

Clerk's Stamp:



COURT FILE NUMBER  
COURT  
JUDICIAL CENTRE OF

2001 07984

COURT OF QUEEN'S BENCH OF ALBERTA  
CALGARY

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

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

APPLICANTS  
RESPONDENTS

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

DOCUMENT  
CONTACT INFORMATION OF  
PARTY FILING THIS  
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**AFFIDAVIT**

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File Number: 54614-1

**AFFIDAVIT OF:**  
**SWORN ON:**

**Martin Boland**  
**June 26, 2020**

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

Clerk's Stamp:



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COURT OF QUEEN'S BENCH OF ALBERTA  
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**AFFIDAVIT OF:  
SWORN ON:**

**Martin Boland  
June 26, 2020**

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

**A. INTRODUCTION**

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

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

## B. CORPORATE STRUCTURE AND BUSINESS OVERVIEW

### Corporate Structure

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

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

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

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

## **History of the Moberly Plant**

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

## **Acquisition of Heemskirk Australia**

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

- (e) fines processing and water clarification; and
- (f) storage and load-out of silica.

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

### **Penhold Transloading Facility**

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

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

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

**C. CHALLENGES FACED BY THE NORTH AMERICAN FRAC SAND INDUSTRY**

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



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

#### D. LIABILITIES

##### Loan Agreements

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

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

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

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

### **Taurus Indebtedness**

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

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

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

#### **QMetco Indebtedness**

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

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

#### **Recent Correspondence with HCA Moberly**

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

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

#### **ATB Secured Indebtedness**

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

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

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

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

### **The Rolling Stock Lease**

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

### **PPR Registrations**

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

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

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



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

**Other Significant Liabilities**

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

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

**E. ASSETS**

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

**F. FINANCIAL STATEMENTS**

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

**G. EMPLOYEES**

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

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

#### **H. THE URGENT NEED FOR RELIEF UNDER THE CCAA**

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

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

### **Case Roadmap**

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

### **I. RELIEF SOUGHT**

#### **Stay of Proceedings**

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

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

### **Appointment of Monitor**

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

### **Administration Charge**

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

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

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

### **Directors' & Officers' Charge**

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

### **J. CASH MANAGEMENT SYSTEM**

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

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

#### **K. NSC UNANIMOUS SHAREHOLDERS AGREEMENT**

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

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

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

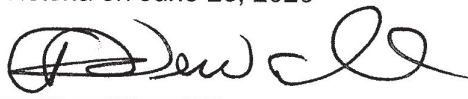


human resources, and sales and marketing functions for the NSC Companies on an integrated basis.

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

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

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

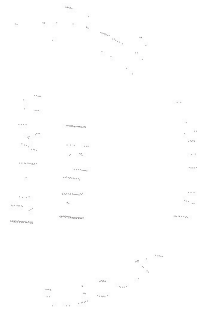


A person authorized under section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit )

  
Martin Boland

Print Name: ADEWALE OLADEJO

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



This is Exhibit "A" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.

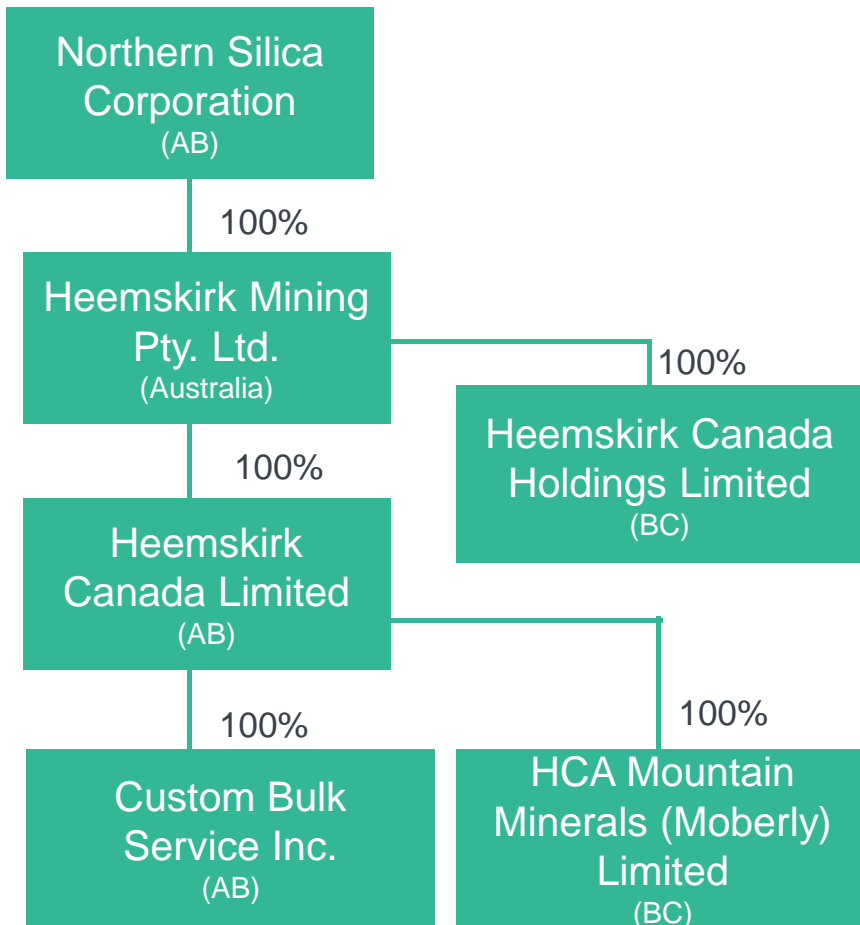


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*A person authorized under section 19(1) of the Oaths and Affirmations Act  
2018 to take an affidavit*

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

# Northern Silica Corporate Chart



This is Exhibit "B" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



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

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

**EXECUTION VERSION**

**NORTHERN SILICA CORPORATION**

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**AMENDED AND RESTATED UNANIMOUS SHAREHOLDER AGREEMENT**

**Effective as of May 18, 2017**

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Osler, Hoskin & Harcourt LLP

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**THIS AMENDED AND RESTATED UNANIMOUS SHAREHOLDER AGREEMENT** is made effective as of May 18, 2017.

**BETWEEN:**

**NORTHERN SILICA CORPORATION**, a corporation governed by the laws of Alberta (including any successor thereto, the "**Corporation**")

– and –

**TAURUS RESOURCES NO. 2 B.V.**

– and –

**TAURUS FUNDS MANAGEMENT NO. 2 L.P.**

-and-

**TAURUS RESOURCES NO. 2 TRUST**

-and-

Any other Person that may become a Party to this Agreement pursuant to the operation hereof.

**RECITALS:**

- A. The Corporation was incorporated pursuant to Articles of Incorporation dated December 1, 2016.
- B. The authorized share capital of the Corporation consists of an unlimited number of Common Shares and an unlimited number of Preferred Shares issuable in series.
- C. The Shareholders and the Corporation entered into a unanimous shareholder agreement effective March 7, 2017 (the "**Original Agreement**") for the purpose of providing for the continuing operation of the Corporation.
- D. The Shareholders and the Corporation have agreed to amend and restate the Original Agreement by entering into this Agreement in order to record their agreement as to the manner in which the Corporation's affairs shall be conducted and to grant each other certain rights and obligations with respect to their ownership of Shares of the Corporation.
- E. The Shareholders intend that this Agreement shall operate and be construed as a unanimous shareholder agreement under the *Business Corporations Act* (Alberta).

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the mutual covenants and agreements herein contained and for other good and valuable



consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereby agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement, unless there is something in the subject matter or content inconsistent therewith, the following terms shall have the following meanings, respectively:

“**Act**” means the *Business Corporations Act* (Alberta), as amended from time to time;

“**Additional Securities**” has the meaning ascribed thereto in Section 5.1(a) ;

“**Affiliate**” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person;

“**Agreement**”, “**this Agreement**”, “**hereto**”, “**herein**”, “**hereby**”, “**hereunder**”, “**hereof**” and similar expressions refer to this Agreement and not to any particular Section, subsection, clause, subdivision or other portion hereof and include any and every amending agreement and agreement supplemental or ancillary hereto;

“**Arm’s Length**” has the meaning that it has for the purposes of the *Income Tax Act* (Canada);

“**Articles**” means the Articles of Incorporation of the Corporation in the form filed on December 1, 2016, as amended or restated from time to time in accordance with the Act;

“**Auditor**” means the auditor or accountant, as the case may be, of the Corporation appointed from time to time;

“**Board**” means the board of directors of the Corporation, as constituted from time to time;

“**Board Charter**” means the charter governing, in part, the composition and structure of the Board and setting out the duties and responsibilities of its members approved by the Board on March 7, 2017;

“**Business**” means, the development and operation of the Moberly Frac Sand Project in British Columbia and any other activities that the Corporation may undertake;

“**Business Day**” means any day excepting a Saturday, Sunday or statutory holiday in Alberta;

“**By-laws**” means the by-laws of the Corporation in the form approved by the Shareholders on December 1, 2017 as amended from time to time in accordance with the Act;

“**CEO**” means the Chief Executive Officer of the Corporation, appointed by the Board from time to time in accordance with the Board Charter, who shall have the title of “President and Chief Executive Officer” of the Corporation;

“**Chairman**” means the chairman of the Corporation appointed by the Board from time to time in accordance with the Board Charter;

“**Closing**” has the meaning ascribed thereto in Section 11.1;

“**Common Shares**” means the shares designated as the “Common Shares” in the capital of the Corporation;

“**Constitutional Documents**” means, collectively, the Articles, By-laws, Board Charter and this Agreement;

“**control**”, “**controlled**”, “**controlling**” and similar terms mean a relationship between two Persons wherein one of such Persons has the ability to manage the affairs of, or to significantly affect the management decisions of, the other of such Persons, and includes (i) in respect of a corporation, the ownership, directly or indirectly through one or more Persons, of voting securities of the corporation carrying more than 50% of the votes that may be cast to elect directors of such corporation, provided that such votes, if exercised, are sufficient to elect a majority of the directors of such corporation or other Person; and (ii) in respect of a Person that is not a corporation, the ownership, directly or indirectly through one or more Persons, of voting rights in respect of the Person which are sufficient to determine the material business decisions of such Person;

“**Defaulting Shareholder**” has the meaning ascribed thereto in Section 14.1;

“**Designated Director**” has the meaning ascribed to it in Section 4.2;

“**Directors**” means the persons who are from time to time duly elected directors of the Corporation and “**Director**” means any one of them;

“**Disposing Shareholder**” has the meaning ascribed thereto in Section 10.2;

“**Disposing Shareholder’s Interest**” has the meaning ascribed thereto in Section 10.2;

“**Disposition**” has the meaning ascribed thereto in Section 10.1;

“**Drag-Along Notice**” has the meaning ascribed thereto in Section 9.1(a);

“**Drag-Along Offer**” has the meaning ascribed thereto in Section 9.1(a);

“**Drag-Along Purchaser**” has the meaning ascribed thereto in Section 9.1(a);

“**Drag-Along Sale**” has the meaning ascribed thereto in Section 9.1(a);

“**Drag-Along Seller**” has the meaning ascribed thereto in Section 9.1(a);

“**Exercise Notice**” has the meaning ascribed thereto in Section 10.3;

“**Facility Agreement**” means the US\$40,000,000 Secured Facility Agreement dated 15 July 2015 between HCA Mountain Minerals (Moberly) Limited (a company incorporated under the laws of British Columbia), the entities listed in Part I of Schedule 1 to that agreement as original

guarantors, Taurus Funds Management Pty Limited as trustee for Taurus Resources No. 2 L.P and Taurus Funds Management Pty Limited as trustee for Taurus Resources No. 2 Trust, as amended and novated to Taurus Resources No. 2 B.V. by the agreement entitled “HCA Mountain Minerals (Moberly) US \$40m Secured Facility Agreement – Novation and Amendment Deed 1”) dated 10 February 2016;

“**Fair Market Value**” means, with respect to the Shares, the price of the Shares as determined in an open and unrestricted market between informed and prudent parties, acting at Arm’s Length under no compulsion to act, expressed in terms of money or money’s worth;

“**Family Member**” means, with respect to any Shareholder which is an individual, any spouse, parent, grandparent, brother, sister, child or grandchild of such person, any de facto family member or a family trust established by such Shareholder;

“**GAAP**” means generally accepted accounting principles consistently applied as set out in the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time, and other authoritative announcements issued by the Accounting Standards Board of the Canadian Institute of Chartered Accountants;

“**IFRS**” means International Financial Reporting Standards which are issued by the International Accounting Standards Board, as adopted in Canada;

“**Independent Director**” shall mean a Director who has no direct or indirect material relationship with the issuer, which could in the view of the Corporation’s Board, be reasonably expected to interfere with the exercise of a Director’s independent judgement;

“**Initiating Drag-Along Seller**” has the meaning ascribed thereto in Section 9.1(a)(i);

“**Law**” means mean all governmental laws (statutory or common), rules, ordinances, regulations, grants, concessions, franchises, licenses, orders, directives, judgments, decrees, and other governmental restrictions, including permits and other similar requirements, whether legislative, administrative or judicial in nature, having application, directly or indirectly, to the Parties and their respective Subsidiaries and other Affiliates, or the transactions contemplated by this Agreement;

“**Losses**” means in respect of a person and in relation to a matter, any and all losses, liabilities, damages, costs, expenses, charges (including all penalties, assessments and fines) which that person suffers, sustains, pays or incurs in connection with that matter and includes reasonable costs of legal counsel (on a solicitor and his own client basis) and other professional advisors and consultants and reasonable costs of investigating and defending claims arising from the matter if those claims are sustained and also includes taxes on a settlement payment or damage award in respect of that matter but does not include, consequential or indirect losses or loss of profit;

“**Mandatory Offeree**” has the meaning ascribed thereto in Section 9.1(a);

“**Offer**” means the Corporation’s offer to acquire all of the outstanding shares of Heemskirk Consolidated Limited dated March 15, 2017;

