are asserted with respect to the transactions contemplated hereby under any applicable Law, or if any proceeding is instituted or threatened by any Governmental Entity challenging or which could lead to a challenge of any of the transactions contemplated hereby as violative of or not in compliance with the requirements of any applicable Law, the Parties shall use their commercially reasonable efforts to resolve such proceeding so as to allow the Effective Time to occur prior to the Outside Date.

## **5.5 Public Communications**

Subject to Section 2.4, none of the Company, the Parent or the Purchaser shall, and each shall cause its respective representatives not to, issue any press release or otherwise make any disclosure relating to this Agreement or the Arrangement without the consent of the Parties hereto (which consent shall not be unreasonably withheld, conditioned or delayed); provided, however, that the foregoing shall be subject to the Company's and the Parent's overriding obligation to make any disclosure or filing required under applicable Laws or, in the case of the Company and the Parent, the rules of any stock exchange upon which its securities are listed or quoted, and in such circumstances the Party obliged to make such disclosure or filing shall use all commercially reasonable efforts to give prior oral or written notice to the other Parties and reasonable opportunity for the other Parties to review or comment on the disclosure or filing (other than with respect to confidential information contained in such disclosure or filing), and if such prior notice is not possible, to give such notice immediately following the making of any such disclosure or filing. Without limiting the generality of the foregoing and for greater certainty, the Parent and the Purchaser acknowledge and agree that the Company shall file this Agreement, together with a material change report related thereto, under the Company's profile on SEDAR without any further notice to the Purchaser or the Parent.

## **ARTICLE VI CONDITIONS**

### **6.1 Mutual Conditions Precedent**

The obligations of the Parties to complete the Arrangement and the transactions contemplated by this Agreement are subject to the fulfillment, on or before the Effective Time, of each of the following conditions precedent, each of which may only be waived with the mutual consent of the Parties:

- (a) the Arrangement Resolution shall have been approved by the Shareholders at the Company Meeting in accordance with the Interim Order;
- (b) the Interim Order and the Final Order shall each have been obtained on terms consistent with this Agreement, and shall not have been set aside or modified in a manner unacceptable to the Company and the Purchaser, each acting reasonably, on appeal or otherwise;
- (c) no applicable Law shall be in effect that makes the consummation of the Arrangement illegal or otherwise prohibits or enjoins the Company or the Purchaser from consummating the Arrangement;
- (d) no Proceeding shall be pending or overtly threatened by any Governmental Entity seeking an injunction, judgment, decree or other order to prevent or challenge the consummation of the Arrangement or the other transactions contemplated by this Agreement; and
- (e) this Agreement shall not have been terminated in accordance with its terms.

### **6.2 Additional Conditions Precedent to the Obligations of the Parent and the Purchaser**

The obligations of the Parent and the Purchaser to complete the transactions contemplated by this Agreement shall also be subject to the fulfillment of each of the following conditions precedent (each of which is for the exclusive benefit of the Parent and the Purchaser and may be waived by the Parent and the Purchaser):

- (a) all covenants of the Company under this Agreement to be performed on or before the Effective Time shall have been duly performed by the Company in all material respects, and the Parent and the Purchaser shall have received a certificate of the Company addressed to the Parent and the Purchaser and dated the Effective Date, signed on behalf of the Company by two senior executive officers of the Company (on the Company's behalf and without personal liability), confirming the same as of the Effective Date;
- (b) the representations and warranties of the Company set forth in this Agreement shall be true and correct in all respects, without regard to any materiality qualifications contained in them, as of the Effective Time, as though made at and as of the Effective Time (except for representations and warranties made as of a

specified date, the accuracy of which shall be determined as of that specified date), except where any failures of any representations and warranties to be so true and correct in all respects would not, either individually or in the aggregate, have a Material Adverse Effect or would not prevent, enjoin or materially hinder or delay the consummation of the Agreement, and the Parent and the Purchaser shall have received a certificate of the Company addressed to the Parent and the Purchaser and dated the Effective Date, signed on behalf of the Company by two senior executive officers of the Company (on the Company's behalf and without personal liability), confirming the same as of the Effective Date;

- (c) since the date hereof, there shall not have been or occurred a Material Adverse Effect;
- (d) the resignations of the directors and officers of the Company and the Subsidiary referred to in Section 5.2(c) shall have been executed and delivered to the Company and the Purchaser;
- (e) the aggregate number of Shares held, directly or indirectly, by those holders of such shares who have validly exercised Dissent Rights and not withdrawn such exercise in connection with the Arrangement (or instituted proceedings to exercise Dissent Rights) shall not exceed 10% of the aggregate number of Shares outstanding immediately prior to the Effective Time; and
- (f) the Plan of Arrangement shall not have been amended, modified or supplemented (i) by the Company without the Purchaser's written consent or (ii) by approval or direction of the Court without the written consent of the Purchaser, acting reasonably.

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

The obligations of the Company to complete the transactions contemplated by this Agreement shall also be subject to the following conditions precedent (each of which is for the exclusive benefit of the Company and may be waived by the Company):

- (a) all covenants of the Parent and the Purchaser under this Agreement to be performed on or before the Effective Time shall have been duly performed by the Parent and the Purchaser in all material respects, and the Company shall have received a certificate of the Parent and the Purchaser, addressed to the Company and dated the Effective Date, signed on behalf of the Parent and the Purchaser respectively by two of its senior executive officers (on its behalf and without personal liability), confirming the same as of the Effective Date;
- (b) the representations and warranties of the Parent and the Purchaser set forth in this Agreement shall be true and correct in all respects, without regard to any materiality qualifications contained in them, as of the Effective Time as though made at and as of the Effective Time (except for representations and warranties made as of a specified date, the accuracy of which shall be determined as of that specified date), except where the failure or failures of all such representations and

warranties to be so true and correct in all respects would not prevent, enjoin or materially hinder or delay the consummation of the Arrangement, and the Company shall have received a certificate of the Parent and the Purchaser, addressed to the Company and dated the Effective Date, signed on behalf of the Parent and the Purchaser respectively by two of its senior executive officers (on its behalf and without personal liability), confirming the same as of the Effective Date;

- (c) the elections or appointments of replacement directors and officers of the Corporation and the Subsidiary referred to in Section 5.3(b) shall have been executed and delivered to the Company; and
- (d) the Purchaser shall have deposited or caused to be deposited with the Depository in escrow (the terms and conditions of such escrow to be satisfactory to the Company, acting reasonably) in accordance with Section 2.9 the funds required to effect payment in full of the aggregate Consideration to be paid for the Shares pursuant to the Arrangement and the Depository shall have confirmed in writing to the Company receipt of these funds.

#### **6.4 Satisfaction of Conditions**

The conditions precedent set out in Sections 6.1, 6.2 and 6.3 shall be conclusively deemed to have been satisfied, waived or released when the Certificate of Arrangement is issued by the Director in accordance with the terms of this Agreement. For greater certainty, and notwithstanding the terms of any escrow arrangement entered into between the Purchaser and the Depository, all funds held in escrow by the Depository pursuant to Section 2.9 hereof shall be released from escrow when the Certificate of Arrangement is issued by the Director without any further act or formality required on the part of any person.

### **ARTICLE VII ADDITIONAL AGREEMENTS**

#### **7.1 Notice and Cure Provisions**

- (1) Each Party shall give prompt notice to the other Parties of the occurrence, or failure to occur, at any time from the date hereof until the earlier to occur of the termination of this Agreement and the Effective Time of any event or state of facts which occurrence or failure would, or would be likely to:
  - (a) cause any of the representations or warranties of any Party contained herein to be untrue or inaccurate in any material respect on the date hereof or at the Effective Time; or
  - (b) result in the failure to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by any Party hereunder prior to the Effective Time.

(2) The Parent may not exercise its right to terminate this Agreement pursuant to Section 8.1(1)(c)(ii) (on its own behalf and on behalf of the Purchaser) and the Company may not exercise its right to terminate this Agreement pursuant to Section 8.1(1)(d)(ii) unless the Party seeking to terminate this Agreement shall have delivered a written notice to the other Parties specifying in reasonable detail all breaches of covenants, representations and warranties or other matters which the Party delivering such notice is asserting as the basis for the termination right. If any such notice is delivered, provided that a Party is proceeding diligently to cure such matter and such matter is reasonably capable of being cured, no Party may exercise such termination right until the earlier of (a) the Outside Date; and (b) the date that is 30 business days following receipt of such notice by the Party to whom the notice was delivered, if such matter has not been cured by such date. If such notice has been delivered prior to the date of the Company Meeting, such meeting shall, unless the Parties agree otherwise, be postponed or adjourned until the expiry of such period (without causing any breach of any other provision contained herein), provided such period does not extend beyond the Outside Date.

## 7.2 Non-Solicitation

(1) Except as expressly provided in this Section 7.2, the Company shall not, directly or indirectly, through any officer, director, employee, representative (including any financial or other advisor) or agent of the Company or the Subsidiary (collectively, “**Representatives**”): (a) solicit, initiate, facilitate or knowingly encourage (including by furnishing information) any inquiries or proposals regarding, constituting, or which may reasonably be regarded to lead to, an Acquisition Proposal; (b) encourage or participate in any discussions or negotiations with any person (other than the Purchaser and the Parent) regarding an Acquisition Proposal; (c) make a Change in Recommendation; (d) accept, approve, endorse, enter into or recommend, or propose publicly to accept, approve, endorse or recommend, any Acquisition Proposal (it being understood that publicly taking no position or a neutral position with respect to an Acquisition Proposal for a period of no more than five business days following the formal announcement of such Acquisition Proposal shall not be considered to be in violation of this Section 7.2(1)); or (e) accept, approve, endorse, recommend or enter into, or publicly propose to accept, approve, endorse or enter into, any agreement in respect of an Acquisition Proposal (other than a confidentiality and standstill agreement permitted by Section 7.2(3)).

(2) Except as otherwise expressly provided in this Section 7.2, the Company shall, and shall cause the Subsidiary and Representatives to, immediately cease and cause to be terminated any solicitation, encouragement, discussion or negotiation with any persons conducted heretofore by the Company, the Subsidiary or any Representatives with respect to any actual or potential Acquisition Proposal, and, in connection therewith, the Company shall discontinue access to the Diligence Documents (and not establish or allow access to any other Diligence Documents, virtual or otherwise or otherwise furnish information) and shall as soon as possible request, to the extent that it is entitled to do so (and exercise all rights it has to require) the return or destruction of all confidential information regarding the Company and the Subsidiary previously provided to any such person or any other person and shall request (and exercise all rights it has to require) the destruction of all material including or incorporating or otherwise reflecting any material confidential information regarding the Company and the Subsidiary. The Company agrees that neither it, nor the Subsidiary, shall terminate, waive, amend or modify, and agrees to actively prosecute and enforce, any provision of any existing confidentiality agreement relating to any

potential Acquisition Proposal or any standstill agreement to which it or the Subsidiary is a party, it being acknowledged and agreed that the automatic termination of any standstill provisions of any such agreement as a result of entering into and the announcement of this Agreement by the Company, pursuant to the express terms of any such agreement, shall not be a violation of this Section 7.2(2) and that the Company shall not be prohibited from considering a Superior Proposal from a party whose standstill obligations so terminated automatically upon the entering into and the announcement of this Agreement.

(3) Notwithstanding Section 7.2(1) if at any time following the date of this Agreement and prior to obtaining the approval of the Arrangement Resolution by the Shareholders at the Company Meeting, the Company receives any written Acquisition Proposal, other than any Acquisition Proposal that resulted from a material breach of this Section 7.2, the Board of Directors may contact the person making such Acquisition Proposal and its Representatives solely for the purpose of clarifying the terms and conditions of such Acquisition Proposal and the likelihood of its consummation so as to determine whether such Acquisition Proposal is, or could reasonably be likely to lead to, a Superior Proposal. If the Board of Directors determines in good faith, after consultation with its financial advisors and outside counsel, that such Acquisition Proposal constitutes or could reasonably be expected to lead to a Superior Proposal, if consummated in accordance with its terms, then the Company may, following compliance with Section 7.2(4):

- (a) furnish information with respect to the Company and the Subsidiary to the person making such Acquisition Proposal; and/or
- (b) enter into, participate, facilitate and maintain discussions or negotiations with, and otherwise co-operate with or assist, the person making such Acquisition Proposal,

provided that the Company shall not, and shall not allow its Representatives to, disclose any non-public information to such person without having entered into a confidentiality and standstill agreement (a correct and complete copy of which confidentiality and standstill agreement shall be provided to the Purchaser before any such non-public information is provided) with such person that contains provisions that are no less favourable to the Company than those contained in the Confidentiality Agreement, provided that such confidentiality and standstill agreement may not include any provision calling for an exclusive right to negotiate with the Company and may not restrict the Company or the Subsidiary from complying with this Section 7.2, and shall promptly provide to the Purchaser any material non-public information concerning the Company or the Subsidiary provided to such other person which was not previously provided to the Purchaser.

(4) The Company shall promptly (and in any event within 24 hours following receipt) notify the Purchaser (orally and in writing) in the event it receives after the date hereof a *bona fide* Acquisition Proposal (including any request for non-public information relating to the Company or the Subsidiary, in each case in connection with a potential Acquisition Proposal), including the material terms and conditions thereof and the identity of the person making the Acquisition Proposal, and shall keep the Purchaser reasonably informed as to the status of developments and negotiations with respect to such Acquisition Proposal, including any changes to the material terms or conditions of such Acquisition Proposal.

(5) Notwithstanding Section 7.2(1), if at any time following the date of this Agreement and prior to obtaining the approval of the Arrangement Resolution by the Shareholders at the Company Meeting, the Company receives an Acquisition Proposal not resulting from a material breach of this Section 7.2 that the Board of Directors concludes in good faith, after consultation with its financial and outside legal advisors, constitutes a Superior Proposal and that failure to take such action would be inconsistent with its fiduciary duties under applicable Law, the Board of Directors may, subject to compliance with the procedures set forth in this Section 7.2 and Section 8.1(1)(d)(i), authorize the Company to terminate this Agreement and contemporaneously enter into a definitive agreement with respect to such Superior Proposal, if and only if:

- (a) it has provided the Purchaser with a copy of the acquisition document proposed to be entered into in respect of the Superior Proposal and written confirmation from the Company that the Board of Directors has determined that such proposal constitutes a Superior Proposal; and
- (b) five business days (the “**Matching Period**”) shall have elapsed from the date that is the later of (i) the date the Purchaser received written notice advising the Parent that the Board of Directors has resolved, subject only to compliance with this Section 7.2, to terminate this Agreement to enter into a definitive agreement with respect to such Superior Proposal and (ii) the date the Purchaser has received all of the materials set forth in Section 7.2(5)(a) (it being understood that the Company shall promptly inform the Purchaser of any amendment to the financial or other material terms of such Superior Proposal during such period).

(6) Notwithstanding Section 7.2(1), the Board of Directors may, subject to compliance with the procedures set forth in this Section 7.2, make a Change in Recommendation (other than of the type referred to in clause (iii) of the definition thereof) if the Board of Directors determines in good faith, after consultation with its outside legal advisors, that failure to take such action would be inconsistent with its fiduciary duties under applicable law, if and only if,

- (a) following the date of this Agreement and prior to obtaining the approval of the Arrangement Resolution by the Shareholders at the Company Meeting, the Company receives an Acquisition Proposal not resulting from a material breach of this Section 7.2 that the Board of Directors determines in good faith, after consultation with its financial and outside legal advisors, constitutes a Superior Proposal; and
- (b) the Company has provided the Purchaser with written notice that there is a Superior Proposal, together with all documentation comprising the Superior Proposal and confirmation that, subject to the terms of this Agreement, the Board of Directors intends to make a Change in Recommendation (other than of the type referred to in Clause (iii) of the definition thereof).

(7) During the Matching Period, the Company agrees that the Parent and the Purchaser shall have the right, but not the obligation, to offer to amend the terms of this Agreement. The Board of Directors shall review any offer to amend the terms of this Agreement in good faith in order to determine, in its discretion in the exercise of its fiduciary duties and in consultation with its

financial and outside legal advisors, whether the Parent's and the Purchaser's amended offer, upon acceptance by the Company would cause the Superior Proposal giving rise to the Matching Period to cease to be a Superior Proposal. If the Board of Directors determines that the Acquisition Proposal giving rise to such Matching Period does not continue to be a Superior Proposal compared to this Agreement as it is proposed to be amended by the Parent and the Purchaser, the Parties shall amend this Agreement to give effect to such amendments and the Board of Directors shall promptly reaffirm its recommendation of the Arrangement. If the Board of Directors continues to believe, in good faith, after consultation with its financial and outside legal advisors, that such Superior Proposal remains a Superior Proposal and therefore rejects the Parent's and the Purchaser's amended offer, if any, or the Parent and the Purchaser fail to enter into an agreement with the Company reflecting such amended offer, the Board of Directors may, subject to compliance with the procedures set forth in Section 7.2(5) and Section 8.1(1)(d)(i), authorize the Company to terminate this Agreement and contemporaneously enter into a definitive agreement with respect to such Superior Proposal.

(8) The Company acknowledges that each successive material modification to any Acquisition Proposal shall constitute a new Acquisition Proposal for purposes of the requirements under Section 7.2(5)(b) and shall initiate a new five business day Matching Period.

(9) In the event the Company provides the notice contemplated by Section 7.2(5) or Section 7.2(6) on a date which is less than five business days prior to the Company Meeting, the Company may, or at the Purchaser's request will, adjourn or postpone the Company Meeting to a date that is not more than five business days after the date of the notice.

(10) Nothing contained in this Agreement shall prohibit the Board of Directors from making any disclosure to Shareholders as required by applicable Securities Laws or if the Board of Directors, acting in good faith and upon the advice of outside legal counsel, shall first have determined that the failure to make such disclosure would be inconsistent with its fiduciary duty provided that for greater certainty in the event of a Change of Recommendation and a termination by the Parent of this Agreement pursuant to Section 8.1(1)(c)(i) (on its own behalf and on behalf of the Purchaser), the Company shall pay the Termination Fee as prescribed by Section 7.3(2) and Section 7.3(3). In addition, nothing contained in this Agreement shall prevent the Company or the Board of Directors from calling and holding a meeting of the Shareholders, or any of them, requisitioned by the Shareholders, or any of them, in accordance with the OBCA or ordered to be held by a court in accordance with applicable Laws.

### **7.3 Termination Fee**

(1) The Purchaser shall pay any filing fees payable in connection with the Regulatory Approvals, including the cost and expenses of all legal action required to obtain the Regulatory Approvals. Each Party shall pay all other fees, costs and expenses incurred by such Party in connection with this Agreement and the Arrangement.

(2) If a Termination Fee Event occurs, the Company shall pay as directed by the Parent in writing (by wire transfer of immediately available funds) the Termination Fee in accordance with Section 7.3(3). For the purposes of this Agreement, "Termination Fee" means \$175,000, less the amount of any withholding required by applicable Laws relating to Taxes which is concurrently

remitted by the Company to the relevant Governmental Entity in respect of such amount, and “Termination Fee Event” means the termination of this Agreement pursuant to:

- (a) Section 8.1(1)(c)(i); or
- (b) Section 8.1(1)(d)(i).

(3) If a Termination Fee Event occurs due to a termination of this Agreement by the Company pursuant to Section 8.1(1)(d)(i), the Termination Fee shall be paid simultaneously with the occurrence of such Termination Fee Event. If a Termination Fee Event occurs due to a termination of this Agreement by the Purchaser pursuant to Section 8.1(1)(c)(i), the Termination Fee shall be paid within two business days following such Termination Fee Event.

(4) In no event shall the Company be required to pay under Section 7.3(2) and/or Section 7.3(3), in the aggregate, an amount in excess of the Termination Fee.

(5) Each of the Parties acknowledges that the agreements contained in this Section 7.3 are an integral part of the transactions contemplated in this Agreement and that, without those agreements, the Parties would not enter into this Agreement. Each Party acknowledges that all of the payment amounts set out in this Section 7.3 are payments of liquidated damages which are a genuine pre-estimate of the damages which the Party entitled to such damages will suffer or incur as a result of the event giving rise to such payment and the resultant termination of this Agreement and are not penalties. Each Party irrevocably waives any right that it may have to raise as a defence that any such liquidated damages are excessive or punitive. Upon receipt as directed by the Parent of any Termination Fee pursuant to this Section 7.3 neither the Purchaser nor the Parent shall have any further claim against the Company arising from or in connection with this Agreement or the Arrangement, and the Purchaser and the Parent agree that, if paid by the Company in accordance with the terms hereof, the Termination Fee shall be the sole and exclusive remedy of the Parent and the Purchaser, provided that nothing in this Section 7.3 shall preclude the Purchaser or the Parent from, prior to the termination of this Agreement in accordance with its terms, seeking injunctive relief to restrain any breach or threatened breach by the Company of any of its obligations hereunder or otherwise to obtain specific performance.

#### **7.4 Reverse Termination Fee**

(1) If this Agreement is terminated by the Company pursuant to:

- (a) Section 8.1(1)(d)(ii); or
- (b) Section 8.1(1)(d)(iii);

then in each such case the Parent or the Purchaser shall pay as directed by the Company in writing (by wire transfer of immediately available funds) the Reverse Termination Fee in accordance with Section 7.4(2). For purposes of this Agreement, “Reverse Termination Fee” means \$175,000, less the amount of any withholding required by applicable Laws relating to Taxes which is concurrently remitted by the Parent or the Purchaser, as applicable, to the relevant Governmental Entity in respect of such amount.

(2) The Reverse Termination Fee shall be paid within two business days following such termination of the Agreement by the Company. The Reverse Termination Fee shall be paid from the Escrow Amount in accordance with the terms of the Escrow Agreement.

(3) In no event shall the Parent or the Purchaser, as applicable, be required to pay under Section 7.4(1), in the aggregate, an amount in excess of the Reverse Termination Fee.

(4) Each of the Parties acknowledges that the agreements contained in this Section 7.4 are an integral part of the transactions contemplated in this Agreement and that, without those agreements, the Parties would not enter into this Agreement. Each Party acknowledges that all of the payment amounts set out in this Section 7.4 are payments of liquidated damages which are a genuine pre-estimate of the damages which the Party entitled to such damages will suffer or incur as a result of the event giving rise to such payment and the resultant termination of this Agreement and are not penalties. Each Party irrevocably waives any right that it may have to raise as a defence that any such liquidated damages are excessive or punitive. Upon receipt as directed by the Company of any Reverse Termination Fee pursuant to this Section 7.4 the Company shall have no further claim against either the Purchaser or the Parent arising from or in connection with this Agreement or the Arrangement, and the Company agrees that, if paid by the Purchaser or the Parent in accordance with the terms hereof, the Reverse Termination Fee shall be the sole and exclusive remedy of the Company, provided that nothing in this Section 7.4 shall preclude the Company from, prior to the termination of this Agreement in accordance with its terms, seeking injunctive relief to restrain any breach or threatened breach by the Purchaser or the Parent of any of their respective obligations hereunder or otherwise to obtain specific performance.

## **7.5 Access to Information; Confidentiality Agreement**

(1) From the date hereof until the earlier of the Effective Time and the termination of this Agreement, subject to applicable Law and the terms of any contract of the Company or the Subsidiary, the Company shall:

- (a) give to the Purchaser and its representatives reasonable access to the offices, properties, books and records of the Company and the Subsidiary; and
- (b) furnish to the Purchaser and its representatives such financial and operating data and other information as such persons may reasonably request.

(2) Any investigation pursuant to this Section 7.5 shall be conducted during normal business hours and in such manner as not to interfere unreasonably with the conduct of the business of the Company and the Subsidiary. Neither the Purchaser nor any of its representatives shall contact officers or employees of the Company or the Subsidiary except after prior approval of the Chief Executive Officer of the Company, which approval shall not be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, any investigation pursuant to this Section 7.5, including the provision of access and the furnishing of information, shall not in any way be deemed to expand the scope of the Company's representations and warranties in this Agreement.