“**Person**” means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, limited liability company, unlimited liability company, government, government regulatory authority, governmental department, agency, commission, board, tribunal, dispute settlement panel or body, bureau, court and, where the context requires, any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

“**Original Agreement**” means the original unanimous shareholders agreement between the Corporation and the Shareholders made effective March 7, 2017;

“**Participating Tag-Along Seller**” has the meaning ascribed thereto in Section 8.1(c);

“**Party**” means a party to this agreement and its successors and permitted assigns;

“**Preferred Shares**” means the shares designated as “Preferred Shares” in the share capital of the Corporation;

“**Proposing Transferors**” has the meaning ascribed thereto in Section 7.1(a), and “**Proposing Transferor**” means any one of such Persons, as the context requires;

“**Purchaser**” has the meaning ascribed thereto in Section 11.1;

“**Related Parties**” means, in reference to a Party: (i) its Affiliates, successors and assigns; (ii) its directors, officers, agents, employees, legal counsel, consultants, advisors and, in the case of a non-corporate Party, such Party’s Family Members; and (iii) its Affiliates’ directors, officers, agents, employees, legal counsel, consultants and advisors;

“**Resident Canadian**” means an individual who is:

- (a) a Canadian citizen ordinarily resident in Canada,
- (b) a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons under the Act, or
- (c) a permanent resident within the meaning of the *Immigration Act (Canada)* and ordinarily resident in Canada;

“**Sale**”, “**Sell**” or “**Sold**” has the meaning ascribed thereto in Section 6.1;

“**Securities**” or “**Security**” includes the Shares and any Shareholder Loan or other evidence of indebtedness or subscription issued by the Corporation;

“**Seller**” has the meaning ascribed thereto in Section 11.1;

“**Shareholders**” means each Person recorded in the shareholder registry maintained by or on behalf of the Corporation as holding either Common Shares or Preferred Shares on the date hereof and, any Person who subsequently acquires and becomes the holder of Common Shares or Preferred Shares effective from the time of such acquisition and who is recorded on the shareholder register as holding such Shares, and “**Shareholder**” means any one of such Persons, as the context requires;

**“Shareholder Loan”** means any debt obligation of the Corporation or a Subsidiary to a Shareholder or any amount that may be owing by the Corporation or a Subsidiary to a Shareholder, whether currently or in the future, evidenced by a promissory note issued by the Corporation or a Subsidiary to a Shareholder;

**“Shareholders’ Notice”** has the meaning ascribed thereto in Section 10.4;

**“Shareholder Party”** has the meaning ascribed to it in Section 16.11;

**“Shares”** means any shares in the capital of the Corporation including the Common Shares and the Preferred Shares;

**“Share Allocation Notice”** has the meaning ascribed thereto in Section 5.1(c);

**“Share Issue Notice”** has the meaning ascribed thereto in Section 5.1(a);

**“Share Offer Notice”** has the mean ascribed thereto in Section 7.1(a)(iii);

**“Share Percentage”** means with respect to any Shareholder, the number of Common Shares held by such Shareholder from time to time expressed as a percentage of the total number of Common Shares issued and outstanding at that time; provided, however, that the total of all Share Percentages shall always equal one hundred percent (100%);

**“Share Request Notice”** has the meaning ascribed thereto in Section 5.1(b);

**“Special Board Matters”** means any action proposed to be undertaken, or not undertaken, by or on behalf of the Corporation that requires the approval of the Board in accordance with the By-law;

**“Special Shareholder Matters”** means any action proposed to be undertaken, or not undertaken, by or on behalf of the Corporation that requires the approval of those Shareholders holding not less than seventy-five percent (75%) of the issued and outstanding Shares, in the manner set forth in Section 4.3;

**“Subsidiary”** has, with respect to the Corporation, the meaning set out in the Act;

**“Tagging Shareholders”** has the meaning ascribed thereto in Section 8.1(a);

**“Tag-Along Initiation Notice”** has the meaning ascribed thereto in Section 8.1(a);

**“Tag-Along Participation Notice”** has the meaning ascribed thereto in Section 8.1(c);

**“Tag-Along Sale”** has the meaning ascribed thereto in Section 8.1(a);

**“Tag-Along Sellers”** has the meaning ascribed thereto in Section 8.1(c);

**“Valuation Date”** has the meaning ascribed thereto in Section 12.1; and

“**Working Capital Facility Agreement**” means the 2017 CAD\$10,000,000 Unsecured Working Capital Facility Agreement between Taurus Resources No. 2 B.V., HCA Mountain Minerals (Moberly) Limited and the Corporation.

## 1.2 Certain Rules of Interpretation

In this Agreement:

- (a) Time – Time is of the essence in the performance of the Parties’ respective obligations.
- (b) Currency – Unless otherwise specified, all references to money amounts are to the lawful currency of Canada.
- (c) Headings – Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (d) Consent – Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time period, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its consent or approval.
- (e) Time Periods – Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.
- (f) Business Day – Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, such payment shall be made or action taken on the next Business Day following.
- (g) Governing Law – This Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable in the Province of Alberta. Each Party submits to the non-exclusive jurisdiction of any Alberta courts sitting in Calgary in any action, application, reference or other proceeding arising out of or related to this Agreement and agrees that all claims in respect of any such action, application, reference or other proceeding shall be heard and determined in such Alberta courts. Each of the parties irrevocably waives, to the fullest extent it may effectively do so, the defence of an inconvenient forum to the maintenance of such action, application or proceeding.
- (h) Including – Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.

- (i) No Strict Construction – The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.
- (j) Number and Gender – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (k) Severability – If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances.
- (l) Statutory References – A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation that amends, supplements or supersedes any such statute or any such regulation.

### **1.3 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and sets out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties pertaining to that subject matter and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, pertaining to that subject matter. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement.

### **1.4 Schedules**

The Schedules to this Agreement, as listed below, are an integral part of this Agreement:

Schedule 1	List of Shareholders
Schedule 2	Form of Counterpart Execution Joinder
Schedule 3	Notice

## **ARTICLE 2 PURPOSE AND SCOPE OF AGREEMENT**

### **2.1 Unanimous Shareholder Agreement**

- (a) This Agreement shall be deemed to be a unanimous shareholder agreement within the meaning of the Act and the power of the Directors to manage or supervise the

management of the business and affairs of the Corporation is restricted in accordance with the terms of this Agreement.

- (b) Where provided in this Agreement, a Shareholder has all of the rights, powers and duties of a Director and all of the obligations and liabilities relating to such rights, powers and duties, whether arising under the Act or otherwise, and to the extent that this Agreement restricts the discretion or powers of the Directors to manage or supervise the management of the business and affairs of the Corporation the Directors are relieved of their duties and liabilities in regard thereto.
- (c) No amendment to this Agreement which will affect the rights, powers and duties of any of the Directors shall become effective until the Directors have been given written notice of the proposed amendment and an opportunity to resign.

## **2.2 Compliance with Agreement**

Each Shareholder agrees to vote and act as a shareholder of the Corporation to fulfil the provisions of this Agreement and in all other respects to comply with, and use its best efforts to cause the Corporation to comply with, this Agreement, and to the extent, if any, which may be permitted by law, shall cause the Directors to act in accordance with this Agreement.

## **2.3 Conflict**

In the event of any conflict between the provisions of this Agreement and the Articles, the provisions of this Agreement shall govern to the extent permitted by the Act. Each of the Parties agree, upon becoming a Shareholder, to vote or cause to be voted the Shares owned by it so as to cause the Articles to be amended to resolve any such conflict in favour of the provisions of this Agreement to the extent permitted by the Act.

## **2.4 Compliance by Corporation**

The Corporation by its execution hereof acknowledges that it has actual notice of the terms of this Agreement, consents hereto and hereby covenants with each of the Shareholders that it will at all times during the term of this Agreement be governed by the terms and provisions hereof in carrying out its business and affairs and, accordingly, shall give or cause to be given such notices, execute or cause to be executed such documents and do or cause to be done all such acts, matters and things as may from time to time be necessary or required to carry out the terms and intent hereof.

# **ARTICLE 3 FINANCIAL PARTICIPATION IN THE CORPORATION**

## **3.1 Equity Participation**

Each of the Shareholders severally, and not jointly, represents and warrants to each other Party that it is the legal and beneficial owner of the entire right, title and interest in and to the Shares appearing opposite to the name of such Shareholder in Schedule 1 hereto, which may be amended by the Corporation to reflect the issuance and transfer of Shares from time to time.



### **3.2 Additional Capital**

Except as provided in this Agreement or as otherwise unanimously agreed, none of the Shareholders shall be obligated to acquire additional Shares or to make loans to the Corporation. It is intention of the Parties that further funds required by the Corporation from time to time will be obtained, to the extent possible, through additional issuances of equity undertaken in accordance with Section 3.2 hereof or by borrowing from a Canadian chartered bank or other lender acceptable to the Shareholders, by permanent or interim financing, or any combination thereof.

## **ARTICLE 4 MANAGEMENT OF THE CORPORATION**

### **4.1 Board Charter**

The duties and responsibilities of the Board shall be governed by the Act and the Board Charter.

### **4.2 Board of Directors**

- (a) The board of directors shall consist of a minimum of three (3) and a maximum of eight (8) directors.
- (b) The Shareholders acknowledge and agree that the Corporation presently has a Board consisting of three (3) Directors, as follows:
  - (i) Martin Boland;
  - (ii) Frank Turner; and
  - (iii) Stuart Love.
- (c) By not later than June 30 2017, the Board shall be comprised of five members as follows:
  - (i) A minimum of twenty-five percent (25%) of the Directors must be Resident Canadians.
  - (ii) If there are three (3) or less Designated Directors on the Board, there shall be a minimum of one (1) Independent Director on the Board.
  - (iii) If there are four (4) or greater Designated Directors on the Board, there shall be a minimum of two (2) Independent Directors on the Board.
  - (iv) The Board may elect the CEO as a member of the Board.
- (d) Shareholders with twenty percent (20%) or greater equity interest in the Corporation may appoint one (1) Director per each twenty percent (20%) interest they own subject to compliance with the requirements noted above. Any Director that is appointed as aforesaid is a “**Designated Director**”. A Shareholder entitled

to designate a Designated Director shall only designate a person that meets the requirements of the Act.

- (e) The Board shall, in advance of any meeting of Shareholders called for purposes of electing Directors, propose a slate of nominees to the Shareholders which shall include, subject to compliance with the Act, each Designated Director as well as such other persons as determined by the Board in compliance with the Act and the Board Charter.
- (f) At least twenty-one (21) days before any meeting of Shareholders at which Directors are to be elected or, in the case of a vacancy on the Board, at least twenty-one (21) days before the effective date of any appointment of a Director to fill such vacancy, any Shareholder entitled to appoint a Designated Director shall give notice to the Board stating the name of the appointee or appointees proposed by such Shareholder.
- (g) If a Designated Director vacates his or her position on the Board, then the Board shall fill the resulting vacancy at the direction of the appointing Shareholder, as applicable, provided the Shareholder remains entitled to appoint an individual to the Board under Section 4.2(d).
- (h) Each Shareholder shall vote all of its Shares to elect the Directors recommended to the Shareholders by the Board in accordance with Section 4.2(e) of this Agreement.

### **4.3 Matters Requiring Special Shareholder Approval**

No obligation of the Corporation or any Subsidiary will be entered into, no decision will be made and no action will be taken by the Corporation or any Subsidiary with respect to:

- (a) making any material change to the nature of the Business of the Corporation, undertaking of new activities or starting a new business;
- (b) authorising or permitting the entry by the Corporation into:
  - (i) a merger, consolidation, arrangement or amalgamation with any other Person;
  - (ii) a scheme for the acquisition of another enterprise (excluding for this purpose, the Offer);
  - (iii) a scheme for another enterprise to take over the Corporation or any of the Subsidiaries;
  - (iv) a partnership, joint venture or similar arrangement or any transaction which is not in the ordinary course of the business of the Corporation; and
  - (v) any proposal to amend the Corporation's Constitutional Documents or change their name, or

- (c) adopting a profit-sharing, share option, bonus or other incentive scheme for the benefit of the Directors, other officers or other employees of, or service provider to, the Corporation and any material amendment to or termination of the scheme.

unless:

- (d) at any meeting of Shareholders duly called for the purpose of considering the proposed action, at least seventy-five (75%) of the votes attached to all of the Common Shares then outstanding are cast by holders of Common Shares in favour of the action; or
- (e) all of the Shareholders consent to such action by an instrument or instruments through written resolution.

#### **4.4 Matters Requiring Special Board Approval**

No obligation of the Corporation or any Subsidiary will be entered into, no decision will be made and no action will be taken by the Corporation or any Subsidiary with respect to:

- (a) allotting or issuing of additional securities of the Corporation or creation of any shares or new class of shares of the Corporation;
- (b) any adjustment or variation of rights to the Shares or the granting of options over the Shares pursuant to any scheme approved by the Shareholders as aforesaid;
- (c) increasing, reducing, consolidating, splitting or otherwise restructuring or reorganising the authorised share capital of the Corporation;
- (d) applying for listing of any Shares or other securities of the Corporation on any recognised stock exchange;
- (e) declaring or paying dividends or making other distributions;
- (f) approving or permitting an acquisition or incurring any capital expenditure greater than C\$5,000,000;
- (g) incurring any borrowings (including contingent or future indebtedness) greater than C\$5,000,000 other than those in existence in Heemskirk Consolidated Limited on the date hereof;
- (h) disposing of material assets or undertakings of the Corporation or contracting to do so;
- (i) approving the formation of any Subsidiary or the acquisition of any shares in any other company;
- (j) creating or allowing to subsist any security interest or other interest or right over any of the assets or undertakings of the Corporation;
- (k) entering into a transaction with a Director or an affiliate of a Director;

- (l) delegating any of the Board's powers or duties to any Committee or person or determining the composition, chair and charter of any Committee;
- (m) the appointment or dismissal of the Auditors;
- (n) making any material change in the accounting policies followed by the Corporation;
- (o) the winding up or dissolution of the Corporation; and
- (p) approving any annual budget or business plan of the Corporation,

unless at any meeting of the Board duly called for the purpose of considering the proposed action at which quorum is present, at least seventy-five (75%) of the Directors vote in favour of the action.

#### **4.5 Remuneration to Directors**

The terms and conditions applicable to the remuneration payable to the Directors shall be as follows:

- (a) Directors shall receive an annual retainer and meeting fees as shall be determined by the other Directors on an annual basis; and
- (b) Directors shall be reimbursed for their reasonable expenses incurred with respect to the Corporation's affairs, including attendance at Directors' meetings.

#### **4.6 Officers**

- (a) The Corporation shall have a Chairman and a CEO, in each case appointed in accordance with the Board Charter, together with such other officers as the Directors may from time to time determine, with such authorities and responsibilities delegated by the Directors as they deem necessary or appropriate.
- (b) The initial Chairman shall be appointed by December 31, 2017 and shall, subject to the operation of this Agreement, have the authorities and responsibilities that are typically delegated to the Chairman of a corporation existing under the Act in addition to those set out in the Board Charter and this Agreement or as may be delegated to such person by the Directors.
- (c) The initial CEO shall be appointed by December 31, 2017 and shall have such authorities and responsibilities as are set out in the Board Charter and this Agreement and as may be delegated by the Directors.

#### **4.7 Indemnity for Directors and Officers**

Subject to any limitations set forth in the Act, but in addition to any existing provisions which may be contained in the Articles, or the Board Charter from time to time, the Corporation shall indemnify current and former Directors and officers of the Corporation or its Subsidiaries and such Director or officers' heirs, successors and other personal representatives at law against all

damages, charges and expenses, including any amount paid to settle any action or satisfy any judgment, reasonably incurred by such Director or officer in respect of any civil, criminal or administrative action or proceeding to which such Director or officer was made a party by reason of being or having been a Director or officer of the Corporation or such subsidiary and any costs related thereto, including any legal costs and disbursements on a solicitor and his own client basis, if:

- (a) such Director or officer has acted honestly and in good faith with a view to the best interests of the Corporation or the Subsidiary in question; and
- (b) in the case of any criminal or administrative action or proceeding, such Director or officer had reasonable ground to believe that his conduct was lawful.

Nothing in this Section 4.7 shall limit the right of any person entitled to claim any indemnity apart from the provisions of this Section 4.7.

#### **4.8 Remuneration to Individuals**

The fees, salaries, bonuses and other forms of remuneration or compensation payable by the Corporation or any of its Subsidiaries or Affiliates to the executive officers of the Corporation shall be determined from time to time by the Directors.

### **ARTICLE 5 SHARE ISSUANCE**

#### **5.1 Issuance of Shares**

- (a) Except as provided in subsection 5.1(j), in the event that the Board determines to issue any additional Shares, options to purchase Shares or securities convertible into Shares (collectively referred to in this Section as “**Additional Securities**”), the Corporation shall within ten (10) Business Days, give a notice (a “**Share Issue Notice**”) to each Shareholder specifying:
  - (i) the reasons why the Corporation is seeking to raise additional equity funding;
  - (ii) the number of shares which the Corporation wishes to issue;
  - (iii) the proposed Share price in Canadian dollar terms; and
  - (iv) each other material term or condition of the proposed issue of Shares.
- (b) A Shareholder may give a notice to the Corporation at any time within twenty (20) Business Days after the Corporation has issued a Share Issue Notice. Such notice must specify the maximum number of Shares that the Shareholder wishes to acquire on the terms and conditions offered by the Corporation (a “**Share Request Notice**”).
- (c) The Corporation must, within forty (40) Business Days after the Corporation has issued the Share Issue Notice to each Shareholder, give to each Shareholder who

has validly agreed to subscribe for Shares pursuant to a Share Request Notice, a notice that specifies the number of Shares that the Shareholder is to receive (a “**Share Allocation Notice**”). Any Shareholder who does not provide a Share Request Notice within the twenty (20) Business Day period noted above shall be deemed to have irrevocably waived its right to purchase any Additional Securities which were the subject of the Share Issue Notice.

- (d) If the aggregate number of Shares contained in all of the Share Request Notices received by the Corporation in response to such Share Issue Notice exceeds the number of Shares specified in the Share Issue Notice, Shares shall be allocated to Shareholders on a *pro rata* basis, referencing Shareholder ownership on the date a Share Issue Notice is issued.
- (e) If the aggregate number of Shares contained in the Share Request Notices received by the Corporation in response to such Share Issue Notice is less than the number of Shares specified in such Share Issue Notice, Shares shall be allocated in accordance with the Share Request Notices.
- (f) The request of each Shareholder who tenders a Share Request Notice to purchase Additional Securities shall be irrevocable, and such Shareholder shall be bound by, and obligated to purchase the number of Additional Securities specified in its Shareholder Request Notice.
- (g) Subject to receiving a full payment for each Share which is specified in a Share Allocation Notice received by the Corporation, and subject to applicable Law, the Corporation shall issue the Shares subscribed for in the Share Allocation Notice within three (3) Business Days following the expiry of the forty (40) Business Day period noted above.
- (h) If, at the earlier of three (3) Business Days after the issuance of Shares subscribed for pursuant to a Share Request Notice or sixty (60) days after the issuance of a Share Issue Notice to each Shareholder, the aggregate number of Shares issued is less than the number of Shares specified in the Share Issue Notice, the Corporation may issue Shares equal to or less than the shortfall to any third party provided that:
  - (i) the issue price is not less than the Share price specified in the Share Issue Notice;
  - (ii) the issue is not on terms and conditions that are more favourable to the third party than the terms and conditions specified in the Share Issue Notice; and
  - (iii) prior to the Corporation issuing any Shares to a third party, the third party shall enter into an adherence deed, agreeing to be bound by the terms and conditions of this Agreement.
- (i) The price for the issuance of Shares of the Corporation shall not be less than \$0.075 per share for a period of fifteen (15) months following incorporation.

- (j) Subject to approval under Section 4.3, the Corporation shall be entitled to issue Additional Securities, without complying with the provisions of Section 5.1(a), through to 5.1(i) when such Additional Securities are being issued:
- (i) upon the exercise of conversion or exchange rights attached to other securities issued by the Corporation in compliance with the terms of this Agreement;
  - (ii) in connection with the acquisition of assets or services (including bank loans, equipment lease financings and acquisition transactions) by the Corporation from a person with whom the Corporation deals at Arm's Length,
  - (iii) upon the exercise of conversion or exchange rights prescribed under the terms of the Facility Agreement;
  - (iv) in connection with the issuance of securities in accordance with the terms of the Working Capital Facility Agreement or the exercise of and conversion of exchange rights attached to those securities; and
  - (v) in connection with the Offer and any related procedures including a compulsory acquisition following completion of the Offer,

provided that if the Person to whom the issuance is proposed to be made is not already bound by the terms of this Agreement, such Person shall first agree, in writing, to become a party to and bound by the terms of this Agreement, by executing a counterpart execution joinder in the form attached hereto as Schedule 2.

## **ARTICLE 6 SHARES**

### **6.1 General Transfer Restriction**

- (a) Except as otherwise provided in this Agreement, no Shares shall at any time be transferred, sold, assigned, mortgaged, pledged, encumbered, hypothecated, declared to be held in trust or otherwise dealt with (any such dealing being herein referred to by the terms "**Sale**", "**Sell**" or "**Sold**") by a Shareholder. The Corporation shall not accept for registration any transaction in Shares in contravention of the terms of this Agreement.
- (b) Notwithstanding anything else contained in this Agreement, no issue or Sale of Shares to any person shall be made until after such person agrees in writing to be bound by and to observe the terms and provisions of this Agreement by executing this Agreement or the counterpart execution joinder set forth in Schedule 2 hereto. A person so agreeing shall be deemed to be a party to this Agreement and one of the Shareholders hereto.

## 6.2 Endorsement on Certificates

Share certificates of the Corporation representing Shares now or hereafter owned by the Shareholders during the currency of this Agreement (whether such Shares are issued initially or with respect to a transfer or otherwise) shall have endorsed thereon in bold the following legend:

**“THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A UNANIMOUS SHAREHOLDER AGREEMENT MADE MARCH 7, 2017 AS IT MAY BE AMENDED, WHICH AGREEMENT CONTAINS, AMONG OTHER THINGS, RESTRICTIONS ON THE RIGHT OF THE HOLDER HEREOF TO TRANSFER OR SELL THE SHARES. A COPY OF SUCH AGREEMENT IS ON FILE AT THE REGISTERED OFFICE OF THE CORPORATION.”**

## 6.3 Disposition With Consent

A Shareholder may Sell to any Person all or some of its Shares if, in addition to obtaining any consent required by the Articles, prior written consent to such Sale is given by each of the other Shareholders, such consent not to be unreasonably withheld or arbitrarily delayed.

## 6.4 Excepted Transfers

A Shareholder shall be entitled to Sell all or any Shares owned by the Shareholder:

- (a) if a company, to any companies wholly owned by it, or if an individual, to any companies wholly owned by such Shareholder provided that, prior to the completion of such Sale the transferee becomes subject to all of the obligations, and becomes entitled to all of the rights of such Shareholder under this Agreement by delivering to the Corporation an executed copy of the counterpart execution joinder in Schedule 2 hereto, and further provided that the selling Shareholder shall continue thereafter to be bound by the terms and conditions of this Agreement and shall continue to wholly own the transferee.
- (b) in accordance with Section 6.3 and Article 7, Article 8 and Article 9 hereof.

## 6.5 Shares of the Corporation

The provisions of this Agreement relating to Shares of the Corporation shall apply *mutatis mutandis* to any Shares or other Securities into which such Shares may be converted, changed, reclassified, redivided, redesignated, redeemed, subdivided or consolidated; to any Shares or other Securities that are received by the Shareholders hereto as part of a new issue, as a stock dividend or distribution payable in Shares or other Securities of the Corporation; and to any Shares or other Securities or shares or other securities of any successor or continuing entity of the Corporation that may be received by the Shareholders on a reorganization, amalgamation, arrangement, consolidation or merger, statutory or otherwise.



## 6.6 Change of Control of Corporate Shareholders

Except as otherwise provided in this Agreement, any transfer, sale, assignment, transmission, bequest, inheritance, mortgage, encumbrance or other disposition of Shares (excluding death) having the result (directly or indirectly and either immediately or subject to the happening of any contingency) of changing the identity of the Person or Persons exercising or who might exercise control of any of the voting shares of any corporate Shareholder (from the Person or Persons exercising control of any such corporate Shareholder as of the date of execution of this Agreement) shall be deemed to be a Sale by such corporate Shareholder of its Shares for purposes of this Agreement notwithstanding whether such change shall be voluntary or involuntary on the part of such corporate Shareholder.

## ARTICLE 7 RIGHT OF FIRST REFUSAL

### 7.1 Right of First Refusal

- (a) Any Shareholder or Shareholders acting together, who propose to transfer Shares, (the “**Proposing Transferor(s)**”) must give notice to the Corporation and to each other Shareholder specifying:
  - (i) the number of Shares to be transferred;
  - (ii) the proposed Share price; and
  - (iii) each other term or condition of the proposed transfer of Shares (a “**Share Offer Notice**”).
- (b) Each other Shareholder may give notice to the Proposing Transferor(s) who have given a Share Offer Notice, any time within ten (10) Business Days after the Proposing Transferor(s) have given that Share Offer Notice to each other Shareholder. Such notice must specify the maximum number of Shares that the Shareholder wishes to acquire on the terms and conditions offered by the Proposing Transferor(s) (a “**Share Request Notice**”). Any Shareholder who does not provide a Share Request Notice within the ten (10) Business Day period noted above shall be deemed to have irrevocably waived its right to purchase any Shares that were the subject of the Share Offer Notice.
- (c) The Proposing Transferor(s) must, within forty (40) Business Days after issuing a Share Offer Notice, give to each Shareholder who has requested Shares pursuant to a Share Request Notice, a Share Allocation Notice that specifies the number of Shares the Shareholder is entitled to receive.
- (d) The request of each Shareholder providing a Share Request Notice in response to a Share Offer Notice to purchase additional Shares shall be irrevocable, and such Shareholder shall be bound by, and obligated to purchase the number of Shares specified in its Share Request Notice.

- (e) If the aggregate number of Shares contained in all of the Share Request Notices received by the Proposing Transferor(s) exceeds the aggregate number of Shares specified in such Share Offer Notice, Shares shall be allocated to the Shareholders that have validly tendered a Share Request Notice on a *pro rata* basis by reference to each such Shareholder's ownership of Shares on the date the Share Issue Notice was issued as compared to all of the Shares issued and outstanding on such date.
- (f) Each Shareholder than has validly tendered a Share Request Notice must, within ten (10) Business Days after the Proposing Transferor(s) have given a Share Allocation Notice to the other Shareholder, pay to the Proposing Transferor(s) the Share price for each Share subscribed for by such Shareholder and allocated to such Shareholder in its Share Allocation Notice.
- (g) Subject to the payment of the Share price for each Share to be transferred being received by the Proposed Transferor(s), and compliance with the other terms and conditions of the offer under the Share Offer Notice, the Proposing Transferor(s) must deliver to each other Shareholder to whom the Proposing Transferor(s) have given a Share Allocation Notice, an executed share transfer form in a form that enables the registration of the transfer of the Shares to the other Shareholder specified in that Share Allocation Notice.
- (h) The Proposing Transferor(s) may transfer any remaining Shares not purchased by another Shareholder as aforesaid to any third party within six (6) months after the date on which the Share Offer Notice was provided to the Corporation and each of the other Shareholders, provided that:
  - (i) the Shares are the subject of a Share Offer Notice; and
  - (ii) the transfer is not:
    - (A) at a price less than the Share price specified in the Share Offer Notice (after deducting any dividend or other distribution declared or made after the date of the Share Offer Notice and retained or to be retained by the Proposing Transferor(s)); or
    - (B) on terms and conditions which are otherwise more favorable to the third party than the terms and conditions contained in the Share Offer Notice;
- (i) Subsections (b) through (h) of this Section 7.1 do not apply when the Proposing Transferor(s) proposes to transfer shares, which at the time of Sale, when aggregated with all other Shares Sold by the Proposing Transferor(s) during the preceding twelve (12) month period, do not exceed 0.20 percent of the total number of outstanding Shares of the Corporation then outstanding. For greater certainty, the other provisions of this Agreement, including Section 6.1 and Section 6.2 shall apply to any such Sale, and, in addition, the Proposing Transferor(s) shall provide written notice to the Corporation of any such Sale.