(3) Notwithstanding Section 7.5(1) or any other provision of this Agreement, the Company shall not be obligated to provide access to, or to disclose, any information to the Purchaser if the

Company reasonably determines that such access or disclosure would violate applicable Law or jeopardize any privilege claim by the Company or the Subsidiary or interfere unreasonably with the conduct of the business of the Company and the Subsidiary or require any action by the Company outside of normal business hours.

(4) For greater certainty, the Parent and the Purchaser shall treat, and shall cause their respective representatives to treat, all information furnished to them or any of such representatives in connection with the transactions contemplated by this Agreement or pursuant to the terms of this Agreement in accordance with the terms of the Confidentiality Agreement. Without limiting the generality of the foregoing, the Parent and the Purchaser acknowledge and agree that the Company Disclosure Letter and all information contained in it is confidential and shall be treated in accordance with the terms of the Confidentiality Agreement.

## **7.6 Interim Period Consents**

The Company may seek approval to undertake any actions not otherwise permitted to be taken under Section 5.1 directly from Colin Hames and the Purchaser shall ensure that such person shall respond, on behalf of the Purchaser, to the Company's requests in an expeditious manner.

## **7.7 Employee Matters**

From and after the Effective Time, the Purchaser shall honour and perform, or cause the Company to honour and perform, all of the obligations of the Company and the Subsidiary under employment and other agreements with current or former Company Employees and Company Plans in accordance with their terms as in effect immediately before the Effective Time.

## **7.8 Indemnification and Insurance**

(1) From and after the Effective Time, the Purchaser shall, and shall cause the Company to, indemnify and hold harmless, to the fullest extent permitted under applicable Law (and to also advance expenses as incurred to the fullest extent permitted under applicable Law), each present and former director and officer of the Company and the Subsidiary (each, an "**Indemnified Person**") against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any Proceeding, arising out of or related to such Indemnified Person's service as a director or officer of the Company and/or the Subsidiary or services performed by such persons at the request of the Company and/or the Subsidiary at or prior to or following the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, including the approval or completion of this Agreement and the Arrangement or any of the other transactions contemplated by this Agreement or arising out of or related to this Agreement and the transactions contemplated hereby. Neither the Purchaser nor the Company shall settle, compromise or consent to the entry of any judgment in any Proceeding involving or naming an Indemnified Person or arising out of or related to an Indemnified Person's service as a director or officer of the Company and/or the Subsidiary or services performed by such persons at the request of the Company and/or the Subsidiary at or prior to or following the Effective Time without the prior written consent of that Indemnified Person unless such settlement, compromise or consent includes an unconditional release of such Indemnified Person from all liability arising out of such Proceeding.

(2) Prior to the Effective Time, the Company and the Subsidiary shall, and from and after the Effective Time if the Company and the Subsidiary are unable to, the Parent and the Purchaser shall, or shall cause the Company and the Subsidiary to, obtain and fully pay a single premium for the non-cancellable extension of the directors' and officers' liability coverage of the Company's and the Subsidiary's existing directors' and officers' insurance policies for a claims reporting or run-off and extended reporting period and claims reporting period of at least six years from and after the Effective Time with respect to any claim related to any period of time at or prior to the Effective Time from an insurance carrier with the same or better credit rating as the Company's current insurance carriers with respect to directors' and officers' liability insurance ("**D&O Insurance**"), and with terms, conditions, retentions and limits of liability that are no less advantageous to the Indemnified Persons than the coverage provided under the existing policies of the Company and the Subsidiary in respect of claims arising from facts or events which existed or occurred at or prior to the Effective Time (including in connection with this Agreement or the transactions or actions contemplated hereby) provided, however, that the Company and the Subsidiary shall not acquire such insurance (and the Purchaser and the Parent shall not be required to cause the Company and the Subsidiary to purchase such insurance) if the premium therefor exceeds 300% of the annual premium paid by the Company and the Subsidiary in respect of their existing D&O Insurance as of the date hereof. If the Company and the Subsidiary for any reason fail to obtain such "run-off" insurance policies as of the Effective Time, the Company and the Subsidiary shall (or if they are unable to, the Parent and the Purchaser shall, or shall cause the Company and the Subsidiary to) continue to maintain in effect for a period of at least six years from and after the Effective Time the D&O Insurance in place as of the date hereof with terms, conditions, retentions and limits of liability that are no less advantageous than the coverage provided under the Company's and the Subsidiary's existing policies as of the date hereof, or the Company and the Subsidiary (or if they are unable to, the Parent and the Purchaser shall, or shall cause the Company and the Subsidiary to) purchase comparable D&O Insurance for such six year period with terms, conditions, retentions and limits of liability that are at least as favourable as provided in the Company's and the Subsidiary's existing policies as of the date hereof provided, however, that if such comparable insurance cannot be obtained, or can only be obtained by paying an annual premium in excess of 300% of the annual premium paid by the Company and the Subsidiary in respect of their D&O Insurance as of the date hereof, the Company and the Subsidiary shall only be required to obtain as much coverage as can be acquired by paying an annual premium equal to 300% of the annual premium paid by the Company and the Subsidiary in respect of their existing D&O Insurance as of the date hereof.

(3) If any Indemnified Person makes any claim for indemnification or advancement of expenses under this Section 7.8 that is denied by the Company or the Purchaser and the Parent, and a court of competent jurisdiction determines that the Indemnified Person is entitled to such indemnification, then the Company and the Purchaser and the Parent shall pay such Indemnified Person's costs and expenses, including reasonable legal fees and expenses, incurred in connection with pursuing such claim against the Company or the Purchaser.

(4) The rights of the Indemnified Persons under this Section 7.8 shall be in addition to any rights such Indemnified Persons may have under the constating documents of the Company or the Subsidiary, or under any applicable Law or agreement of any Indemnified Person with the Company or the Subsidiary. All rights to indemnification and exculpation from liabilities for acts

or omissions occurring at or prior to the Effective Time and rights to advancement of expenses relating thereto in favour of any Indemnified Person as provided in the constating documents of the Company or the Subsidiary or any agreement between such Indemnified Person and the Company or the Subsidiary shall survive the Effective Time for a period of not less than six years and shall not be amended, repealed or otherwise modified in any manner that would adversely affect any right thereunder of any such Indemnified Person.

(5) If the Company, the Purchaser or the Parent or any of their successors or assigns shall (a) amalgamate, consolidate with or merge or wind-up into any other person and shall not be the continuing or surviving corporation or entity; or (b) transfer all or substantially all of its properties and assets to any person, then, and in each such case, proper provisions shall be made so that the successors and assigns and transferees of the Company, the Purchaser or the Parent, as the case may be, shall assume all of the obligations set forth in this Section 7.8. The Parent shall ensure that the Company and the Purchaser and the Parent and any of their successors or assigns have adequate financial resources to satisfy all of the obligations set forth in this Section 7.8.

(6) The provisions of this Section 7.8 shall survive the consummation of the transactions contemplated by this Agreement and are intended for the benefit of, and shall be enforceable by, the Indemnified Persons, and their respective heirs, executors, administrators and personal representatives and shall be binding on the Company and its successors and assigns, and, for such purpose only, the Company hereby confirms that it is acting as trustee on their behalf and agrees to enforce the provisions of this Section 7.8 on their behalf.

## **7.9 Expense Reimbursement**

(1) If this Agreement is terminated by the Parent pursuant to Section 8.1(1)(b)(i), the Company shall reimburse the Parent (the “**Expense Reimbursement**”) an amount of up to \$125,000 for reasonable and documented out-of-pocket expenses incurred by Parent in connection with the transactions contemplated herein.

(2) Any such Expense Reimbursement payment shall be made within two business days of receipt of copies of invoices or other reasonable proof of payments actually made.

(3) For certainty, no Expense Reimbursement will be paid in the event a Termination Payment is payable to the Purchaser.

## **ARTICLE VIII TERMINATION, AMENDMENT AND WAIVER**

### **8.1 Termination**

(1) This Agreement may be terminated and the Arrangement may be abandoned at any time prior to the Effective Time (notwithstanding any approval of this Agreement or the Arrangement Resolution or the Arrangement by the Shareholders and/or the Court):

- (a) by mutual written agreement of the Parties;

- (b) by either the Company or the Parent, on its own behalf and on behalf of the Purchaser, if:
- (i) the Effective Time shall not have occurred on or before the Outside Date, except that the right to terminate this Agreement under this Section 8.1(1)(b)(i) shall not be available to any such Party whose failure (or, in the case of the Parent, the failure of any of the Purchaser or the Parent) to fulfill any of its obligations has been the cause of, or resulted in, the failure of the Effective Time to occur by such date;
  - (ii) after the date hereof, there shall be enacted or made any applicable Law (or any such applicable Law shall have been amended) that makes consummation of the Arrangement illegal or otherwise prohibited or enjoins the Company, the Parent or the Purchaser from consummating the Arrangement and such applicable Law (if applicable) or injunction shall have become final and non-appealable; or
  - (iii) the Arrangement Resolution shall have failed to receive the requisite vote of the Shareholders for approval at the Company Meeting (including any adjournment or postponement thereof) in accordance with the Interim Order;
- (c) by the Parent on its own behalf and on behalf of the Purchaser, if:
- (i) prior to obtaining the approval of the Arrangement Resolution by the Shareholders, (i) the Board of Directors shall have withdrawn, withheld, qualified or modified in a manner adverse to the Parent, the Purchaser or the consummation of the Arrangement its recommendation to the Shareholders to vote in favour of the Arrangement, or failed to reconfirm within five business days after request by the Parent its approval and recommendation of the Arrangement or the Arrangement Resolution (it being understood that publicly taking a neutral position or no position with respect to an Acquisition Proposal beyond a period of five business days after public announcement of an Acquisition Proposal shall be considered an adverse modification); (ii) the Board shall have approved or recommended any Acquisition Proposal; (iii) the Company enters into a written agreement in respect of an Acquisition Proposal (other than a confidentiality agreement permitted by Section 7.2(3)); or (iv) the Company shall have publicly announced the intention to do any of the foregoing (each of the clauses (i), (ii), (iii) and (iv) above, a “**Change in Recommendation**”) or the Company breaches Section 7.2 in any material respect; or
  - (ii) subject to Section 7.1(2), a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Company set forth in this Agreement shall have occurred that would cause the conditions set forth in Section 6.1 or Section 6.2 not to be satisfied, and

such conditions are not satisfied or are incapable of being satisfied by the Outside Date; provided that the Purchaser or the Parent is not then in breach of this Agreement so as to cause any of the conditions set forth in Section 6.1 or Section 6.3 not to be satisfied; or

- (d) by the Company, if:
  - (i) prior to obtaining the approval of the Arrangement Resolution by the Shareholders, the Board of Directors authorizes the Company, subject to complying with the terms of this Agreement (including the terms of Section 7.2 and payment of the Termination Fee in accordance with Section 7.3), to enter into a written agreement concerning a Superior Proposal;
  - (ii) subject to Section 7.1(2), a breach of any representation or warranty or failure to perform any covenant or agreement on the part of any of the Purchaser or the Parent set forth in this Agreement shall have occurred that would cause the conditions set forth in Section 6.1 or 6.3 not to be satisfied, and such conditions are not satisfied or are incapable of being satisfied by the Outside Date; provided that the Company is not then in breach of this Agreement so as to cause any of the conditions set forth in Section 6.1 or Section 6.2 not to be satisfied; or
  - (iii) the Purchaser does not provide or cause to be provided the Depositary with sufficient funds to complete the transactions contemplated by the Agreement as required pursuant to Section 2.9; provided that the Company is not then in breach of this Agreement so as to cause any of the conditions set forth in Section 6.1 or 6.2 not to be satisfied.

(2) The Party desiring to terminate this Agreement pursuant to this Section 8.1 (other than pursuant to Section 8.1(1)(a)) shall give notice of such termination to the other Parties.

## **8.2 Effect of Termination**

- (a) If this Agreement is terminated pursuant to Section 8.1, this Agreement shall become void and of no effect without liability of any Party (or any shareholder, director, officer, employee, agent, consultant or representative of such Party) to any other Party hereto, except that (a) the provisions of this Section 8.2, Section 2.4(5), Section 2.7, Section 7.3, Section 7.5(4), and Article IX (other than Section 9.3) shall survive any termination hereof pursuant to Section 8.1(1); and (b) neither the termination of this Agreement nor anything contained in this Section 8.2 shall relieve any Party for any liability for any wilful and intentional breach of this Agreement subject to the limitations set forth in Section 7.3(5).

## **8.3 Waiver**

No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar) or a future waiver of the same provisions, nor shall

such waiver be binding unless executed in writing by the Party to be bound by the waiver. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

## **ARTICLE IX GENERAL PROVISIONS**

### **9.1 Notices**

All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of the date delivered or sent if delivered personally or sent by facsimile or e-mail transmission, or as of the following business day if sent by prepaid overnight courier, to the Parties at the following addresses (or at such other addresses as shall be specified by any Party by notice to the other Parties given in accordance with these provisions):

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

Arden Holdings Ltd.  
c/o Continental Trust Corporation Limited  
5th Floor, Richmond House  
12 Par-la-Ville Road  
P.O. Box HM 646  
Hamilton HM CX, Bermuda

Attention: Colin Hames  
Facsimile: (441) 405-8107  
E-mail: [cgh@etc.bm](mailto:cgh@etc.bm)

with a copy to:

Norton Rose Canada LLP  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street  
Toronto, ON M5J 2Z4  
Canada  
Attention: Barry Segal  
Facsimile: (416) 216-4861  
E-mail: [barry.segal@nortonrosefulbright.com](mailto:barry.segal@nortonrosefulbright.com)

- (b) if to the Company:

Khan Resources Inc.  
The Exchange Tower  
130 King Street West, Suite 1800  
Toronto, Ontario M5X 1E3

Attention: Grant Edey  
Facsimile: (416) 947-0167  
E-mail: [gedey@rogers.com](mailto:gedey@rogers.com)

with a copy to:

Davies Ward Phillips Vineberg LLP  
155 Wellington St W,  
Toronto, ON M5V 3J7

Attention: Cameron Rusaw  
Facsimile: (416) 863-0871  
E-Mail: [crusaw@dwpv.com](mailto:crusaw@dwpv.com)

## **9.2 Governing Law; Jurisdiction; Service of Process**

This Agreement shall be governed, including as to validity, interpretation and effect, by the Laws of the Province of Ontario and the Laws of Canada applicable therein, and shall be construed and treated in all respects as an Ontario contract. The Parties agree that any Proceeding seeking to enforce any provisions of, or based on any matter arising out of or in connection with this Agreement or the transactions contemplated hereby shall be brought in any court of the Province of Ontario, and each of the Parties irrevocably consents to the jurisdiction of such courts (and of the appellate courts therefrom) in any such Proceeding and irrevocably waives, to the fullest extent that any such Proceeding brought in any such court has been brought in an inconvenient forum. Each of the Parties expressly acknowledges that the foregoing waiver is intended to be irrevocable under all applicable Laws. Process in any Proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 9.1 shall be deemed effective service.

## **9.3 Injunctive Relief and Specific Performance**

The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at Law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that, prior to the termination of this Agreement pursuant to Section 8.1, the Parties shall be entitled to an injunction or injunctions and other equitable relief to prevent breaches or threatened breaches of the provisions of this Agreement or to otherwise obtain specific performance of any such provisions and to cause the Arrangement and the other transactions contemplated by this Agreement to be consummated on the terms and subject to the conditions set forth herein. Each Party hereby waives (i) any defences in any action for specific performance, include the defence that a remedy at Law would be adequate and (ii) any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief.

#### **9.4 Time of Essence**

Time shall be of the essence in this Agreement.

#### **9.5 Entire Agreement, Binding Effect and Assignment**

This Agreement shall be binding on and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

This Agreement (including the Schedules hereto), the Company Disclosure Letter and the Confidentiality Agreement constitute the entire agreement, and supersede all other prior agreements and understandings, both written and oral, between the Parties, or any of them, with respect to the subject matter hereof and thereof. Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by any of the Parties without the prior written consent of all the Parties.

#### **9.6 Severability**

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

#### **9.7 No Third Party Beneficiaries**

Except as provided in Section 2.4(5), Section 7.7 and Section 7.8 which, without limiting their terms, are intended as stipulations for the benefit of the third persons mentioned therein, and except for the rights of the Shareholders to receive the Consideration, following the Effective Time pursuant to the Arrangement (for which purpose the Company hereby confirms that it is acting as trustee on behalf of the Shareholders), this Agreement is not intended to confer any rights or remedies upon any person other than the Parties to this Agreement. The Parent and the Purchaser appoint the Company as the trustee for the applicable directors, officers and employees of the Company with respect to such individuals specified in Section 2.4(5), Section 7.7 and Section 7.8, hereof and the Company accepts such appointment. To the fullest extent permitted by applicable Law, each of the Parent, the Purchaser and the Company agrees that the stipulations for the benefit of third persons set out in Section 2.4(5), Section 7.7 and Section 7.8 shall not be revoked, and that acceptance by such third persons of such stipulations shall be deemed to have occurred, without prejudice to their right to accept in any other manner, through the fulfilment of their respective duties and functions with the Company or the Subsidiary until the end of the business day following the execution of this Agreement, it being an essential condition of this Agreement that the persons intended to be beneficiaries of such stipulations shall be entitled to all the rights and remedies available to them thereunder and under applicable Law.

## **9.8 Rules of Construction**

The Parties to this Agreement waive the application of any applicable Law or rule of construction providing that ambiguities in any agreement or other document shall be construed against the Party drafting such agreement or other document.

## **9.9 No Liability**

No director or officer of the Purchaser or the Parent or any of their subsidiaries shall have any personal liability whatsoever to the Company under this Agreement or any other document delivered in connection with the transactions contemplated hereby on behalf of the Purchaser or the Parent or any of their subsidiaries. No director or officer of the Company or the Subsidiary shall have any personal liability whatsoever to the Purchaser or the Parent under this Agreement or any other document delivered in connection with the transactions contemplated hereby on behalf of the Company or the Subsidiary.

## **9.10 Counterparts, Execution**

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The Parties shall be entitled to rely upon delivery of an executed facsimile or similar executed electronic copy of this Agreement, and such facsimile or similar executed electronic copy shall be legally effective to create a valid and binding agreement between the Parties.

## **9.11 Amendments**

This Agreement and the Plan of Arrangement may, at any time and from time to time before or after the holding of the Company Meeting but not later than the Effective Time, be amended by mutual written agreement of the Parties, and any such amendment may, subject to the Interim Order and Final Order and applicable Laws, without limitation:

- (a) change the time for performance of any of the obligations or acts of the Parties;
- (b) modify any representation or warranty contained herein or in any document delivered pursuant hereto;
- (c) modify any of the covenants herein contained and waive or modify performance of any of the obligations of the Parties; and/or
- (d) modify any mutual conditions precedent herein contained.

*[Remainder of page intentionally left blank.]*

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

**ARDEN HOLDINGS LTD.**

By: "Colin Hames"

Colin Hames  
Director

**2567850 ONTARIO INC.**

By: "Colin Hames"

Colin Hames  
President and Chief Executive Officer

**KHAN RESOURCES INC.**

By: "Grant Edey"

Grant Edey  
President and Chief Executive Officer

## SCHEDULE A

### ARRANGEMENT RESOLUTION

BE IT RESOLVED THAT:

1. The arrangement (the “**Arrangement**”) under Section 182 of the *Business Corporations Act* (Ontario) (the “**OBCA**”) of Khan Resources Inc. (the “**Company**”), as more particularly described and set forth in the management information circular (the “**Circular**”) dated ●, 2017 of the Company accompanying the notice of this meeting (as the Arrangement may be amended, modified or supplemented in accordance with the arrangement agreement (the “**Arrangement Agreement**”) made as of March 22, 2017 between the Company, Arden Holdings Ltd. and 2567850 Ontario Inc., is hereby authorized, approved and adopted.
2. The plan of arrangement of the Company (as it has been or may be amended, modified or supplemented in accordance with the Arrangement Agreement and its terms (the “**Plan of Arrangement**”)), the full text of which is set out in Appendix “●” to the Circular, is hereby authorized, approved and adopted.
3. The (i) Arrangement Agreement and related transactions, (ii) actions of the directors of the Company in approving the Arrangement Agreement, and (iii) actions of the directors and officers of the Company in executing and delivering the Arrangement Agreement, and any amendments, modifications or supplements thereto, are hereby ratified and approved.
4. The Company be and is hereby authorized to apply for a final order from the Ontario Superior Court of Justice (Commercial List) to approve the Arrangement on the terms set forth in the Arrangement Agreement and the Plan of Arrangement (as they may be amended, modified or supplemented and as described in the Circular).
5. Notwithstanding that this resolution has been passed (and the Arrangement adopted) by the shareholders of the Company or that the Arrangement has been approved by the Ontario Superior Court of Justice (Commercial List), the directors of the Company are hereby authorized and empowered to, without notice to or approval of the shareholders of the Company, (i) amend, modify or supplement the Arrangement Agreement or the Plan of Arrangement to the extent permitted by the Arrangement Agreement, and (ii) subject to the terms of the Arrangement Agreement, not to proceed with the Arrangement and related transactions.
6. Any officer or director of the Company is hereby authorized and directed for and on behalf of the Company to execute and deliver for filing with the Director under the OBCA articles of arrangement and such other documents as are necessary or desirable to give effect to the Arrangement in accordance with the Arrangement Agreement, such determination to be conclusively evidenced by the execution and delivery of such articles of arrangement and any such other documents.
7. Any officer or director of the Company is hereby authorized and directed for and on behalf of the Company to execute or cause to be executed and to deliver or cause to be delivered all such other documents and instruments and to perform or cause to be performed all such other acts and things as such person determines may be necessary or desirable to give full effect to the

foregoing resolution and the matters authorized thereby, such determination to be conclusively evidenced by the execution and delivery of such document or instrument or the doing of any such act or thing.

**SCHEDULE B  
PLAN OF ARRANGEMENT**

**PLAN OF ARRANGEMENT UNDER SECTION 182  
OF THE *BUSINESS CORPORATIONS ACT* (ONTARIO)**

**ARTICLE I  
INTERPRETATION**

**1.1 Definitions**

Unless indicated otherwise, where used in this Plan of Arrangement, capitalized terms used but not defined shall have the meanings ascribed thereto in the Arrangement Agreement (as defined below) and the following terms shall have the following meanings (and grammatical variations of such terms shall have corresponding meanings):

“**affiliate**” has the meaning ascribed thereto in National Instrument 45-106 *Prospectus Exemptions* of the Canadian Securities Administrators;

“**Arrangement**” means the arrangement under Section 182 of the OBCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations thereto made in accordance with Section 9.11 of the Arrangement Agreement or this Plan of Arrangement or made at the direction of the Court in the Final Order with the consent of the Company and the Purchaser, each acting reasonably;

“**Arrangement Agreement**” means the arrangement agreement dated as of March 22, 2017, between the Purchaser, the Parent and the Company (including the schedules thereto) as it may be amended, modified or supplemented from time to time in accordance with the terms thereof;

“**Arrangement Resolution**” means the special resolution approving this Plan of Arrangement to be considered at the Company Meeting;

“**Articles of Arrangement**” means the articles of arrangement of the Company in respect of the Arrangement, required by the OBCA to be sent to the Director after the Final Order is made, which shall be in a form and content satisfactory to the Company and the Purchaser, each acting reasonably;

“**business day**” means any day, other than a Saturday, a Sunday or a statutory or civic holiday in Toronto, Canada or Bermuda;

“**Certificate of Arrangement**” means the certificate of arrangement to be issued by the Director pursuant to subsection 183(2) of the OBCA in respect of the Articles of Arrangement;

“**Company**” means Khan Resources Inc., a corporation existing under the laws of Ontario;