## 7.2 Closing

It shall be a condition of the closing of any Sale under Article 6, Article 8 and Article 9 for the benefit of the Corporation or purchasing Shareholders, as the case may be, that the Disposing Shareholder deliver against payment of the purchase price a release and discharge of any and all claims of the Disposing Shareholder against the Corporation and its officers and Directors, the certificate or certificates representing the Disposing Shareholder's Interest duly endorsed in blank and a representation and warranty dated the day of closing to the effect that the Disposing Shareholder has good right, title and lawful authority to sell the Disposing Shareholder's Interest, that the Disposing Shareholder's Interest is not subject to any contractual or other restrictions (other than pursuant to this Agreement or the Articles) and that the Disposing Shareholder's Interest is beneficially owned by the Disposing Shareholder free and clear of any liens, encumbrances, mortgages, pledges, charges or security interests of any kind whatsoever. Subject to the provisions of this Section 7.1(i), the Sale of a Disposing Shareholder's Interest shall be completed in accordance with the terms set out in Article 11.

## ARTICLE 8 TAG ALONG RIGHTS

### 8.1 Tag Along Rights

- (a) If any Proposing Transferor(s), having complied with Article 7, if applicable, proposes to sell all or a portion of the Shares of such Proposing Transferor(s) (so long as such Shares constitute over 50% of the Shares of such class issued and outstanding) to a non-Affiliated third party then the Proposing Transferor(s) shall first furnish a written notice (the "**Tag-Along Initiation Notice**") to the Corporation and each other Shareholder that are not Proposing Transferor(s) (collectively, the "**Tagging Shareholders**") prior to the consummation of any sale pursuant to this Article 8 (a "**Tag-Along Sale**"). The Tag-Along Initiation Notice shall include:
  - (i) the principal terms of the Tag-Along Sale, including:
    - (A) the per Share purchase price; and
    - (B) the name and address of the prospective third party; and
  - (ii) an invitation to each Tagging Shareholder to participate in such Tag-Along Sale on substantially the same terms as those upon which the Proposing Transferor(s) will sell to the third party.
- (b) If a Tag-Along Initiation Notice is delivered, each Shareholder has the right to require the Third Party to purchase all of the Shares held by such Shareholder on the same terms and conditions as the Proposing Transferor(s) proposes to sell their Shares to a non-affiliated third party.
- (c) Within ten (10) Business Days after receipt of the Tag-Along Initiation Notice, each Tagging Shareholder desiring to include Shares in the Tag-Along Sale (each, a "**Participating Tag-Along Seller**", and collectively with the Proposing

Transferor(s), the “**Tag-Along Sellers**”) shall furnish a written notice (the “**Tag-Along Participation Notice**”) to the Corporation and the Proposing Transferor(s) requesting the inclusion of their Shares in the Tag-Along Sale. Each Tagging Shareholder who does not timely furnish a Tag-Along Participation Notice to the Proposing Transferor(s) in accordance with the immediately preceding sentence shall be deemed to have waived all of the rights of such Tagging Shareholder with respect to the Tag-Along Sale.

- (d) The request of each Participating Tag-Along Seller contained in its Tag-Along Participation Notice shall be irrevocable, and such Participating Tag-Along Seller shall be bound by, and obligated to sell in the Tag-Along Sale the number of Shares specified in, its Tag-Along Participation Notice on the same terms and conditions (including time of sale), with respect to each Share sold, as each Proposing Transferor(s) shall sell each of its Shares; provided, however, that:
  - (i) if, at the end of the sixtieth (60<sup>th</sup>) Business Day following receipt of the Tag-Along Initiation Notice, the Proposing Transferor(s) has not completed the Tag-Along Sale, then:
    - (A) each Participating Tag-Along Seller shall be released from its obligations under its Tag-Along Participation Notice;
    - (B) the Tag-Along Initiation Notice shall be null and void; and
    - (C) the consummation of the Tag-Along Sale shall be subject to the satisfaction anew of the requirements of this Article 8, including the issuance of a new Tag-Along Initiation Notice; in each case, unless the failure to complete the Tag-Along Sale resulted from the failure by any Participating Tag-Along Seller to comply with the terms of this Section 8.1 (in the case of which failure, the Proposing Transferor(s) shall be permitted to sell to the third party any Shares not sold by reason of such failure).
- (e) On a sale of Shares pursuant to this Section 8.1, all Shareholders selling Shares shall be required, together with the Proposing Transferor(s), to provide to the third party such covenants, representations and warranties as are negotiated with the third party by the Proposing Transferor(s). Such covenants, representations and warranties shall be given severally by the Shareholders selling Shares pursuant to this Section 8.1 with liability for such representations and warranties being shared between such Shareholders in the proportion that the number of Shares being sold by each of them bears to the total number of Shares being sold by the Proposing Transferor(s) and the Tagging Shareholders, except for liabilities related to breaches of representations, warranties and covenants relating solely to any individual Shareholder, which shall be borne solely by the breaching Shareholder.

**ARTICLE 9  
DRAG-ALONG RIGHT**

**9.1 Drag-Along Right**

- (a) If a *bona fide* offer (a “**Drag-Along Offer**”) is made or proposed to any Shareholders or to the Corporation by a prospective third party purchaser that is not an Affiliate of the Drag-Along Sellers (the “**Drag-Along Purchaser**”) that provides for the transfer of the beneficial ownership of at least seventy-five percent (75%) of the total issued and outstanding Shares on a fully diluted basis, the Initiating Drag-Along Seller may furnish a written notice (the “**Drag-Along Notice**”) to each other Shareholder (each a “**Mandatory Offeree**”, and collectively with the Initiating Drag-Along Seller, the “**Drag-Along Sellers**”), which Drag-Along Notice:
- (i) shall be furnished to each Mandatory Offeree at least twenty (20) Business Days prior to the consummation of any sale pursuant to this Section 9.1 (a “**Drag-Along Sale**”);
  - (ii) shall include the principal terms of the Drag-Along Sale, including the per Share purchase price and the name and address of the prospective Drag-Along Purchaser;
  - (iii) shall require each Mandatory Offeree to sell in the Drag-Along Sale such Mandatory Offeree’s Drag-Along portion on the same terms and conditions with respect to each Share sold as each Initiating Drag-Along Seller shall sell each of its Shares; provided, however, that the Drag-Along Offer is accepted or approved by Shareholders in respect of not less than seventy-five percent (75%) of the then issued and outstanding Common Shares on an as-converted basis; and
  - (iv) shall include a certification that the Drag-Along Purchaser has offered to acquire all Shares of the Drag-Along Sellers subject to such Drag-Along Sale.
- (b) If:
- (i) the Initiating Drag-Along Seller furnishes the Drag-Along Notice to each Mandatory Offeree in accordance with this Section 9.1; and
  - (ii) the Drag-Along Offer is accepted or approved by Shareholders in respect of not less than seventy-five percent (75%) of the then issued and outstanding Common Shares on an as-converted basis,

then on the date that the Corporation and the Shareholders are notified that the designated Shareholders (the “**Initiating Drag-Along Seller**”) have accepted or approved such Drag-Along Offer (together with any other Shareholders to the extent legally required), the Corporation is deemed to have accepted the Drag-Along Offer (to the extent applicable), and any Shareholder who has not accepted

or approved the Drag-Along Offer is deemed to have done so on the same terms and conditions with respect to each Share sold as each Initiating Drag-Along Seller shall sell each of its Shares.

- (c) If, at the end of the one hundred twentieth (120<sup>th</sup>) day following the date of the Drag-Along Notice, the Initiating Drag-Along Seller has not completed the Drag-Along Sale with respect to its Shares and the Drag-Along portion of each Drag-Along Seller, then:
  - (i) each Mandatory Offeree shall be released from its obligations under the Drag-Along Notice;
  - (ii) the Drag-Along Notice shall be null and void; and
  - (iii) the consummation of the Drag-Along Sale shall be subject to the satisfaction anew of the requirements of this Section 9.1, including the issuance of a new Drag-Along Notice; in each case, unless the failure to complete the Drag-Along Sale resulted from the failure by any Mandatory Offeree to comply with the terms of this Section 9.1.
- (d) Each Mandatory Offeree that is required to sell its Mandatory Offeree's Drag-Along portion under Section 9.1 will:
  - (i) execute and deliver a purchase and sale agreement and any ancillary documents reasonably required by the purchaser to effect the transaction contemplated by the Drag-Along Offer, and will transfer to the purchaser good title to the Shares of the Shareholder free of all encumbrances, together with certificates and other documents of title evidencing ownership of such Common Shares, duly endorsed in blank for transfer by the Shareholder; and
  - (ii) take all other actions reasonably necessary as a shareholder of the Corporation or Director (if applicable) to permit the completion of the transactions contemplated by the Drag-Along Offer.
- (e) The Corporation will promptly take all actions reasonably necessary to permit the completion of the transactions contemplated by the Drag-Along Offer.
- (f) A Shareholder that accepts or is deemed to accept a Drag-Along Offer is not required to comply with Article 7 (Right of First Refusal) or Article 8 (Tag Along Rights).

## ARTICLE 10 TRANSFER BY OPERATION OF LAW OR IN SPECIAL CIRCUMSTANCES

### 10.1 Disposition

For the purposes of this Article 10, a “**Disposition**” shall occur where the following occurs in relation to a Shareholder that is a natural person:

- (a) the Shareholder dies;
- (b) the Shareholder is petitioned into bankruptcy or makes an assignment for the benefit of its creditors;
- (c) the Shareholder is judged insane or incompetent to handle its own affairs by a court of competent jurisdiction;
- (d) the Shareholder is declared to be a dependent adult under applicable legislation;
- (e) an order is made by a court of competent jurisdiction purporting to deal with the Shares of the Shareholder pursuant to the legislation relating to the allocation, transfer or distribution of matrimonial property;
- (f) the Shares of the Shareholder are seized or attached in any way for the payment of any judgment or order or the exercise of any security interest in respect of the Shares; or
- (g) the Shareholder is convicted of a criminal offence by a court of competent jurisdiction under any legislation applicable to such Shareholder and all appeals available to such Shareholder have been unsuccessfully exhausted,

or where the following occurs in relation to a Shareholder which is in corporate form:

- (h) where any of the events listed in (a), (b), (c), (d) or (e) above occur with respect to the beneficial owner of fifty percent (50%) or more of all of the issued and outstanding voting shares in the capital of any such corporate Shareholder;
- (i) it is dissolved, wound-up or liquidated;
- (j) it is petitioned into bankruptcy or makes an assignment for the benefit of its creditors;
- (k) the Shares of the Shareholder are seized or attached in any way for the payment of any judgment or order or the exercise of any security interest in respect of the Shares;
- (l) the Shareholder is convicted of a criminal offence by a court of competent jurisdiction under any legislation applicable to such Shareholder and all appeals available to such Shareholder have been unsuccessfully exhausted; or
- (m) there is a sale, transfer or other disposition of any of its shares which has the effect of altering the control of the Shareholder as contemplated in Section 6.6 hereto

provided that any of the events listed in subsection 10.1(a), (c) or (d) above shall not constitute a Disposition for the purposes of this Article 10 if, as a result of the occurrence of any such event, the Shareholder's Shares are Sold to any Family Member(s) of the Shareholder or any company or companies wholly owned by the Shareholder's Family Member(s).

## 10.2 Option

In the event of a Disposition by a Shareholder (the “**Disposing Shareholder**”), such Disposition shall be deemed to be a grant: (i) to the Corporation of an option to purchase all of the Shares owned by the Disposing Shareholder (the “**Disposing Shareholder’s Interest**”) and, failing the exercise of the option by the Corporation or upon the failure of the Corporation to purchase the Disposing Shareholder’s Interest, (ii) to the other Shareholders of an option to purchase the Disposing Shareholder’s Interest. The purchase price of the Disposing Shareholder’s Interest to be purchased pursuant to and under the options granted by this Article 10 shall be equal to an amount determined by the Directors of the Corporation as a fair value for such interest.

## 10.3 Exercise Of Option By Corporation

The Corporation shall have the right, for ten (10) Business Days following its receipt of notice of the Disposition, to exercise the option and to elect to purchase the Disposing Shareholder’s Interest by giving written notice (the “**Exercise Notice**”) to the Disposing Shareholder stating that it is exercising the option. The Sale of the Disposing Shareholder’s Interest to the Corporation shall be completed within thirty (30) Business Days following the delivery by the Corporation to the Disposing Shareholder of the Exercise Notice.

## 10.4 Unaccepted Shares

If the Corporation fails to elect to exercise the option or exercises the option but fails to complete the purchase of the Disposing Shareholder’s Interest within the thirty (30) Business Day period referred to in Section 10.3, then the Corporation shall give written notice to the other Shareholders advising them accordingly together with a copy of the Exercise Notice (if any) and each of the other Shareholders shall have the right, during the ten (10) Business Day period following their receipt of such notice, to exercise the option and to elect to purchase the Disposing Shareholder’s Interest by giving written notice (the “**Shareholders’ Notice**”) to the Disposing Shareholder stating that it is exercising the option. If there is more than one other Shareholder at the time of a Disposition and such other Shareholders together elect as aforesaid to purchase more than the number of Shares being sold by the Disposing Shareholder, then the Shares of such class shall be allocated among such other Shareholders *pro rata* according to their existing beneficial ownership of such class of Shares on the date of the Disposition and the respective Shareholders’ Notice of such other Shareholders together with the notice to such other Shareholders referred to above shall constitute several contracts for the Sale of the number of Shares allocated to them respectively. The completion of the Sale of the Disposing Shareholder’s Interest to such other Shareholders shall be completed within thirty (30) Business Days following the later of the delivery by the other Shareholders to the Disposing Shareholder of the Shareholders’ Notice and the determination of the Fair Market Value of the Disposing Shareholder’s Interest pursuant to Article 12.