“**Company Circular**” means the notice of the Company Meeting and accompanying management information circular, including all schedules, appendices and exhibits thereto, sent to, among others, the holders of Shares in connection with the Company Meeting, as amended, supplemented or otherwise modified from time to time;

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

“**Consideration**” means \$0.05 in cash per Share;

“**Court**” means the Ontario Superior Court of Justice (Commercial List);

“**Depository**” means Equity Transfer and Trust Company, as depository, or any other bank, trust company or financial institution, as may be agreed to in writing by the Company and the Purchaser;

“**Director**” means the Director appointed pursuant to Section 278 of the OBCA;

“**Dissent Rights**” has the meaning ascribed thereto in Section 4.1;

“**Dissenting Shareholder**” means a registered holder of Shares who validly dissents in respect of the Arrangement Resolution in compliance with the Dissent Rights and has not withdrawn or been deemed to have withdrawn such exercise of Dissent Rights, but only in respect of the Shares in respect of which Dissent Rights are validly exercised by such registered holder;

“**Effective Date**” means the date shown on the Certificate of Arrangement giving effect to the Arrangement;

“**Effective Time**” means 12:01 a.m. (Toronto time), or such other time as may be agreed to in writing by the Company and the Purchaser, on the Effective Date;

“**Exchange**” means the Canadian Securities Exchange;

“**Final Order**” means the final order of the Court, as contemplated by Section 2.5 of the Arrangement Agreement, approving the Arrangement, as such order may be amended by the Court (with the consent of both the Company and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is acceptable to both the Company and the Purchaser, each acting reasonably) on appeal;

“**Governmental Entity**” means any (a) supranational, multinational, federal, national, provincial, state, regional, municipal, local or other government, governmental or public department, ministry, central bank, court, tribunal, arbitral body, office, Crown corporation, commission board, commissioner, board, bureau or agency, domestic or foreign, (b) subdivision, agent, commission, or authority of any of the foregoing, or (c) quasi-governmental or private body, including any tribunal, commission, stock exchange (including the Exchange), regulatory agency or self-regulatory organization exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing;

“**holders**” means when used with reference to the Shares, except where the context otherwise requires, the holders of the Shares shown from time to time in the registers maintained by or on behalf of the Company in respect of the Shares;

“**Interim Order**” means the interim order of the Court in a form acceptable to the Company and the Purchaser, acting reasonably, as contemplated by Section 2.2 of the Arrangement Agreement, providing for, among other things, the calling and holding of the Company Meeting, as the same may be amended by the Court with the consent of the Company and the Purchaser, each acting reasonably;

“**Law**” or “**Laws**” means all federal, provincial, state, municipal, regional and local laws (statutory, common or otherwise), by-laws, statutes, rules, regulations, principles of law and equity, orders, rulings, certificates, ordinances, judgments, injunctions, determinations, awards, decrees, legally binding codes or other requirements, whether domestic or foreign, and the terms and conditions of any grant of approval, permission, authority or licence or similar requirement enacted, adapted, promulgated or applied by any Governmental Entity or self-regulatory authority (including the Exchange), and the term “applicable” with respect to such Laws and in a context that refers to one or more persons, means such Laws as are binding upon or applicable to such person or its assets;

“**Letter of Transmittal**” means the letter of transmittal sent by the Company to holders of Shares for use in connection with the Arrangement, in a form acceptable to the Purchaser, acting reasonably;

“**Liens**” means any hypothecs, mortgages, liens, charges, security interests, prior claims, pledges, encroachments, options, rights of first refusal or first offer, occupancy rights, covenants, restrictions, encumbrances of any kind and adverse claims;

“**OBCA**” means the *Business Corporations Act* (Ontario), as amended;

“**Parent**” means Arden Holdings Ltd., a corporation existing under the laws of Turks and Caicos Islands;

“**Parties**” means, collectively, the Purchaser, the Company and the Parent, and “**Party**” means any of them;

“**person**” includes an individual, firm, limited or general partnership, limited liability company, limited liability partnership, trust, joint venture, venture capital fund, association, body corporate, unincorporated organization, trustee, executor, administrator, legal representative, government (including any Governmental Entity) or any other entity, whether or not having legal status;

“**Plan of Arrangement**” means this plan of arrangement proposed under Section 182 of the OBCA, and any amendments or variations hereto made in accordance with Section 9.11 of the Arrangement Agreement or this Plan of Arrangement or made at the direction of the Court in the Final Order with the consent of the Company and the Purchaser, each acting reasonably;

“**Purchaser**” means 2567850 Ontario Inc., a corporation existing under the Laws of Ontario, and a wholly-owned subsidiary of the Parent;

“**Shareholder Rights Plan**” means the amended and restated shareholder rights plan agreement dated as of November 14, 2006 between the Company and Equity Transfer and Trust Company, as amended and restated from time to time;

“**Shares**” means the common shares in the capital of the Company; and

“**Tax Act**” means the *Income Tax Act* (Canada), as amended.

## **1.2 Interpretation Not Affected by Headings**

The division of this Plan of Arrangement into Articles, Sections, Appendices, subsections, paragraphs and clauses and the insertion of headings are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Plan of Arrangement. Unless the contrary intention appears, references in this Plan of Arrangement to an Article, Section, Appendix, subsection, paragraph or clause by number or letter or both refer to the Article, Section, Appendix, subsection, paragraph or clause,

respectively, bearing that designation in this Plan of Arrangement. The words “hereof”, “herein” and “hereunder” and words of like import used in this Plan of Arrangement shall refer to this Plan of Arrangement as a whole and not to any particular provision of this Plan of Arrangement.

### **1.3 Rules of Construction**

In this Plan of Arrangement, unless the contrary intention appears, words importing the singular include the plural and *vice versa*, and words importing gender include all genders. References in this Plan of Arrangement to the words “include”, “includes” or “including” shall be deemed to be followed by the words “without limitation” whether or not they are in fact followed by those words or words of like import.

### **1.4 Currency**

Unless otherwise stated, all references in this Plan of Arrangement to sums of money are expressed in, and all payments provided for herein shall be made in, Canadian currency and “Cdn\$” or “\$” refers to Canadian dollars.

### **1.5 Date for Any Action**

If the date on which any action is required to be taken hereunder by a person is not a business day, such action shall be required to be taken on the next succeeding day which is a business day.

### **1.6 References to Dates, Statutes, etc.**

In this Plan of Arrangement, references from or through any date mean, unless otherwise specified, from and including that date and/or through and including that date, respectively. In this Plan of Arrangement, references to a particular statute or Law shall be to such statute or Law and the rules, regulations and published policies made thereunder, as now in effect and as they may be promulgated thereunder or amended from time to time. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. Any reference in this Plan of Arrangement to a person includes its heirs, administrators, executors, legal personal representatives, predecessors, successors and permitted assigns of that person.

### **1.7 Time**

Time shall be of the essence in this Plan of Arrangement. All times expressed herein are Toronto, Ontario time unless otherwise stipulated herein.

## **ARTICLE II THE ARRANGEMENT**

### **2.1 Arrangement Agreement**

This Plan of Arrangement is made pursuant to, and is subject to the provisions of, the Arrangement Agreement.

### **2.2 Binding Effect**

This Plan of Arrangement and the Arrangement, upon the filing of the Articles of Arrangement and the issuance of the Certificate of Arrangement, will become effective, and be binding on the Purchaser, the

Parent, the Company, all holders and beneficial owners of Shares, and the Depositary, at and after the Effective Time without any further act or formality required on the part of any person, except as expressly provided herein.

### **ARTICLE III ARRANGEMENT**

#### **3.1 The Arrangement**

The following events set out in this Section 3.1 shall occur and shall be deemed to occur consecutively commencing at the Effective Time in the order set out in this Section 3.1 without any further authorization, act or formality:

- (1) the Shareholder Rights Plan shall be terminated and be of no further force and effect and all rights issued thereunder shall be terminated and expire without any payment in respect thereof.
- (2) all directors of the Company shall cease to be directors and the following persons shall become the directors of the Company: Colin Hames and Karen McArthur.
- (3) the following steps shall occur simultaneously: each Share outstanding immediately prior to the Effective Time shall be transferred from the holder thereof to the Purchaser in exchange for the Consideration from the Purchaser, subject to (for greater certainty) applicable withholdings in accordance with Section 5.3, which amount shall be paid to the holder pursuant to and in accordance with Article V from the funds deposited with the Depositary under Section 5.1(1), and the names of the holders of such Shares transferred to the Purchaser shall be removed from the register of holders of Shares, and the Purchaser shall be recorded as the registered holder of the Shares so acquired and shall be the legal and beneficial owner thereof; provided that, if ultimately entitled in accordance with Section 4.1, Dissenting Shareholders shall have the right to receive a payment from the Purchaser equal to the fair value of the outstanding Shares held immediately prior to the Effective Time by such Dissenting Shareholders in lieu of the Consideration.

#### **3.2 Tax Election**

At any time after the completion of the share exchange set out in Section 3.1(3), as promptly as possible after all conditions therefor have been met, the Company shall file the prescribed form of election under the Tax Act with the Canada Revenue Agency electing to cease being a public corporation for the purposes of the Tax Act.

#### **3.3 Transfers Free and Clear**

Any transfer of any securities pursuant to the Arrangement shall be free and clear of all Liens.

### **ARTICLE IV RIGHTS OF DISSENT**

#### **4.1 Rights of Dissent**

Registered holders of the Shares may exercise, pursuant to and in the manner set forth in Section 185 of the OBCA, the right of dissent in connection with the Arrangement, as same may be modified by the

Interim Order and this Section 4.1 (“**Dissent Rights**”); *provided* that, notwithstanding subsection 185(6) of the OBCA, the written notice setting forth such registered holder’s objection to the Arrangement Resolution referred to in subsection 185(6) of the OBCA must be received by the Company not later than 5:00 p.m. Toronto time on the business day which is two business days immediately preceding the date of the Company Meeting (as it may be adjourned or postponed from time to time). Registered holders of Shares who duly and validly exercise such Dissent Rights and who:

- (1) are ultimately entitled to be paid by the Purchaser the fair value for their Shares, (a) shall be deemed to have transferred the Shares held by them and in respect of which Dissent Rights have been duly and validly exercised to the Purchaser, without any further act or formality, free and clear of all Liens at the time specified in Section 3.1(3), in consideration of a debt claim against the Purchaser to be paid the fair value of such Shares and (b) shall be entitled to be paid by the Purchaser an amount equal to the fair value of such Shares, and shall not be entitled to any other payment or consideration, including any payment that would be payable under the Arrangement had such registered holders not exercised their Dissent Rights in respect of such Shares; or
- (2) are ultimately not entitled, for any reason, to be paid fair value for their Shares, shall be deemed to have participated in the Arrangement on the same basis as a non-dissenting holder of Shares as contemplated by Section 3.1(3).

#### **4.2 Recognition of Dissenting Shareholders**

- (1) In no circumstances shall the Purchaser, the Company or any other person be required to recognize a person exercising Dissent Rights unless such person is the registered holder of those Shares in respect of which such rights are sought to be exercised.
- (2) For greater certainty, in no case shall the Purchaser, the Company or any other person be required to recognize a Dissenting Shareholder as a holder of Shares in respect of which Dissent Rights have been validly exercised after the completion of the steps set out in Section 3.1(3) and the names of such Dissenting Shareholders shall be removed from the applicable register of holders of Shares in respect of which Dissent Rights have been validly exercised at the same time as the steps described in Section 3.1(3) occur and the Purchaser shall be recorded as the holder of the Shares so transferred and shall be deemed the legal and beneficial owner thereof free and clear of any Liens. In addition to any other restrictions under section 185 of the OBCA, holders of Shares who vote or have instructed a proxyholder to vote such Shares in favour of the Arrangement Resolution (but only in respect of such Shares) shall not be entitled to exercise Dissent Rights.

### **ARTICLE V CERTIFICATES AND PAYMENTS**

#### **5.1 Payment of Consideration**

- (1) On the Effective Date, in accordance with the terms of the Arrangement Agreement, the Purchaser shall (and the Parent shall ensure that the Purchaser shall) deposit cash with the Depositary in the aggregate amount equal to the payments required by this Plan of Arrangement to be made to holders of Shares (with the amount per Share in respect of which Dissent Rights have been exercised being deemed to be the Consideration for this purpose only). The cash deposited shall not be used for any other purpose except as provided in this Plan of Arrangement. The cash deposited with the Depositary shall be

held in an interest-bearing account, and any interest earned on such funds shall be for the account of the Purchaser.