## 10.5 Failure To Exercise

If neither the Corporation nor the other Shareholders gives to the Disposing Shareholder an Exercise Notice or Shareholders’ Notice prior to the expiry of the option periods referred to in Sections 10.3 and 10.4, or if the sale of the Disposing Shareholder’s Interest fails to close due to a default by the Corporation or the Shareholders, then the Corporation and the other



Shareholders shall be deemed to have exercised their right to refuse to purchase the Disposing Shareholder's Interest and the respective options shall expire.

## **ARTICLE 11 ARRANGEMENTS REGARDING DISPOSITIONS**

### **11.1 Terms of Purchase and Sale**

In the event of any Sale of Shares by a Shareholder (the "**Seller**") as provided in this Agreement to a third party, the Corporation or another Shareholder or Shareholders (herein collectively referred to as the "**Purchaser**"), the following conditions shall apply:

- (a) the date scheduled for closing (the "**Closing**") shall be that specified in this Agreement or such other date as may, subject to the terms of this Agreement, be agreed to by the Parties and, if applicable, any third party;
- (b) any amount payable pursuant to a Sale that is to be paid in cash shall be paid in Canadian funds by way of cash, certified cheque, bank draft or wire transfer;
- (c) if, on the date of Closing, the Seller shall be indebted to the Corporation in an amount recorded and verified, the Seller shall satisfy and discharge all or any portion of such indebtedness. If the Seller does not satisfy and discharge such indebtedness then the Purchaser shall, to the extent that funds are available from the purchase price, satisfy and discharge all or any portion of such indebtedness and shall receive and take credit against the purchase price for the amount or amounts so paid on account of any such indebtedness;
- (d) if, on the date of Closing, the Corporation shall be indebted to the Seller in an amount recorded on the books of the Corporation and verified by the Auditors, such indebtedness shall be paid to the Seller by the Corporation or bought-out by the Purchaser at the time of Closing;
- (e) if, on the date of Closing, the Seller is responsible on any covenant for liabilities or obligations of the Corporation, the Purchaser shall procure for the Seller and deliver to him at the time of Closing releases from any such covenants or guarantees;
- (f) if by reason of any lien, charge or encumbrance, or any succession, inheritance, estate, probate or similar duties, taxes, levies or liens existing or assessed against the Seller, the Seller is unable to make delivery of the Shares of the Seller to the Purchaser within the time limited therefor, the Purchaser shall be at liberty to make payment to the holder of such lien or charge or the governmental authority imposing such duties, taxes, levies or liens, which payment shall be and be deemed to be payment to the Seller and shall be applied in reduction of the unpaid balance of the purchase price;
- (g) if, on the date of Closing, the Seller shall have any securities (other than Securities) lodged with any person, including the Corporation's bankers, to secure any indebtedness or obligations of the Corporation, then the Purchaser shall

deliver the same free and clear of any claims in connection with such indebtedness to the Seller;

- (h) the Seller shall, at the time of completion of the Sale execute and deliver to the Purchaser all such notices, documents and other assurances as may be necessary to enable the Purchaser to exercise voting control of the Shares of the Seller;
- (i) if, on the date of Closing, the Seller shall without just cause refuse to complete the transaction, the CEO or any Director or other officer of the Corporation shall have the right separately upon such default (without prejudice to any other rights which the Purchaser may have) and upon payment by the Purchaser of the balance due on Closing (less or plus any adjustment herein permitted) to the solicitors for the Corporation on behalf of and in the name of the Seller, to complete the transaction as aforesaid and to obtain delivery of all Share certificates representing the Shares to which the Seller is then entitled;
- (j) all Shares required to be delivered on Closing shall be duly endorsed in blank for transfer with signatures duly witnessed;
- (k) the Shares shall be transferred by the Seller free and clear of all liens and encumbrances; and
- (l) if the Purchaser is a third party he or she shall execute the counterpart execution joinder set forth in Schedule 2 hereof.

## ARTICLE 12 FAIR MARKET VALUE

### 12.1 Determination of Fair Market Value

- (a) **Valuation Procedure:** Upon the provisions of this Section becoming applicable (but subject to Section 12.1(d)), the Parties shall request that the Auditor determine the Fair Market Value of all of the issued and outstanding Shares as at the date of the event which gives rise to the right to purchase and sale (the “**Valuation Date**”).

In determining the Fair Market Value of all of the issued and outstanding Shares, the Auditor shall take into account and apply generally accepted accounting and valuation principles, and:

- (i) the Auditor shall not have regard to whether the Shares subject to the transaction of purchase and sale constitute a minority block or a majority block of all of the issued and outstanding Shares and no minority or majority discount or premium shall be applied to its valuation; and
- (ii) if the event in question is the death of an individual Party, the Auditor shall not have regard to the occurrence of such death or to any proceeds of insurance payable to the Corporation as a result of such death.

- (b) **Calculation of Fair Market Value Per Share:** The Fair Market Value of the Shares being purchased and sold shall be determined by dividing the Fair Market Value of all of the issued and outstanding Shares as at the Valuation Date, as determined by the Auditor in accordance with the provisions of Section 12.1(a), by the number of Shares then issued and outstanding and multiplying the resulting amount by the number of Shares being purchased and sold.
- (c) **Expenses:** The cost of the Auditor's valuation shall be borne solely by the Corporation.
- (d) **Disputed Valuation:** If any Shareholder disagrees with the opinion of the Auditor as to Fair Market Value of the Shares, such Shareholder may, by notice in writing to the other Shareholders, require another accountant or auditor which must be a national accounting firm that is not the accountant or auditor for any Shareholder or Principal, to review the opinion of the Auditor concerning Fair Market Value of the Shares and the determination of such independent accountant or auditor in such circumstances shall be conclusive and binding on all Parties and none of the Parties shall have any right to or shall seek any appeal or review from or of such determination. It is agreed that the fees and disbursements of the independent accountant or auditor shall be borne by the Shareholder requesting the review unless the valuation so determined varies by more than ten percent (10%) from the valuation determined by the Auditor in favour of the Person requesting the review, in which event the fees and disbursements of such independent accountant or auditor shall be borne by the Corporation.

## 12.2 Copy to Shareholders

Forthwith upon the Corporation receiving the valuation of the Shares, the Corporation shall forward a copy of the valuation to the Shareholders.

## ARTICLE 13 ACCOUNTING AND RECORDS

### 13.1 Accounting

The books of account of the Corporation shall be kept and maintained at all times at a location and in a form in accordance with the Act. The books of account shall be maintained in accordance with GAAP or IFRS, consistently applied.

### 13.2 Financial Statements

The Corporation shall prepare and furnish or cause to be prepared and furnished to each of the Shareholders within one hundred twenty (120) days after the close of each calendar year a balance sheet of the Corporation dated as of the end of each such year, a related statement of income or loss and a related statement of source and application of funds for the Corporation for each such year, all of which shall be prepared in accordance with GAAP or IFRS, consistently applied and certified in the customary manner by the Auditors and shall contain the same information for each such year as is required to be included in the reports prepared pursuant to Section 13.3.

### 13.3 Quarterly Reports

- (a) Within forty-five (45) days after the end of each quarter, the Corporation shall deliver to each Shareholder a quarterly report consisting of:
  - (i) unaudited summary financial statements for the preceding quarter comprised of balance sheets, profit and loss statements and cash flow statements prepared in accordance with GAAP or IFRS consistently applied;
  - (ii) an operations summary;
  - (iii) an environmental and safety governance summary; and
  - (iv) a summary of any other material developments.
- (b) All Shareholder information will be distributed electronically through each Shareholder's nominated email and posted on the Corporation's website, with an individualized login to be provided to each Shareholder.
- (c) Shareholders consent to the electronic delivery of all reporting requirements.

### 13.4 Access To Records

Each Shareholder shall have the right at all reasonable times at its expense during usual business hours to audit, examine and make copies of or extracts from the books of account and other books and records of the Corporation to which the Shareholder is entitled under the Act.

## ARTICLE 14 DEFAULT

### 14.1 Defaulting Shareholder

- (a) A Shareholder shall be a "**Defaulting Shareholder**" if the Shareholder has defaulted in the performance of any obligation hereunder (a "**Default**") and, other than as set forth in Section 16.11, the Corporation or any other Shareholder has given a notice to such Shareholder (a "**Default Notice**") specifying particulars of the Default and such Shareholder has not cured the Default within twenty (20) Business Days of such notice.
- (b) All Default Notices shall be copied to the Corporation and all Shareholders. If a Shareholder is a Defaulting Shareholder and the event or circumstance that caused it to be a Defaulting Shareholder has been cured or ceased to exist, it shall thereupon cease to be a Defaulting Shareholder.

### 14.2 Dividends and other Distributions to a Defaulting Shareholder

If a Default has not been remedied within the cure period provided in Subsection 14.1(a), the Corporation shall, in good faith and as soon as reasonably practicable, determine the Losses to the Corporation resulting from such Default. The Corporation shall notify each of the

Shareholders of the amount so determined. All dividends or other distributions otherwise payable by the Corporation to a Defaulting Shareholder shall be applied by the Corporation as compensation to the Corporation for such Losses until the Corporation has fully recovered all such Losses, at which time the Default shall have been cured and such Defaulting Shareholder shall not longer be a Defaulting Shareholder hereunder.

### **14.3 Effect of Default**

For so long as a Shareholder is a Defaulting Shareholder and subject to the provisions of the Act, its rights as a Shareholder, including voting rights and rights to information, shall be suspended until such Shareholder ceases to be a Defaulting Shareholder. A Defaulting Shareholder shall remain obligated for all its liabilities as a Shareholder that accrue prior to and during the period of time such Shareholder is a Defaulting Shareholder, including any such liabilities maturing thereafter but originating from actions taken prior thereto.

## **ARTICLE 15 CONFIDENTIALITY**

### **15.1 Confidential Information**

The Shareholders shall not, and shall cause their Related Parties to not, disclose the private affairs of the Corporation, including any pre-incorporation activities, and any information with respect to the Business, whether before or after the incorporation of the Corporation, will be considered confidential and shall not be divulged to any Person other than the Parties and their directors, officers and authorized representatives unless:

- (a) the information is or becomes generally available to the public other than by disclosure by such Party, Shareholder or any Related Party of such Party or Shareholder contrary to this Section 15.1;
- (b) the information is reasonably required to be disclosed by a Party to protect its interests in connection with any valuation or dispute resolution proceeding under this Agreement; or
- (c) the information is required to be disclosed by law or by applicable regulations or policies of any regulatory agency having jurisdiction over the Corporation.

The Parties and the Shareholders agree that all restrictions contained in this Article 15 are reasonable and valid and all defences to the strict enforcement thereof by any Party, Shareholder or the Corporation are hereby waived by them. Further, any confidential information regarding the Corporation or the Business shall be used by each Shareholder, its Related Parties and if applicable, its Principal solely for purposes of evaluating its investment in the Corporation and its rights thereunder and shall not be used in any manner that is adverse to the interests of the Corporation or the Business.

## **ARTICLE 16 GENERAL**

### **16.1 Term**

This Agreement shall continue in full force and effect until:

- (a) terminated by the passing of a resolution of a special Shareholder matter in accordance with Section 4.3;
- (b) such time as all of the Shares are held by one Shareholder;
- (c) such time as the Corporation completes a public offering of Shares by prospectus, offering memorandum, listing particulars, registration statement or similar document pursuant to applicable securities laws; or
- (d) such time as any Shares become listed and posted for trading on a recognized stock exchange.

### **16.2 Dispute Resolution**

Any dispute among the Parties arising out of or in connection with this Agreement:

- (a) will first be attempted to be resolved by the Parties through good faith negotiations and in connection therewith, any Party may request in writing that any other Party meet and commence such negotiations within a reasonable period of time (in any event no later than seven (7) days) after the request;
- (b) such negotiations will be between senior representatives of management of each such Party or if the Party is a natural person, by the Party itself;
- (c) if within seven (7) days after commencement of the negotiations under paragraph (a), above, the dispute has not been resolved, any Party may refer the matter to arbitration in accordance with the provisions set out below;
- (d) any dispute which cannot be resolved by negotiation will be determined by arbitration, by three (3) arbitrators, in accordance with the ADR Institute of Canada's Rules of Arbitration;
- (e) the three arbitrators will have qualifications relevant and suitable to the issue in dispute, and will be disinterested in the dispute and will be impartial with respect to all Parties thereto;
- (f) each Party may join as an additional Party to an arbitration involving other Parties under this Agreement if the Parties agree to consolidation;
- (g) each Party shall be joined as an additional Party to an arbitration involving other Parties under this Agreement if more than one (1) arbitration is begun under this Agreement and any Party contends that two (2) or more arbitrations are substantially related and that the issues should be heard in one (1) proceeding, the

arbitrators selected in the first-filed of such proceedings shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before those arbitrators;

- (h) the determination of the arbitrators will be final and binding upon the Parties;
- (i) each Party will bear its own costs in connection with the arbitration, provided that, if the arbitrators find that any Party has acted unreasonably, the arbitrators may, in their discretion, award costs against such Party;
- (j) the arbitrators will have the discretionary authority to grant specific performance, rectification, injunctions and other equitable relief as may be requested by a Party including interim preservation orders;
- (k) any order of the arbitrators may be entered with a court of competent jurisdiction for the purposes of enforcement;
- (l) the place of arbitration will be Calgary, Alberta;
- (m) the arbitrators will resolve the dispute in accordance with the laws of Alberta;
- (n) the Parties will act in good faith and use commercially reasonable efforts to resolve disputes in a timely manner; and
- (o) all aspects of the arbitration will be kept confidential, except as between Parties joined under subsections (f) or (g).

### **16.3 Amendments and Waivers**

This Agreement may be amended only by a written instrument signed by the parties hereto. No failure to exercise and no delay in exercising, on the part of any Party, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law. The failure of any Party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by any Party of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by such Party.

### **16.4 Assignment**

Except as may be expressly provided in this Agreement, none of the Parties to this Agreement may assign its rights or obligations under this Agreement without the prior written consent of all of the other Parties.

## **16.5 Successors And Assigns**

Subject to the terms herein, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, other legal personal representatives, successors and assigns.

## **16.6 Entire Agreement**

This Agreement constitutes the entire agreement among the Parties and the Shareholders for the purpose of establishing their rights and obligations in respect of the Business, the formation of the Corporation, the issuance of the Shares and the management and control of the Corporation and supersedes all other prior agreements, understandings, negotiations and discussions, whether oral or written, among the Parties with respect thereto.

## **16.7 Notices**

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as a “**Notice**”) shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail to the addresses set out in Schedule 3.

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a business day in the place of delivery or receipt, then the Notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving Notice to the other Parties in accordance with the provisions of this Section.

## **16.8 Power of Attorney**

Each Shareholder hereby irrevocably nominates, constitutes and appoints the CEO or any Independent Director as its true and lawful attorney and agent for, in the name of and on behalf of the applicable Shareholder in order to:

- (a) execute on behalf of each Shareholder any amendment to this Agreement necessary to correct any mechanical or clerical error in this Agreement;
- (b) execute on behalf of each Shareholder any amendment to this Agreement that does not adversely affect the rights hereunder of any Shareholder, individually or as a class; and
- (c) execute and deliver all documents, instruments, declarations, agreements, approvals and certificates (including all transfers, share certificates, resignations and releases) required to be executed and delivered by the Shareholder to give effect to the matters set forth in this Agreement including the provisions of Article 7, Article 8, or Article 9.



Such appointment and power of attorney, being coupled with an interest, shall not be revoked by the dissolution, winding up, bankruptcy or insolvency of such Shareholder and each Party hereby ratifies, confirms and agrees to ratify and confirm all that the CEO or any Independent Director may lawfully do or cause to be done by virtue of such power of attorney.

### **16.9 Independent Legal Advice**

The Parties acknowledge that they have entered into this Agreement willingly with full knowledge of the obligations imposed by the terms of this Agreement. The Parties acknowledge that they have been afforded the opportunity to obtain independent legal advice and confirm by their execution of this Agreement that they have either done so or waived their right to do so, and agree that this Agreement constitutes a binding legal obligation and that they are estopped from raising any claim on the basis that they have not obtained such advice.

### **16.10 Further Assurances**

Each Party hereto agrees to execute any and all documents and to perform such other acts as may be necessary or expedient to further the purposes of this Agreement and the transactions contemplated hereby.

### **16.11 Request for Originally Executed Instrument**

Without limiting the generality of Section 16.10 above:

- (a) any Person (the “**Shareholder Party**”) that becomes a Party to this Agreement pursuant to an instrument executed on behalf of such Shareholder Party by another Person acting as an attorney, agent, administrator or in a similar capacity, for and on behalf of the Shareholder Party, shall, if so requested by the Corporation, provide a Counterpart Execution Joinder (also known as a Deed of Adherence) substantially in the form attached hereto as Schedule 2, originally executed by such Shareholder Party, together with evidence of such original execution, and evidence of the authority of any Person signing on behalf of a Shareholder Party that is not a natural Person as the Corporation may reasonably request, within ten (10) Business Days of being so requested by the Corporation; and
- (b) any Shareholder Party that does not provide a duly executed Counterpart Execution Joinder, together with evidence of authority of the Person signing on behalf of the Shareholder Party, if applicable, at the end of the ten (10) Business Day period noted above shall forthwith become a Defaulting Shareholder for purposes of Article 14 hereof.

### **16.12 Execution and Delivery**

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile or portable document format (PDF) and all such counterparts and facsimiles shall together constitute one and the same agreement.

*[The Remainder of this Page has been Intentionally Left Blank]*

**IN WITNESS OF WHICH** the Parties have duly executed this Amended and Restated Unanimous Shareholders Agreement as of the date first set forth above.

**NORTHERN SILICA CORPORATION**

By: \_\_\_\_\_  
Name: Stuart Love  
Title:

By: \_\_\_\_\_  
Name: Martin Boland  
Title:

**TAURUS RESOURCES NO. 2 B.V.**

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

**TAURUS RESOURCES LIMITED GP NO.  
2 LLC FOR AND ON BEHALF OF:  
TAURUS RESOURCES NO. 2 LLP**

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

**TAURUS FUNDS MANAGEMENT PTY  
LIMITED AS TRUSTEE OF: TAURUS  
RESOURCES NO. 2 TRUST**

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

## SCHEDULE 1

### LIST OF SHAREHOLDERS

<b>Shareholder</b>	<b>Common Shares</b>	<b>Shareholders' Address</b>
Taurus Resources No. 2 B.V.	9000	Jachthavenweg 109H 1081 KM Amsterdam The Netherlands
Taurus Resources No. 2 L.P.	986	CO Services Cayman Limited, Willow House, Cricket Square, Grand Cayman, KY1-1001, Cayman Islands
Taurus Resources No. 2 Trust	14	Suite 4101, Level 41, Gateway, 1 Macquarie Place, Sydney NSW 2000
<b>TOTAL</b>	<b>10000</b>	

**SCHEDULE 2**

**COUNTERPART EXECUTION JOINDER FOR UNANIMOUS SHAREHOLDERS  
AGREEMENT OF NORTHERN SILICA CORPORATION.**

Effective upon the execution hereof, the undersigned hereby agrees to be bound by and subject to the terms of that certain Amended and Restated Unanimous Shareholders Agreement of Northern Silica Corporation effective as of May 18, 2017 by and among Northern Silica Corporation and the shareholders of Northern Silica Corporation, as such agreement has been, or may be further, amended or modified from time to time in accordance with its terms.

Dated \_\_\_\_\_

\_\_\_\_\_  
Name of Shareholder

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Address of Shareholder

\_\_\_\_\_  
Number of Common Shares

### SCHEDULE 3

#### NOTICE

Any notice, communication, payment or demand required or permitted to be given or made hereunder to any Party shall be sufficiently given or made for all purposes if in writing and delivered personally to the Party or to an officer of the Party to whom the same is directed or if delivered in person or sent by facsimile or registered mail (except a notice of any meeting of the Board, which may be sent by ordinary mail) within Canada, postage prepaid, addressed as follows:

- (a) if to the Corporation:

Northern Silica Corporation  
#2500 - 450 1<sup>st</sup> Street SW  
Calgary, AB  
Canada  
T2P 5H1

- (b) if to a Shareholder:

Taurus Resources No. 2 B.V.  
Jachthavenweg 109H  
1081 KM Amsterdam  
The Netherlands

Or


Taurus Resources No. 2 Trust  
Suite 4101, Level 41, Gateway,  
1 Macquarie Place,  
Sydney NSW 2000 Australia

Or

Taurus Resources No. 2 L.P.  
CO Services Cayman Limited,  
Willow House, Cricket Square,  
Grand Cayman, KY1-1001,  
Cayman Islands

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a business day in the place of delivery or receipt, then the Notice shall be deemed to have been given and received on the next Business Day.

This is Exhibit "C" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



---

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

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

# Amending and Accession Deed

Dated December 21, 2018

HCA Mountain Minerals (Moberly) Limited ("**Borrower**")  
Northern Silica Corporation, Heemskirk Mining Pty Ltd, Heemskirk  
Canada Limited and Heemskirk Canada Holdings Limited ("**Guarantors**")  
Taurus Resources No.2 B.V. ("**Lender**")  
Northern Silica Corporation ("**NSC**")

**King & Wood Mallesons**  
Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
T +61 2 9296 2000  
F +61 2 9296 3999  
DX 113 Sydney  
[www.kwm.com](http://www.kwm.com)

# Amending and Accession Deed

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# Amending and Accession Deed

## Details

<b>Parties</b>	<b>Borrower, Lender and NSC</b>	
<b>Borrower</b>	<b>Name</b>	<b>HCA Mountain Minerals (Moberly) Limited</b>
	<b>Address</b>	Suite 204, 1212-1 <sup>st</sup> Street SE, Calgary, AB, T2G 2H8
<b>Guarantors</b>	<b>Name</b>	<b>Northern Silica Corporation</b>
	<b>Address</b>	2500, 450-1 <sup>st</sup> Street SW, Calgary, AB, T2P 5H1
	<b>Name</b>	<b>Heemskirk Mining Pty Ltd</b>
	<b>Address</b>	Suite 204, 1212-1 <sup>st</sup> Street SE, Calgary, AB, T2G 2H8
	<b>Name</b>	<b>Heemskirk Canada Limited</b>
	<b>Address</b>	Suite 204, 1212-1 <sup>st</sup> Street SE, Calgary, AB, T2G 2H8
	<b>Name</b>	<b>Heemskirk Canada Holdings Limited</b>
	<b>Address</b>	Suite 204, 1212-1 <sup>st</sup> Street SE, Calgary, AB, T2G 2H8
<b>Lender</b>	<b>Name</b>	<b>Taurus Resources No.2 B.V.</b>
	<b>Address</b>	Jachthavenweg 109H, 1081 KM Amsterdam, The Netherlands  with a copy of any notice to be provided to:  Martin Boland Suite 4101, Level 41, Gateway 1 Macquarie Place Sydney NSW 2000 Australia
<b>NSC</b>	<b>Name</b>	<b>Northern Silica Corporation</b>
	<b>Address</b>	2500, 450 – 1 <sup>st</sup> Street SW, Calgary, Alberta, T2P 5H1, Canada
<b>Recitals</b>	<b>A</b>	The parties wish to amend the Secured Facility Agreement in the manner set out in this document.
	<b>B</b>	NSC has agreed to be bound by the terms of the Amended Secured Facility Agreement.

# Amending and Accession Deed

## General terms

---

### 1 Interpretation

#### 1.1 Definitions

Any term not defined in this document has the meaning given in the Amended Secured Facility Agreement as applicable, unless the contrary intention appears.

**Amended Secured Facility Agreement** means the Original Secured Facility Agreement, as amended by this document and attached at Annexure A.

**Effective Time** means the point in time immediately after the time at which the Lender notifies the Borrower in writing that the conditions precedent listed in Schedule 1 have been satisfied or waived.

**Original Secured Facility Agreement** means the document titled "US\$40,000,000 Secured Facility Agreement" dated 15 July 2015 between the HCA Mountain Minerals (Moberly) Limited, Taurus Funds Management Pty Ltd as trustee for Taurus Resources No.2 L.P and Taurus Funds Management Pty Limited as trustee for Taurus Resources No.2 Trust as amended and novated to Taurus Resources No. 2 B.V. on 10 February 2016.

#### 1.2 Interpretation

Clauses 1.2 and 1.3 of the Amended Secured Facility Agreement apply to this document, with any necessary changes.

#### 1.3 Finance Document

The parties acknowledge that this document is a Finance Document.

---

### 2 Amendments

On and from the Effective Time:

- (a) the Original Secured Facility Agreement is amended to read as set out in Annexure A to this document; and
- (b) any reference to the Original Secured Facility Agreement in any Finance Document (except for this document) is to be read as referring to the Original Secured Facility Agreement as amended by this document.

---

### 3 Effect of amendments

#### 3.1 Validity and enforceability of Finance Documents

Nothing in this document:

- (a) prejudices or adversely affects any right, power, authority, discretion or remedy arising under any Finance Document before the Effective Time; or

- (b) discharges, releases or otherwise affects any liability or obligation arising under any Finance Document before the Effective Time.

### **3.2 Conflicting terms**

If there is a conflict between the Finance Documents and this document, the terms of this document prevail.

---

## **4 Accession**

With effect from and including the Effective Time:

- (a) NSC is or becomes bound by the Amended Secured Facility Agreement and acquires the rights and assumes the obligations of NSC, and as an Obligor and as a Guarantor, under the Amended Secured Facility Agreement; and
- (b) each other party to the Amended Secured Facility Agreement continues to be bound by the Amended Secured Facility Agreement on the basis that NSC acquires the rights against and assumed obligations towards the Obligors and the Lender,

as set out in the Amended Secured Facility Agreement.

---

## **5 Representations and warranties**

The Obligors make their representations and warranties contained in each Finance Document (including where applicable, as if those representations and warranties related to this document), other than any representation and warranty set out in clauses 17.11(a) and 17.11(b) of the Amended Secured Facility Agreement, for the Lender's benefit with reference to the facts and circumstances subsisting at the date of this document and on the Effective Time.

---

## **6 General**

### **6.1 Borrower to bear costs**

Any thing which must be done by the Lender under this document, whether or not at the request of the Borrower or another Obligor, is to be done at the cost of the Borrower, such costs of the Lender to be reasonable.

### **6.2 Further action**

Each party must do all things and execute all further documents necessary to give full effect to this document.

### **6.3 Counterparts**

This document may consist of a number of copies each signed by one or more parties to the agreement. If so, the signed copies are treated as making up the one document.

### **6.4 Attorneys**

Each attorney executing this document states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

---

## **7 Governing law**

### **7.1 Governing law and jurisdiction**

The law in force in New South Wales governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

**EXECUTED** as a deed

# Amending and Accession Deed

## Schedule 1 – Conditions precedent

---

### 1 Obligors

- (a) A certified copy of the constitutional documents of each Obligor (if any) or a confirmation from each Obligor that no changes have been made to the constitutional documents since the last certified copy was provided to the Lender.
- (b) A certified copy of the register of shareholders of the Obligors or a confirmation from each Obligor that no changes have been made to the register of shareholders since the last certified copy was provided to the Lender.
- (c) A certified extract of a resolution of the board of directors of each Obligor:
  - (i) approving the terms of, and the transactions contemplated by, this document and resolving that it execute this document;
  - (ii) confirming that it is in its best interests to execute this document;
  - (iii) authorising a specified person or persons to execute this document on its behalf, and/or a power of attorney for execution of this document;
  - (iv) confirming that it is able to pay its debts as and when they become due; and
  - (v) if applicable, authorising a specified person or persons, on its behalf, as Authorised Officers to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (d) If relevant, a certified copy of the power of attorney for the execution of each Finance Document to which it is a party, from each Obligor executed under common seal or by two directors or a director and a secretary.
- (e) A specimen of the signature of each person authorised by the resolution referred to in paragraph (c)(v) above.
- (f) A certificate of each Obligor (signed by a director) confirming and certifying that:
  - (i) borrowing or guaranteeing, as appropriate, the Facility A Commitment would not cause any borrowing, guaranteeing or similar limit binding on the Borrower to be exceeded;
  - (ii) no Event of Default or Review Event has occurred and is continuing (and no Event of Default might reasonably be expected to result from the entry into this document);

- (iii) there is, or has been no, event, development or circumstance that has had or is reasonably likely to have a Material Adverse Effect in respect of the Project or the Obligors (taken as a whole) since 22 January 2015;
- (iv) each copy document relating to it specified in this section of Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this document; and
- (v) if it is incorporated in Australia, such Obligor is not in breach of Chapter 2E of the Corporations Act.