- (2) Upon the surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Shares that were transferred pursuant to Section 3.1(3), together with a duly completed and executed Letter of Transmittal and such additional documents and instruments as the Depositary may reasonably require, the holder of the Shares represented by such surrendered certificate shall be entitled to receive in exchange therefor from the Depositary, and the Depositary shall deliver to such holder as soon as possible, a cheque (or other form of immediately available funds) representing the cash which such holder has the right to receive under the Arrangement for such Shares, less any amounts withheld pursuant to Section 5.3, and any certificate so surrendered shall forthwith be cancelled. For greater certainty, as of the Effective Time, a holder of Shares' right to receive cash under the Arrangement shall be satisfied only out of the amount deposited pursuant to Section 5.1(1), and such holder shall have no further right or claim as against the Company or the Purchaser except to the extent the cash so deposited is insufficient to satisfy the amounts payable to such former holders.
- (3) Until surrendered for cancellation as contemplated by this Section 5.1, each certificate that immediately prior to the Effective Time represented Shares shall be deemed after the Effective Time to represent only the right to receive upon such surrender a cash payment in lieu of such certificate as contemplated in this Section 5.1 or Section 4.1, as the case may be, less any amounts withheld pursuant to Section 5.3. Any such certificate formerly representing Shares not duly surrendered on or before the sixth anniversary of the Effective Date shall cease to represent a claim by or interest of any former holder of Shares of any kind or nature against or in the Company or the Purchaser. On such date, all cash to which such former holder was entitled shall be deemed to have been surrendered to the Purchaser.
- (4) Any payment made by way of cheque by the Depositary on behalf of the Company or the Purchaser pursuant to this Plan of Arrangement that has not been deposited or has been returned to the Depositary or that otherwise remains unclaimed, in each case, on or before the sixth anniversary of the Effective Time, and any right or claim to payment hereunder that remains outstanding on the sixth anniversary of the Effective Time shall cease to represent a right or claim of any kind or nature and the right of the holder to receive the consideration for the Shares pursuant to this Plan of Arrangement shall terminate and be deemed to be surrendered and forfeited to the Purchaser for no consideration.
- (5) No holder of Shares shall be entitled to receive any consideration other than the consideration to which such holder is entitled to receive in accordance with Article III and this Section 5.1 and, for greater certainty, no such holder will be entitled to receive any interest, dividends, premium or other payment in connection therewith, other than any declared but unpaid dividends with a record date prior to the Effective Date. No dividend or other distribution declared or made after the Effective Time with respect to the Shares with a record date on or after the Effective Date shall be delivered to the holder of any unsurrendered certificate which, immediately prior to the Effective Date, represented outstanding Shares.

## **5.2 Lost Certificates**

In the event that any certificate which immediately prior to the Effective Time represented one or more outstanding Shares that were transferred pursuant to Section 3.1(3) shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such certificate to be lost, stolen or destroyed, the Depositary will deliver in exchange for such lost, stolen or destroyed certificate, cash deliverable in accordance with such holder's Letter of Transmittal. When authorizing such payment in exchange for any lost, stolen or destroyed certificate, the person to whom such cash is to be delivered shall, as a condition precedent to the delivery of such cash, give a bond satisfactory to the Purchaser and the Depositary (acting reasonably) in such sum as the Purchaser may direct, or otherwise indemnify the Purchaser and the Company in a manner satisfactory to the Purchaser and the Company, acting reasonably, against any claim that may be made against the Purchaser or the Company with respect to the certificate alleged to have been lost, stolen or destroyed.

## **5.3 Withholding Rights**

Each of the Company, Parent, Purchaser and the Depositary shall be entitled to deduct and withhold from any amounts payable to any person pursuant to this Plan of Arrangement (including any amounts payable pursuant to Articles III, IV and V) such amounts as are required to be deducted or withheld with respect to such payment under the Tax Act or any provision of any other applicable Law. To the extent that amounts are so withheld or deducted and remitted to the applicable Governmental Entity, such withheld or deducted amounts shall be treated for all purposes of this Plan of Arrangement as having been paid to such person as the remainder of the payment in respect of which such deduction and withholding were made.

## **5.4 Letter of Transmittal**

At the time of mailing of the Company Circular or as soon as practicable after the Effective Date, the Company shall forward to each holder of Shares at the address of such holder as it appears on the register maintained by or on behalf of the Company in respect of the holders of Shares a Letter of Transmittal.

# **ARTICLE VI AMENDMENTS**

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

- (1) The Company may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must be (a) set out in writing, (b) approved by the Purchaser, (c) filed with the Court and, if made following the Company Meeting, approved by the Court and (d) communicated to holders of the Shares and others as may be required by the Interim Order if and as required by the Court.
- (2) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by the Company at any time prior to the Company Meeting (provided that the Purchaser shall have consented thereto in writing) with or without any other prior notice or communication, and if so proposed and accepted by the persons voting at the Company Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.

- (3) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Company Meeting shall be effective only if (a) it is consented to in writing by each of the Company and the Purchaser (in each case, acting reasonably), and (b) if required by the Court, it is consented to by holders of the Shares voting in the manner directed by the Court.
- (4) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by the Purchaser, provided that it concerns a matter which, in the reasonable opinion of the Purchaser, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the economic interest of any former holder of Shares.

## **ARTICLE VII FURTHER ASSURANCES**

### **7.1 Notwithstanding**

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

### **7.2 Paramountcy**

From and after the Effective Time (a) this Plan of Arrangement shall take precedence and priority over any and all rights related to Shares issued prior to the Effective Time, (b) the rights and obligations of the holders of Shares, and any trustee and transfer agent therefor, shall be solely as provided for in this Plan of Arrangement, and (c) all actions, causes of actions, claims or proceedings (actual or contingent, and whether or not previously asserted) based on or in any way relating to Shares shall be deemed to have been settled, compromised, released and determined without liability except as set forth herein.

## SCHEDULE C

### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

- (a) **Corporate Existence and Power.** The Company is a corporation duly incorporated, validly existing and in good standing under the Laws of the Province of Ontario and has all corporate power and capacity to own, lease and operate its properties and assets as now owned and to carry on its business as now conducted. The Company is duly registered or otherwise authorized to do business and is in good standing in each jurisdiction in which the character of its properties, whether owned, leased, licensed or otherwise held, or the nature of its activities makes such registration necessary, and has all governmental licenses, authorizations, permits, consents and approvals required to own, lease and operate its properties and assets and to carry on its business as now conducted, except for those licenses, authorizations, permits, consents and approvals the absence of which do not have or would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.
- (b) **Corporate Authorization.** The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby are within the Company's corporate power and capacity and have been duly authorized by the Board of Directors and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement or the transactions contemplated hereby other than in connection with the approval by the Board of Directors of the Company Circular and the approval by the Shareholders in the manner required by the Interim Order and applicable Laws and approval by the Court. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to the qualification that such enforceability may be limited by bankruptcy, insolvency, reorganization or other Laws of general application relating to or affecting rights of creditors and that equitable remedies, including specific performance, are discretionary and may not be ordered. As of the date hereof, the Board of Directors has (i) determined that the consideration to be received by the Shareholders is fair and that the Arrangement is in the best interests of the Company and (ii) resolved, subject to Section 7.2(6), to recommend that the Shareholders vote in favour of the Arrangement Resolution, and such determinations and resolutions are effective and unamended as of the date hereof.
- (c) **Governmental Authorization.** No consent, approval, order or authorization of, or filing, recording, registering or publication with, any Governmental Entity is required to be obtained or made by the Company in connection with the execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby, other than (i) the Interim Order and any approvals required by the Interim Order; (ii) the Final Order; (iii) filings with the Director under the OBCA; (iv) compliance with any applicable Securities Laws, rules and policies

of the Exchange; and (v) any actions or filings the absence of which would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

- (d) **Non-Contravention.** The execution, delivery and performance by the Company of its obligations under this Agreement and the consummation of the transactions contemplated hereby and by the Plan of Arrangement do not and shall not (i) contravene, conflict with, or result in any violation or breach of any provision of the articles or by-laws of the Company or the constating documents of the Subsidiary; (ii) assuming compliance with the matters, or obtaining the approvals, referred to in paragraph (c) above, contravene, conflict with or result in a violation or breach of any provision of any applicable Law or any license, approval, consent or authorization issued by a Governmental Entity held by the Company or the Subsidiary; (iii) require any notice or consent or other action by any person under, contravene, conflict with, violate, breach or constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default, under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which the Company or the Subsidiary is entitled under, or give rise to any rights of first refusal or trigger any change in control provisions or any restriction under, any provision of any contract or other instrument, binding upon the Company or the Subsidiary or affecting any of their respective assets; or (iv) result in the creation or imposition of any Lien on any asset of the Company or the Subsidiary, with such exceptions, in the case of each of clauses (ii), (iii) and (iv), as do not have or would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. True and complete copies of the articles of amendment and by-laws of the Company as currently in effect have been made available to the Purchaser and the Company has not taken any action to amend or succeed such documents.
- (e) **Capitalization.** The authorized share capital of the Company consists of an unlimited number of Shares. As of the close of business on March 22, 2017, there were issued and outstanding the number of Shares set out in the Company Disclosure Letter and no other shares were issued and outstanding. Except for the Shareholder Rights Plan, there are no pre-emptive or other outstanding rights, options, warrants, conversion rights, redemption rights, repurchase rights, shareholder rights plans, agreements, arrangements, calls, commitments or rights of any kind that obligate the Company or the Subsidiary to issue or sell any shares of capital stock or other securities of the Company or the Subsidiary or any securities or obligations convertible or exchangeable into or exercisable for, or giving any person a right to subscribe for or acquire, from treasury any securities of the Company or the Subsidiary, and no securities or obligations evidencing such rights are authorized, issued or outstanding. There are no outstanding contractual or other rights to which the Company or the Subsidiary is a party, the value of which is based on the value of the Shares. All the outstanding Shares have been duly authorized and validly issued, are fully paid and non-assessable. There are no outstanding contractual or other obligations of the Company or the Subsidiary to repurchase, redeem or otherwise acquire any of its securities or with respect to the voting or disposition of any outstanding securities of the Company or the Subsidiary.

The Shares have not been listed or quoted by the Company on any market other than the Exchange. No order ceasing or suspending trading in securities of the Company or

prohibiting the sale of such securities has been issued and outstanding against the Company or its directors or officers.

- (f) **Subsidiary.** The Company Disclosure Letter sets forth the following information with respect to the Subsidiary: (i) its name; (ii) as of the date hereof, the number, type and principal amount, as applicable, of its outstanding equity securities and a list of registered holders thereof; and (iii) its jurisdiction of organization or governance. The Subsidiary is a corporation duly incorporated, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or creation and has all corporate power and capacity to own, lease and operate its properties and assets as now owned and to carry on its business as now conducted. The Subsidiary is duly registered or otherwise authorized to do business and is in good standing in each jurisdiction in which the character of its properties, whether owned, leased, licensed or otherwise held, or the nature of its activities makes such registration necessary, and has all governmental licenses, authorizations, permits, consents and approvals required to own, lease and operate its properties and assets and to carry on its business as now conducted, except for those licenses, authorizations, permits, consents and approvals the absence of which do not have or would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. The Company is, directly or indirectly, the record and beneficial owner of all of the outstanding shares of capital stock or other equity interests of the Subsidiary, free and clear of any Liens. All of such shares and other equity interests so owned by the Company are validly issued, fully paid and non-assessable (and no such shares or other equity interests have been issued in violation of any pre-emptive or similar rights). As of the date hereof, except for the equity interests owned by the Company in the Subsidiary, neither the Company nor the Subsidiary owns, beneficially or of record, any equity interest of any kind in any other person.
- (g) **Securities Laws Matters.** The Company is a “reporting issuer” under applicable Canadian Securities Laws in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba and Ontario, and is not in default of any material requirements of any Securities Laws applicable in such jurisdictions or the rules and regulations of the Exchange. No delisting, suspension of trading in or cease trading order with respect to the Shares is pending or, to the knowledge of the Company, threatened. The documents comprising the Company’s Current Public Disclosure Record did not at the time filed with Securities Authorities contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, not misleading in light of the circumstances under which they were made. The Company has timely filed with the Securities Authorities all material forms, reports, schedules, statements and other documents required to be filed by the Company with the Securities Authorities since September 30, 2016, where the failure to timely file would individually or in the aggregate reasonably be expected to have a Material Adverse Effect. The Company has not filed any confidential material change report with the Securities Authorities which at the date hereof remains confidential.
- (h) **Financial Statements.** The audited consolidated financial statements and the unaudited consolidated interim financial statements of the Company included in the Company’s Current Public Disclosure Record fairly present, in all material respects, in conformity

with IFRS applied on a consistent basis (except as may be indicated in the notes thereto), the consolidated financial position of the Company and the Subsidiary as of the dates thereof and their consolidated statements of earnings, comprehensive income, shareholders' equity and cash flows for the periods then ended (subject to normal year-end adjustments and the absence of notes in the case of any unaudited interim financial statements). Except as set forth in the Company's financial statements, neither the Company nor the Subsidiary has any documents creating any material off-balance sheet arrangements. Neither the Company nor the Subsidiary is a party to, or has any commitment to become a party to, any joint venture, partnership agreement or any similar contract (including any contract relating to any transaction, arrangement or relationship between or among the Company or the Subsidiary, on the one hand, and any unconsolidated affiliate, including any structured finance, special purpose or limited purpose entity or person, on the other hand) where the purpose or effect of such arrangement is to avoid disclosure of any material transaction involving the Company or the Subsidiary in the Company's financial statements.

- (i) **Disclosure/Internal Controls.** The Company has established and maintained disclosure controls and procedures and internal control over financial reporting, as those terms are defined in National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings*. The disclosure controls and procedures have been designed to provide reasonable assurance that (i) material information relating to the Company, including the Subsidiary, is made known to the Company's Chief Executive Officer and its Chief Financial Officer by others within those entities; and (ii) information required to be disclosed by the Company in its annual filings, interim filings or other reports filed or submitted by it under Securities Law is recorded, processed, summarized and reported within the time periods specified in Securities Laws. The internal control over financial reporting has been designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with IFRS. The Company's Chief Executive Officer and its Chief Financial Officer have disclosed to the Company's auditors any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls. To the knowledge of the Company, except as set forth in the Company Disclosure Letter, there are no material deficiencies or weaknesses in the design or operation of the internal control over financial reporting that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information, and there is no fraud, whether or not material, that involved or involves management or other employees who have a role in the internal control over financial reporting of the Company.
- (j) **Absence of Certain Changes.** Since September 30, 2016, other than the transactions contemplated in this Agreement, or other than as disclosed in the Company's Public Disclosure Record or in the Company Disclosure Letter: (i) the business of the Company and the Subsidiary has been conducted in the Ordinary Course of Business; (ii) there has not been any event, occurrence, development or state of circumstances or facts that has had or would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect; (iii) there has not been any declaration, setting aside or payment of any dividend on, or other distribution (whether in cash, stock or property) in respect of, any

shares in the capital of, or equity or other voting interests in, the Company or the Subsidiary, except for dividends from a subsidiary to the Company or another wholly-owned subsidiary of the Company and dividends by the Company as publicly disclosed; (iv) there has not been any split, combination or reclassification of any shares in the capital of, or equity or other voting interests in, the Company or the Subsidiary or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares in the capital of, or other equity or voting interests in, the Company or the Subsidiary; (v) there has not been any change in financial or tax accounting methods, principles or practices by the Company or the Subsidiary, except insofar as may have been required or permitted by IFRS or applicable Laws; and (vi) there has not been any material write-down by the Company or the Subsidiary of any of the material assets of the Company or the Subsidiary.

- (k) **No Undisclosed Material Liabilities.** There are no liabilities or obligations of the Company or the Subsidiary of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, other than: (i) liabilities or obligations disclosed in any financial statements of the Company in the Company's Current Public Disclosure Record; (ii) liabilities or obligations incurred in the Ordinary Course of Business since September 30, 2016; (iii) liabilities or obligations incurred in connection with the transactions contemplated hereby; and (iv) liabilities or obligations that would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.
- (l) **Compliance with Laws.** The Company and the Subsidiary is, and since September 30, 2016 has been, in compliance with, and to the knowledge of the Company is not under investigation with respect to and has not been threatened to be charged with or given notice of any violation of, any applicable Law, except for failures to comply or violations that have not had and would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.
- (m) **Regulatory Compliance.** The Company and the Subsidiary have obtained and are in compliance in all material respects with all Permits. There has not occurred within the last two years any violation of, or any default under, or any event giving rise to or potentially giving rise to any right of termination, revocation, adverse modification, non-renewal or cancellation of any Permit and to the knowledge of the Company, no Governmental Entity has provided the Company or the Subsidiary with notice of any of the foregoing, except for any such matter as would not have and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Neither of the Company or the Subsidiary has been convicted of any crime or engaged in any conduct which could result in debarment or disqualification by any Governmental Entity and, to the knowledge of the Company, there is no Proceeding pending or threatened that reasonably might be expected to result in criminal liability or debarment or disqualification by any Governmental Entity. To the knowledge of the Company, the Company and the Subsidiary are in compliance with all foreign ownership restrictions applicable to any of them under applicable Laws.

- (n) **Litigation.** As of the date hereof, there is no Proceeding pending against, or, to the knowledge of the Company, threatened against or affecting, the Company or the Subsidiary or any of their respective properties or assets, before any Governmental Entity or other person, that would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. Neither the Company nor the Subsidiary nor their respective assets or properties, nor directors or officers in their capacities as such, is subject to any outstanding judgment, order, writ, injunction or decree material to the Company and the Subsidiary, taken as a whole.
- (o) **Taxes.** Except as disclosed in the Company Disclosure Letter, all Tax Returns required by applicable Laws to be filed with any Governmental Entity by, or on behalf of, the Company or the Subsidiary have been filed when due in accordance with all applicable Laws (taking into account any applicable extensions), and all such Tax Returns were true and complete. Except as disclosed in the Company Disclosure Letter, the Company and the Subsidiary have paid (or has had paid on its behalf) on a timely basis to the appropriate Governmental Entity all Taxes, including instalments, which are due and payable prior to the date hereof. Except as set forth in the Company Disclosure Letter, the Company and the Subsidiary have established (or has had established on its behalf) in accordance with GAAP an adequate accrual for all material Taxes which are not yet due and payable through the end of the last period for which the Company and the Subsidiary ordinarily record items on their respective books and, since the date thereof, neither the Company nor the Subsidiary has incurred any liability for Taxes other than in the Ordinary Course of Business. Except as set forth in the Company Disclosure Letter, no deficiencies for any Taxes have been assessed by a Governmental Entity with respect to any Taxes due by the Company or the Subsidiary and there is no Proceeding outstanding, pending or, to the knowledge of the Company, threatened with respect to the Company or the Subsidiary in respect of Taxes. The Company and the Subsidiary have complied with all requirements of applicable Law relating to the withholding and remittance of amounts from payments or amounts owed to any person, including any person that is a non-resident of Canada. Neither the Company nor the Subsidiary is party to any material tax sharing agreement or tax indemnification agreement with any person, other than the Company or the Subsidiary.
- (p) **Employment Matters.**
- (i) The Company Disclosure Letter contains a complete and accurate list of Company Employees, including their respective location, hire date, position, salary, benefits and current status (full time, part-time, active, non-active), as well as a list of all former Company employees to whom the Company or the Subsidiary has or may have any obligations indicating the nature and value of such obligations.
- (ii) As of the date of this Agreement, to the knowledge of the Company, no active Company Employee listed in (i) has provided written notice to the Company or the Subsidiary that he or she intends to resign, retire or terminate his or her employment with the Company or the Subsidiary as a result of the transactions contemplated by this Agreement or otherwise.

- (iii) Neither the Company nor the Subsidiary is a party to any material Proceeding under any applicable Law relating to the Company Employees.
  - (iv) Except as set forth in the Company Disclosure Letter, no employment agreement with respect to any Company Employee listed in (i) above contains any specific provision in relation to his or her termination, the application of which shall be triggered by the transactions contemplated by this Agreement.
  - (v) The Company is in compliance with all applicable Laws respecting employment, employment practices and standards, terms and conditions of employment, wages and hours, occupational health and safety, human rights, labour relations, pay equity and workers' compensation, except for failures to comply or violations that have not had and would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.
  - (vi) Neither the Company nor the Subsidiary is in arrears in the payment of wages, overtime pay, public holiday pay, salary, commission, bonuses, incentives, vacation pay, expense reimbursement or any other compensation in any form or of any other amounts owing to current or former Company Employees. There are no outstanding decisions or settlements or pending settlements under any applicable employment Laws which place any material obligation upon the Company and the Subsidiary, taken as a whole, to do or refrain from doing any act, or which place a material financial obligation upon the Company and the Subsidiary, taken as a whole.
- (q) **Company Plans.**
- (i) The Company Disclosure Letter contains a complete list of all material health, welfare, supplemental unemployment benefit, bonus, profit sharing, option, insurance, incentive, incentive compensation, deferred compensation, share purchase, share compensation, disability, pension or supplemental retirement plans and other material employee or director compensation or benefit plans, policies, trusts, funds, agreements or arrangements for the benefit of directors or former directors of the Company or the Subsidiary, Company Employees or former Company Employees, which are maintained by or binding upon the Company or the Subsidiary or in respect of which the Company or the Subsidiary has any actual or potential liability (but for greater certainty, excluding any plans maintained by a Governmental Entity pursuant to statute) (collectively, the "**Company Plans**").
  - (ii) All of the Company Plans are and have been established, registered, qualified, funded and, in all material respects, administered in accordance with all applicable Laws, and in accordance with their terms, the terms of the material documents that support such Company Plans and the terms of agreements between the Company and/or the Subsidiary, as the case may be, and their respective Company Employees and former Company Employees who are members of, or beneficiaries under, the Company Plans.

- (iii) All current obligations of the Company or the Subsidiary regarding the Company Plans have been satisfied in all material respects. All contributions, premiums or Taxes required to be made or paid by the Company or the Subsidiary, as the case may be, under the terms of each Company Plan or by applicable Laws in respect of the Company Plans have been made in a timely fashion in accordance with applicable Laws in all material respects and in accordance with the terms of the applicable Company Plan in all material respects. As of the date hereof, no currently outstanding notice of underfunding, non-compliance, failure to be in good standing or otherwise has been received by the Company or the Subsidiary from any applicable Governmental Entity in respect of any Company Plan that is a pension or retirement plan.
- (iv) No Company Plan is subject to any pending Proceeding initiated by any Governmental Entity, or by any other party (other than routine claims for benefits) and, to the knowledge of the Company, there exists no state of facts which after notice or lapse of time or both would reasonably be expected to give rise to any such Proceeding or to affect the registration or qualification of any Company Plan required to be registered or qualified.
- (v) The Company and the Subsidiary have no liability or obligations in respect of any plan or arrangement which provides pensions on a defined benefit basis (but for greater certainty, excluding any plans maintained by a Governmental Entity pursuant to statute).
- (vi) Except as set out in the Company Disclosure Letter, the Arrangement will not result in or require any payment or severance, or the acceleration, vesting or increase in benefits under any Company Plan.
- (vii) The Company has no material liability or obligation to provide post-retirement benefits for former or retired employees of the Company or to any other individual.
- (f) **Collective Agreements.** Neither the Company nor the Subsidiary is party to any collective agreements, either directly or by operation of law, with any trade union or association which may qualify as a trade union. There are no outstanding or, to the knowledge of the Company, threatened labour tribunal proceedings of any kind, including unfair labour practice proceedings or any proceedings which could result in certification of a trade union as bargaining agent for any employees of the Company or the Subsidiary. There are no threatened or apparent union organizing activities involving employees of the Company or the Subsidiary nor is the Company or the Subsidiary currently negotiating any collective agreement.
- (s) **Environmental Matters.** Except as would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect: (i) no written notice, claim, order, complaint or penalty has been received by the Company or the Subsidiary alleging a violation by or liability of the Company or the Subsidiary under any Environmental Law, and, to the Company's knowledge, there are no Proceedings pending or threatened

which allege a violation by the Company or the Subsidiary of any Environmental Laws; (ii) the Company and the Subsidiary have all environmental Permits necessary for operations to comply with all Environmental Laws; (iii) the operations of the Company and the Subsidiary are in compliance in all material respects with the terms of Environmental Laws; (iv) neither the Company nor the Subsidiary has caused any Release of a Hazardous Material on, at, from or under any real or immovable property currently or formerly owned, operated or occupied by the Company or the Subsidiary that is reasonably likely to form the basis of any claim against the Company or the Subsidiary and (v) neither the Company nor the Subsidiary has assumed responsibility for or agreed to indemnify or hold harmless any person for any liability or obligation arising under any Environmental Law that is reasonably likely to form the basis of any claim against the Company or the Subsidiary.