---

## **2 Finance Document**

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

- (b) this document; and
- (c) executed copies of any other documents or things which are required to ensure that each Finance Document which must be stamped or registered can be stamped or registered (including payment of any stamp duty or registration fees and provision of a duly completed and signed multi jurisdictional mortgage statement) and any other forms required in respect of stamping or registration.

---

## **3 KYC requirements**

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

---

## **4 Other documents and evidence**

- (a) A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (b) Evidence that the fees, costs and expenses then due from the Borrower to the Lender which are due and payable on or prior to the Effective Time have been paid or will be paid.
- (c) The Borrower provides evidence that Heemskirk Mining Pty Ltd (ACN 106 720 138) accepts its appointment as process agent under clause 39.2 ("Service of process") of the Amended Secured Facility Agreement.

# Amending and Accession Deed

## Signing

**DATED:** December 21, 2018

**Borrower**

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

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

By: \_\_\_\_\_

Name: *Jerrad Blanchard*  
Title: *Director*

I have authority to bind the above.

**Guarantors**

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

**NORTHERN SILICA CORPORATION**

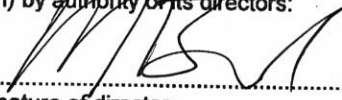
By: 

Name: Jerrad Blanchard  
Title: CFO

I have authority to bind the above.



EXECUTED by HEEMSKIRK MINING )  
PTY LTD in accordance with section )  
127(1) of the Corporations Act 2001 )  
(Cth) by authority of its directors: )

  
..... )  
Signature of director )


MARTIN MATTHEW BOYARD )  
..... )  
Name of director (block letters) )

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

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

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

**HEEMSKIRK CANADA LIMITED**

By: 

Name: Jerrad Blanchard  
Title: Director

I have authority to bind the above.

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

**HEEMSKIRK CANADA HOLDINGS  
LIMITED**

By: 

Name: Jerrad Blanchard  
Title: Director

I have authority to bind the above.

Lender

IN WITNESS WHEREOF, the undersigned by its respective officers or other representatives thereunto duly authorized have caused this document to be duly executed and delivered as of the date stated at the beginning of this document.

TAURUS RESOURCES NO.2 B.V.

By: \_\_\_\_\_

Jules de Kom  
Name: Managing Director

Title: Director ~~B~~

11-12-2018

By: \_\_\_\_\_

Martin Boland  
Name: Martin Boland  
Title: Director

I have authority to bind the above.

# **Amending and Accession Deed**

## **Annexure A – Amended Secured Facility Agreement**

*US DOLLAR TERM FACILITY AGREEMENT*



(Australian Branch)

US\$25,000,000  
SECURED FACILITY AGREEMENT

Dated 15 July 2015

for

*HCA MOUNTAIN MINERALS (MOBERLY) LIMITED (A COMPANY INCORPORATED IN  
BRITISH COLUMBIA, CANADA)*

and

*TAURUS RESOURCES NO.2 B.V.*

acting as Lender

KING & WOOD MALLESONS  
Level 61, Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
T +61 2 9296 2000  
F +61 2 9296 3999  
DX 113 Sydney

**KING&WOOD  
MALLESONS**

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THIS AGREEMENT is dated 15 July 2015 and made between:

- (1) HCA Mountain Minerals (Moberly) Limited (a company incorporated in British Columbia, Canada) of Suite 204, 1212-1st Street SE, Calgary, AB, T2G 2H8 (the "**Borrower**");
- (2) The entities listed in Part I of Schedule 1 as original guarantors (the "**Original Guarantors**"); and
- (3) Taurus Resources No.2 B.V. of Jachthavenweg 109H, 1081 KM Amsterdam, The Netherlands (the "**Original Lender**").

IT IS AGREED as follows:

## SECTION 1 INTERPRETATION

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

"**Accession Letter**" means a document substantially in the form set out in Schedule 4 (*Form of Accession Letter*).

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

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

"**Additional Guarantor**" means a person which becomes an Additional Guarantor in accordance with Clause 24 (*Changes to the Obligors*).

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Amending and Accession Deed**" means the document titled "Amending and Accession Deed" between the Borrower and the other Obligors and the Original Lender and annexing this agreement, dated December 2018.

"**Annual Budget**" means an annual budget and forecast for the Project, including budgeted profit and loss, cash flow forecast, capital expenditure budget and operation and maintenance budget, which must:

- (a) include a summary of the assumptions used in preparing that annual budget;
- (b) be approved by the board of the Borrower; and
- (c) be in the form agreed between the Borrower and the Lender,

as subsequently updated, supplemented or replaced in accordance with Clause 19.4 (*Base Case Financial Model and Annual Budget*).

**"Annual Environmental and Social Report"** means an environmental and social monitoring report prepared by the Borrower and delivered in accordance with Clause 18.4(b)(i)(B) (*Information: miscellaneous*).

**"Approved Purpose"** means to fund the Project Costs of Phase 1, including making payments to the Holdback Account in accordance with the terms of this Agreement, provided that Facility A cannot be used for the purpose of making or funding Distributions, funding the Lock-up Account or for the payment or funding of any Repayment Instalment.

**"ASX Listing Rules"** means the rules governing the listing of shares on the Australian Securities Exchange.

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

**"Authorisation"** means:

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

**"Authorised Officer"** means:

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

**"Availability Period"** means the period from and including the date of this Agreement to and including 31 December 2016.

**"Available Commitment"** means the Lender's Facility A Commitment minus (without double counting):

- (a) the amount of its participation in any outstanding Loans; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date; and
- (c) any amounts capitalised in accordance with clause 7 (Interest) or 9.1(d) (*Commitment Fee*).

**"Bank Accounts"** means the Project Account, the Holdback Account and the Lock-up Account.

**"Base Case Financial Model"** means the computer model relating to the Project agreed between the Borrower and the Lender before the first Utilisation Date as updated from time to time in accordance with Clause 19.4 (*Base Case Financial Model*).

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

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in Sydney.

**"Calculation Date"** means each of 31 March, 30 June, 30 September and 31 December each year, with the first Calculation Date being the first Repayment Date.

**"Calculation Period"** means in respect of a Calculation Date:

- (a) in relation to a previous Calculation Period, the period of 6 Months ending on and including that Calculation Date (other than in the case of the first Calculation Date, where it means the period from the first Utilisation Date to and including the first Calculation Date); and
- (b) in relation to a future Calculation Period, the period of 6 Months commencing on the day immediately following such Calculation Date (other than in the case of the final Calculation Date, where it means the period from the day immediately following such Calculation Date to and including the Termination Date).

**"Canadian PPSA"** means the *Personal Property Security Act* (British Columbia), RSBC 1996 c. 359.

**"Capitalised Amounts"** means any interest that has accrued under clause 7 (*Interest*), which has not been paid or prepaid and which has been capitalised in accordance with clause 7 (*Interest*).

**"CFADS"** means, in relation to any period, an amount (which may be a negative or positive figure) calculated by deducting "B" from "A" where:

- (a) "A" is the aggregate of the Operating Revenue of the Northern Silica Group received (or as the case may be with respect to the Borrower, projected in the Base Case Financial Model to be received) in that period; and
- (b) "B" is the aggregate (without double counting) of the Operating Costs of the Northern Silica Group paid (or as the case may be with respect to the Borrower, projected in the Base Case Financial Model to be paid) in that period.

**"Change in Control"** has the meaning given to this term in Clause 22.1 (*Change in Control*).

**"Code"** means the US Internal Revenue Code of 1986.

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

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

**"Compliance Certificate"** means a certificate substantially in the form set out in Schedule 6 (*Form of Compliance Certificate*).

**"Construction Contract"** means:

- (a) a construction contract in the form of CCDC2-2008 stipulated price contract dated as of 24 October 2014, 2015 between the Borrower and the Construction Contractor, in respect of foundation work;
- (b) a construction contract substantially in the form of CCDC2-2008 stipulated price contract and supplemental conditions thereto between the Borrower and the Construction Contractor, in respect of the construction work for Phase 1 (other than foundation work); and
- (c) the Engineering, Commissioning and Operational Readiness Services Agreement between the Borrower and the EPCM Contractor; and
- (d) all change orders, notices, certificates issued under, or in accordance with, any of the documents listed in paragraphs (a), (b) and (c) above; and
- (e) all amendments, variations and modifications of any of the documents listed in paragraphs (a), (b) and (c) above.

**"Construction Contractor"** means Maple Reinders Inc.

**"Construction Costs"** means the costs incurred by the Borrower in the engineering, design, construction, commissioning and operational readiness of the Project in accordance with the Construction Contract, Engineering Contract and any other agreement between the Borrower and another person for the engineering, design or construction of the Project in accordance with the Base Case Financial Model.

**"Construction Report"** means a report substantially in a form set out in Schedule 9 (*Form of Construction Report*).

**"Control"** has the meaning given to it by section 50AA of the Corporation Act.

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

**"Corrective Action Plan"** has the meaning given to this term in Clause 20.24(c).

**"Dangerous Substance"** means any natural or artificial substance (including petroleum and whether in a solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any such other substance) capable of causing harm to the Environment or damaging the Environment or public health or welfare including any noxious, hazardous, toxic, dangerous, special or controlled waste or other polluting substance or matter.

**"Default"** means an Event of Default or any event or circumstance specified in Clause 21 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing, as applicable) be an Event of Default.

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

**"Enforcement Date"** means the date on which a notice is issued under Clause 21.21 (Consequences of an Event of Default).

**“Engineering Contract”** means:

- (a) an engineering contract to be entered into between the Borrower and the Engineering Contractor for the engineering work in respect of Phase 1;
- (b) all change orders, notices, certificates issued under, or in accordance with, any of the documents listed in paragraph (a) above; and
- (c) all amendments, variations and modifications of any of the documents listed in paragraph (a) above.

**“Engineering Contractor”** means Aecom Canada Limited or such other contractor as may be agreed between the parties.

**"Environment"** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water).

**"Environmental and Social Authorisation"** means each Authorisation that is required under Environmental and Social Law.

**"Environmental and Social Law"** means:

- (a) any applicable law or regulation which relates to:
  - (i) the pollution or protection of the Environment;
  - (ii) the conditions of the workplace; or
  - (iii) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste;
- (b) the Equator Principles;
- (c) any applicable law or regulation concerning labour matters; social security; the regulation of industrial relations; the protection of health and safety; the protection and regulation of the ownership of land, immovable property, intellectual property, cultural property and other assets; the protection and empowerment of indigenous peoples or ethnic groups; the protection, restoration and promotion of cultural heritage; the protection of human rights; or the protection or empowerment of employees, citizens or other people; and
- (d) the World Bank Group Environmental, Health and Safety Guidelines, as updated from time to time.

**"Environmental and Social Permits"** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental and Social Law for the operation of the business of any Obligor.

**"Environmental or Social Claim"** means any claim made, any notice of claim issued or any administrative, regulatory, judicial or arbitral action or proceedings taken by any person with respect to the Project or any activity relating to the Project, in each case, in connection with:

- (a) any breach, or alleged breach, of any applicable Environmental and Social Law or Environmental and Social Authorisation which results in, or is reasonably likely to result in, any Obligor or the Lender incurring any material liability; or
- (b) any Material E&S Incident.

**"EPCM Contractor"** means Ausenco Engineering Canada Inc. (a company incorporated in British Columbia).

**"Equator Principles"** means the principles so named and described in the document titled "the 'Equator Principles' – a financial industry benchmark for determining, assessing and managing social & environmental risk in project financing" (a copy of which can be found at [www.equator-principles.com](http://www.equator-principles.com)), as updated from time to time.

**"Existing Lender"** has the meaning given to this term in Clause 23.1 (*Assignments and transfers by the Lender*).

**"Event of Default"** means any event or circumstance specified as such in Clause 21 (*Events of Default*).

**"Facility A"** means the loan facility made available under this Agreement as described in Clause 2 (*The Facilities*).

**"Facility A Commitment"** means US\$25,000,000, to the extent not cancelled, reduced or transferred by the Lender under this Agreement and as increased from time to time for any amounts capitalised in accordance with clause 7 (*Interest*) and 9.1(d) (*Commitment Fee*).

**"Facility A Loan"** means a loan made or to be made under Facility A or the principal amount outstanding for the time being of that loan.

**"Facility A Repayment Date"** means each date set out in Clause 5.1 (*Repayment of Facility A Loans*).

**"Facility A Repayment Instalment"** means each instalment set out in Clause 5.1 (*Repayment of Facility A Loans*).

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

**"FATCA"** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or

- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

**“FATCA Application Date”** means:

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

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

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

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

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

**“FATCA Payment”** means:

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

**“Finance Document”** means:

- (a) this Agreement;
- (b) the Novation and Amendment Deed 1;
- (c) the Amendment and Accession Deed;
- (d) any Accession Letter;
- (e) any Utilisation Request;
- (f) any Compliance Certificate;
- (g) any Withdrawals Certificate;
- (h) the Account Bank Deed;

- (i) the Royalty Deed;
- (j) each Security Document; and
- (k) any other document designated as such by the Lender and the Borrower.