- (t) **Real Property.** Neither the Company nor the Subsidiary owns any real property; Any real property or building held under lease by the Company or the Subsidiary is held by it under valid and subsisting leases and/or temporary occupations enforceable against the respective lessors and/or owners thereof with the exclusive right to occupy and use such premises. All leases in respect of real property to which the Company or the Subsidiary is a party have been made available in the Diligence Documents. The Company Disclosure Letter sets forth the addresses of all leased real property.
- (u) **Personal Property.** Neither the Company nor the Subsidiary own any personal or moveable property.
- (v) **Permits.** The Company and the Subsidiary have obtained, and is in compliance with, all Permits required by applicable Laws necessary to conduct their current businesses as they are now being conducted, other than where the absence of such Permits or the failure to comply would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There has not occurred any violation of, or any default under, or any event giving rise to or potentially giving rise to any right of termination, revocation, adverse modification, non-renewal or cancellation of any Permit, that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and, to the knowledge of the Company, no Governmental Entity has provided the Company or the Subsidiary with notice of any of the foregoing.
- (w) **Contracts.** Neither the Company nor the Subsidiary are party to any contract which is material to the conduct of the business.
- (x) **Intellectual Property.**
  - (i) Each of the Company and the Subsidiary owns or has the right to use all Intellectual Property required to carry on its business as currently conducted and proposed to be conducted. To the knowledge of the Company, there has been no claim of infringement by any of the Company or the Subsidiary or breach by the Company or the Subsidiary of any Intellectual Property rights or industrial rights of any other person, and none of the Company or the Subsidiary has received any

notice that the conduct of its business infringes on any Intellectual Property rights or industrial rights of any other person.

- (ii) There are no material proceedings pending or threatened against the Company or the Subsidiary in respect of any Intellectual Property in any court, tribunal or other forum in Canada or any other foreign jurisdiction.
  - (iii) The consummation of the transactions contemplated by this Agreement will not alter, impair or extinguish the Company's or the Subsidiary's rights in any Intellectual Property.
- (y) **Insurance.**
- (i) Each of the Company and the Subsidiary is, and has been continuously since September 30, 2016, insured by reputable and financially responsible third party insurers in respect of the operations and assets of the Company and the Subsidiary with policies issued. The third party insurance policies of the Company and the Subsidiary are in full force and effect in accordance with their terms and neither the Company nor the Subsidiary are in material default under the terms of any such policy. As of the date hereof, the Company has no knowledge of threatened termination of, or material premium increase with respect to, any of such policies.
  - (ii) There is no material claim pending under any insurance policy of the Company or the Subsidiary that has been denied, rejected, questioned or disputed by any insurer or as to which any insurer has made any reservation of rights or refused to cover all or any portion of such claims. All Proceedings covered by any of the insurance policies has been properly reported to and accepted by the applicable insurer.
- (z) **Opinion of Financial Advisors.** The Board of Directors and the Special Committee have received the Fairness Opinion from Blair Franklin Capital Partners to the effect that, as of the date of this Agreement, the Consideration to be received by the Shareholders is fair from a financial point of view.
- (aa) **Books and Records.** The books and records of the Company and the Subsidiary fairly reflect in all material respects the financial position of the Company and the Subsidiary and all material financial transactions relating to the businesses carried on by the Company and the Subsidiary have been accurately recorded in all material respects in such books and records.
- (bb) **Finders' Fees.** There is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of the Company or the Subsidiary who might be entitled to any fee or commission from the Company or the Subsidiary in connection with the transactions contemplated by this Agreement.
- (cc) **Shareholder Rights Plan.** Other than the Shareholder Rights Plan, the Company does not have in place, and the Shareholders have not adopted or approved, any shareholders

rights plan or a similar plan giving rights to acquire additional Shares upon execution or performance of the obligations under this Agreement.

- (dd) **No Collateral Benefit.** To the knowledge of the Company, no “director” or “senior officer” of the Company or any of their “affiliated entities” (in each case within the meaning of MI 61-101) is, or will be, entitled to receive a “collateral benefit” (within the meaning of such instrument) as a consequence of any transaction contemplated under this Agreement.
- (ee) **Corrupt Practices Legislation.** There have been no actions taken by or, to the knowledge of the Company, on behalf of the Company or the Subsidiary that would cause the Company to be in violation of the *Foreign Corrupt Practices Act* of the United States or the *Corruption of Foreign Public Officials Act* (Canada).
- (ff) **Non-Arm’s Length Transactions.** Neither the Company nor the Subsidiary is indebted to any director, officer or employee of the Company or the Subsidiary or any of their respective affiliates or associates (except for amounts due as salaries, bonuses, other remuneration and reimbursement of expenses in the Ordinary Course of Business), and no director, officer or employee of the Company or the Subsidiary or any of their respective affiliates or associates is a party to any contract, loans, advance, guarantee or other transaction with the Company or the Subsidiary required to be disclosed pursuant to applicable Securities Laws.

## SCHEDULE D

### REPRESENTATIONS AND WARRANTIES OF THE PARENT AND THE PURCHASER

- (a) **Organization and Qualification.** Each of the Parent and the Purchaser is a corporation duly incorporated, validly existing and in good standing under the Laws of its jurisdiction of incorporation and has all corporate power and capacity to own its assets as now owned and to carry on its business as it is now being conducted. Each of the Parent and the Purchaser is duly registered or otherwise authorized to do business and is in good standing in each jurisdiction in which the character of its properties, whether owned, leased, licensed or otherwise held, or the nature of its activities makes such registration necessary, and has all governmental licenses, authorizations, permits, consents and approvals required to own, lease and operate its properties and assets and to carry on its business as now conducted, except where the failure to be so registered or in good standing, and except for those licenses, authorizations, permits, consents and approvals the absence of which, would not, prevent or materially delay the transactions contemplated by this Agreement. All of the issued and outstanding securities or other ownership interests of the Purchaser are validly issued, fully paid and non-assessable. The Purchaser is a wholly-owned subsidiary of the Parent.
- (b) **Corporate Authorization.** The execution, delivery and performance by each of the Parent and the Purchaser of this Agreement and the consummation by each of the Parent and the Purchaser of the transactions contemplated hereby are within each of the Parent's and the Purchaser's corporate power and capacity and have been duly authorized by each of their respective boards of directors, as applicable, and no other corporate proceedings on the part of either each of the Parent or the Purchaser are necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by each of the Parent and the Purchaser and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes a valid and binding agreement of each of the Parent and the Purchaser, enforceable against each of them in accordance with its terms, subject to the qualification that such enforceability may be limited by bankruptcy, insolvency, reorganization or other Laws of general application relating to or affecting rights of creditors and that equitable remedies, including specific performance, are discretionary and may not be ordered.
- (c) **Governmental Authorization.** The execution, delivery and performance by each of the Parent and the Purchaser of this Agreement and the consummation by the Purchaser of the transactions contemplated hereby and by the Plan of Arrangement require no consent, approval or authorization of or any action by or in respect of, or filing, recording, registering or publication with, or notification to any Governmental Entity other than (i) the Interim Order and any approvals required by the Interim Order; (ii) the Final Order; (iii) filings with the Director under the OBCA; (iv) compliance with any applicable Securities Laws; and (v) any actions or filings the absence of which would not reasonably be expected to materially or adversely impair the ability of the Parent and the Purchaser to complete the transactions contemplated by the Agreement.

- (d) **Non-Contravention.** The execution, delivery and performance by each of the Parent and the Purchaser of this Agreement and the consummation of the transactions contemplated hereby and by the Plan of Arrangement do not and shall not (i) contravene, conflict with, or result in any violation or breach of the articles or by-laws or other comparable organizational documents of the Parent or the Purchaser; (ii) assuming compliance with the matters, or obtaining the approvals, referred to in paragraph (c) above, contravene, conflict with or result in a violation or breach of any provision of any applicable Law or any license, approval, consent or authorization issued by a Governmental Entity held by the Purchaser or the Parent; (iii) require any consent or other action by any person under, constitute a default, or an event that, with or without notice or lapse of time or both, would constitute a default, under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which the Purchaser or the Parent is entitled under any provision of any material contract to which the Purchaser or the Parent is a party or by which it or any of its properties or assets may be bound; or (iv) result in the creation or imposition of any Lien on any material asset of the Purchaser or the Parent, with such exceptions, in the case of (ii) through (iv), as would not be reasonably expected to materially impede or delay the ability of the Purchaser or the Parent to consummate the transactions contemplated by this Agreement.
- (e) **Litigation.** As of the date hereof, there is no Proceeding pending against, or to the knowledge of the Parent, threatened against or affecting the Parent or the Purchaser or any of its respective properties or, any of its respective officers and directors (in their capacities as such) that, individually or in the aggregate, could impair the Parent's or Purchaser's, as applicable, ability to perform its respective obligations under this Agreement. There is no judgment, decree or order against the Parent or the Purchaser or any of their respective directors or officers (in their capacities as such) that could prevent, enjoin, alter or materially delay the Parent or Purchaser, as applicable, from performing its respective obligations under this Agreement or that in any manner challenges or seeks to prevent, enjoin, alter or materially delay the Arrangement or any of the other transactions contemplated hereby.
- (f) **Sufficient Funds.** Parent has made adequate arrangements to ensure that, at the Effective Time, the Purchaser shall have available cash sufficient to pay in full the aggregate Consideration for Shares pursuant to the Arrangement in accordance with the terms of this Agreement, and to make all other payments required to be made by the Purchaser or the Parent in connection with the transactions contemplated by this Agreement and to pay all related fees and expenses for which the Purchaser or the Parent is responsible under the terms of the Agreement.
- (g) **Security Ownership.** None of the Purchaser or the Parent or any of their affiliates or any person acting jointly or in concert with any of them owns any securities of the Company.
- (h) **No Collateral Benefit.** To the knowledge of the Parent and the Purchaser, no related party of the Company (within the meaning of MI 61-101) is, or will be, entitled to receive a "collateral benefit" (within the meaning of such instrument) as a consequence of any

transaction contemplated under this Agreement; or is, or will be, a party to any “connected transaction” (within the meaning of such instrument) to any transaction contemplated under this Agreement.

- (i) **No Other Voting Agreements.** None of the Parent, the Purchaser, any of their affiliates or any person acting jointly or in concert with any of them is party to any agreement, arrangement or understanding with any holder of securities of the Company directly or indirectly relating to any such securities or the Company, including the voting, sale or other transfer of such securities.
- (j) **Corrupt Practices Legislation.** There have been no actions taken by or, to the knowledge of the Parent or Colin Hames, on behalf of the Parent or the Purchaser or any officer, director, shareholder or affiliate thereof that would cause any of the foregoing to be in violation of the *Foreign Corrupt Practices Act* of the United States, the *Corruption of Public Officials Act* (Canada), or any other anti-bribery, anti-fraud, anti-money laundering or similar legislation in any jurisdiction.