**"Financial Indebtedness"** means any indebtedness for or in respect of:

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

**"Financial Statements"** means:

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

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

**"Financing Costs"** means interest, fees, discount, costs and expenses and all other amounts payable by the Borrower in relation to its Financial Indebtedness under the



Finance Documents, including fees payable to the Lender. It does not include payments of principal.

**"First Repayment Date"** means the date of the first Facility A Repayment Date.

**"Good Operating Practice"** means:

- (a) if a Material Project Document includes a standard of good practice which applies in a particular event or circumstance, for the purposes of that event or circumstance only, the standard of good practice defined in that Material Project Document; or
- (b) in all other cases, the exercise of skill, prudence and operating practice which would reasonably and ordinarily be expected from a skilled and experienced owner and operator engaged in the same business as the Borrower under similar circumstances, in compliance in all material respects with all applicable legislation, industry codes of practice, Authorisations and all relevant documents relating to the Project or the Borrower's business.

**"Governmental Agency"** means any government or any governmental, semi-governmental, intergovernmental, supranational or judicial entity, body, agency, department or regulatory, self-regulatory or other organisation or authority. It also includes any self-regulatory organisation established under statute or any stock exchange.

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

**"Guarantor"** means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 24 (*Changes to the Obligors*).

**"Historic DSCR"** means, in respect of a Calculation Date, the ratio of C:D where:

- (a) "C" is CFADS;
- (b) "D" is the aggregate amount of all Financing Costs and Repayment Instalments which are due and payable by the Obligors under the Finance Documents,

in each case, for the preceding 12 Months ending on that Calculation Date.

**"Holdback Account"** means the Canadian dollar-denominated bank account or accounts to be opened by the Borrower, immediately following execution of this Agreement (with the account name and number to be provided by the Borrower to the Lender in writing prior to the first Utilisation of Facility A), together with any replacement and substitute accounts opened with the written consent of the Lender and sub-accounts of such accounts.

**"Holdback Amount"** means any amounts required to be held back pursuant to the BLA.

**"Holding Company"** means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

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

**"Increased Costs"** means:

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

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

**"Independent Certifier"** means, at the date of this document, PEC Consulting Group, or any other person nominated by the Lender from time to time.

**"Independent Market Expert"** means a reputable frac sand market pricing expert appointed by the Lender after consultation with the Borrower.

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

**"Initial Cost to Complete Certificate"** means a certificate substantially in the form set out in Schedule 10 (*Form of Initial Cost to Complete Certificate*), with the details completed.

A person is **Insolvent** if:

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

- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction,

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

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

**"Lender"** means:

- (a) any Original Lender; and
- (b) any person which has become a Party in accordance with Clause 23 (*Changes to the Lenders*),

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

**"Loan"** means a Facility A Loan.

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

**"Material Adverse Effect"** means a material adverse effect on:

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

**"Material E&S Incident"** means any incident, event or circumstance connected with the Project that results in:

- (a) the death of, or significant injury to, one or more persons;
- (b) a material threat to the health or safety of one or more persons;
- (c) significant damage to property or the Environment; or
- (d) significant protest or other civil action (whether carried out by persons engaged in activities relating to the Project, the public or otherwise) which is directed against any Obligor or any activities relating to or connected with the Project and which is reasonably likely to result in a Material Adverse Effect.

**"Material Project Document"** means each of:

- (a) any Construction Contract;
- (b) any Engineering Contract;
- (c) the Project Lease;
- (d) any other document designated as such by the Lender and the Borrower; and
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any of the documents listed above.

**"Mining Leases"** means the mining leases, claims and permits held by the Borrower and identified by the following reference numbers: 110222781, 344488, 213089, 213090, 213099, 213195, 338588, 576995, M-181, PA-05907, PE-06985, CL 63763, 2013-20, 2012-00570.

**"Month"** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) subject to paragraph (b) below, if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and

- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month.

The above rules will only apply to the last Month of any period.

**"Northern Silica Group"** means:

- (c) NSC;
- (a) Heemskirk Mining Pty Ltd ACN 106 720 138;
- (b) Heemskirk Canada Limited (a company incorporated in Alberta, Canada);
- (c) the Borrower;
- (d) Custom Bulk Services Limited (a company incorporated in Alberta, Canada);
- (e) Heemskirk Canada Holdings Limited (a company incorporated in British Columbia, Canada); and
- (f) any entity Controlled by NSC.

**"NSC"** means Northern Silica Corporation (a company incorporated in Alberta, Canada).

**"NSC USA"** means the document titled "Unanimous Shareholder Agreement" between NSC, Taurus Funds Management Pty Ltd as trustee for Taurus Resources No.2 L.P., Taurus Funds Management Pty Limited as trustee for Taurus Resources No.2 Trust, Taurus Resources No. 2 B.V. and others, dated 7 March 2017, as amended from time to time.

**"New Lender"** has the meaning given to this term in Clause 23.1 (*Assignments and transfers by the Lender*).

**"Novation and Amendment Deed 1"** means the document titled "HCA Mountain Minerals (Moberly) US\$40m Secured Facility Agreement – Novation and Amending Deed 1" between the parties to this Agreement, among others, and dated on or about December 2015.

**"Obligor"** means a Borrower or a Guarantor.

**"OFAC Sanctions"** means sanctions imposed from time to time by the Office of Foreign Assets Control of the Department of Treasury of the United States of America.

**"Operating Costs"** means, for any period, the costs, fees and expenses paid (or with respect to the Borrower, forecast to be paid and as set out in the Base Case Financial Model) during that period by the Northern Silica Group in operating the Project and related business interests including, but not limited to, transload facilities and any other ancillary activities undertaken by the Northern Silica Group (excluding interest, fees and other amounts in the nature of interest on Financial Indebtedness and Taxes not listed in the following) including (without double counting):

- (a) payments under Material Project Documents and any other documents or contracts entered into by the Northern Silica Group in respect of the operation of the Project, however only if the documents and contracts comply with clause 20.9 (*Arm's length basis*);

- (b) ongoing maintenance and repair costs, fees and expenses;
- (c) lease payments in respect of the Project and related business interests including, but not limited to, transload facilities and any other ancillary activities undertaken by the Northern Silica Group;
- (d) sustaining capital expenditure (including maintenance and repair costs, fees and expenses which constitute capital expenditure);
- (e) royalties, government charges, rates, rent and other outgoings;
- (f) costs, fees and expenses of the Northern Silica Group to maintain its incorporation, office, staff (including wages and superannuation) and other marketing and administrative costs, fees and expenses, in respect of the Borrower, in an amount no greater than that provided for in that period in the most recent Base Case Financial Model;
- (g) fees of consultants and other advisers;
- (h) insurance premiums;
- (i) exploration costs, in respect of the Borrower, not exceeding the total set out in the Annual Budget and Base Case Financial Model;
- (j) Taxes; and
- (k) any other costs, fees and expenses the Borrower and the Lender agree are Operating Costs.

**"Operating Revenue"** means, for any period, all amounts the Northern Silica Group receives (or with respect to the Borrower, is forecast to receive and as set out in the Base Case Financial Model), in that period from or in relation to the Project in the nature of revenues received by the Northern Silica Group on a cash basis including:

- (a) proceeds of all sales of Product;
- (b) management fees;
- (c) transload fees;
- (d) all revenue (or amounts in the nature of revenue) received by the Northern Silica Group;
- (e) compensation and other amounts which represent a return on, or compensation for, lost revenue (including the proceeds of relevant insurance claims);
- (f) interest on bank accounts; and
- (g) any Tax rebate or refund.

**"Original Financial Statements"** means the audited consolidated Financial Statements of the Obligors and certain Related Bodies Corporate of the Obligors for the financial year ended 30 September 2014.

**"Original Obligor"** means the Borrower or an Original Guarantor.

**"Parent Company Shares"** means the ordinary shares in NSC.

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

**"Permitted Disposal"** means any sale, transfer, lease or other disposal specified in Clause 20.4(b) (*Disposals*).

**"Permitted Distribution"** means any Distribution:

- (a) made by an Obligor to another Obligor in circumstances where, if the amounts being Distributed were subject to any Security, they are or become the subject of an equivalent Security after the Distribution; or
- (b) made by the Borrower if:
  - (i) the Borrower has repaid an amount greater than 70% of the total Facility A Commitment to the Lender in accordance with Clause 5.1 (*Repayment of Facility A*) or Clause 6.3 (*Voluntary prepayment of Loans*);
  - (ii) the PLCR is greater than 1.5:1 before and after making such Distribution;
  - (iii) the Projected DSCR is greater than 1.35:1 before and after making such Distribution;
  - (iv) the Historic DSCR is greater than 1.35:1 before and after making such Distribution;
  - (v) no Default, Event of Default or Review Event is continuing before and after making such Distribution; and
  - (vi) the Phase 1 Project Completion Tests have been successfully completed or passed, to the satisfaction of the Lender; or

made by the Borrower with the prior written consent of the Lender.

**"Permitted Financial Indebtedness"** means:

- (a) in relation to the incurrence of Financial Indebtedness, any Financial Indebtedness specified in Clause 20.13(b); and/or
- (b) in relation to the provision of Financial Indebtedness, any Financial Indebtedness specified in Clause 20.14(b) .

**"Permitted Security"** means any Security specified in Clause 20.3(c) (*Negative pledge*).

**"Phase 1"** means phase 1 of the Project, being the construction and development of the Project to an output capacity as described by the Production Forecasts.

**"Phase 1 Project Completion Test"** means the series of pre-determined mechanical and economical tests agreed between the Borrower and the Lender (substantially in the form of the tests outlined in Schedule 12 (*Phase 1 Project Completion Tests*)), in writing, prior to, or on, the first Utilisation of Facility A confirming that, over a period of 90 consecutive days, Phase 1 of the Project:

- (a) operates within an agreed threshold of forecast production, cost and other operating parameters; and
- (b) is projected to be in compliance with the financial ratios set out in Clause 19 (*Financial Covenants*) for the life of the Project.

The parties agree that the Phase 1 Project Completion Tests will require that no Event of Default or Review Event is continuing.

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

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

"Product" means fracing sand and any other sand products treated at the Project.

"Production Forecasts" means the production forecasts in respect of the Project contained in the Base Case Financial Model and dated 30 November 2018.

"Project" means the Moberly Frac Sand Project, comprised of the Project Lease together with the buildings and foundations located on the Project Lease and the Mining Leases.

"Project Account" means the dollar-denominated bank account to be opened by the Borrower, immediately following execution of this Agreement (with the account name and number to be provided by the Borrower to the Lender in writing prior to the first Utilisation of Facility A), together with any replacement and substitute accounts opened with the written consent of the Lender, and sub-accounts of those accounts.

"Project Area" means any freehold, leasehold and other estate or interest in land in respect of which the Borrower has an interest in, easement over, right of access to, or entry upon, for the purposes of the Project, from time to time and, for the avoidance of doubt, includes the lands comprised in the Project Lease and the Mining Leases.

"Project Costs" means, for any period, the following amounts paid, or forecast to be paid, during that period by the Borrower in completing Phase 1, (in respect of any forecast, as set out in the Base Case Financial Model) (excluding, interest, fees and other amounts in the nature of interest on Financial Indebtedness and Taxes not listed in the following), in respect of:

- (a) Construction Costs;
- (b) internal and external development costs in an amount no greater than that provided for in the most recent Base Case Financial Model;
- (c) Project Area specific costs including rates and other outgoings in relation to the Project Area;
- (d) costs, fees and expenses of the Borrower's engineering, environmental, social, governmental, insurance and legal consultants under or in relation to the negotiation, preparation, execution and completion of the Material Project Documents or otherwise in connection with the Project;
- (e) costs, fees and expenses of start up, testing and commissioning of the Project;
- (f) insurance premiums payable before the completion of construction;



- (g) any Taxes payable before the completion of construction; and
- (h) any other cost that the Borrower and the Lender agree are Project Costs.

**"Projected Debt Service Costs"** means the aggregate amount of Financing Costs and Repayment Instalments projected to be due and payable by the Obligors under the Finance Documents for the period commencing on the day after the applicable Calculation Date to (and inclusive of) the next Calculation Date.

**"Projected DSCR"** means in respect of a Calculation Date, the ratio of C:D where:

- (a) "C" is the projected CFADS; and
- (b) "D" is the aggregate amount of Financing Costs and Repayment Instalments projected to be due and payable by the Obligors under the Finance Documents,

in each case, for the relevant Calculation Period and each future Calculation Period.

**"Project Lease"** means the lease, dated 13 July 2015, from Heemskirk Canada Holdings Limited (a company incorporated in British Columbia, Canada) to the Borrower in respect of the lands referred to as PID 029-224-861, Lot A Section 29 Township 28 Range 22 West of the 5th Meridian Kootney District Plan EPP30862, being part of the Project Area.

**"Project Life Cover Ratio"** or **"PLCR"** means in respect of a Calculation Date, the ratio of N:A where:

- (a) "N" is the net present value of the projected CFADS for a period of 5 years from the applicable Calculation Date (discounted at 10% per annum); and
- (b) "A" is the aggregate amount outstanding in respect of all Loans.

**"Quarter End"** means each of 31 March, 30 June, 30 September and 31 December each year.

**"Related Body Corporate"** has the meaning given to this term in the Corporation Act, except that a body corporate, trust or partnership shall not be precluded from being a related body corporate merely because it is formed or established outside Australia, and for the purpose of this Agreement, includes, with respect to a specified person, another person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified, where "control" means the possession, directly or indirectly, of the power to direct or ensure the direction of the management or policies of a person, whether through the ability to exercise voting power, by contract or otherwise.

**"Repayment Date"** means a Facility A Repayment Date.

**"Repayment Instalment"** means, for a Repayment Date, any applicable Facility A Repayment Instalment.

**"Repeating Representations"** means each of the representations set out in Clause 17 (*Representations*), other than those set out in Clauses 17.11(a) and 17.11(b) (*Financial Statements*).

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

**“Review Event”** means any event or circumstance specified as such in Clause 22 (*Review Events*).

**“Royalty Deed”** means the royalty deed dated 14 February 2016 between the Borrower and the Original Lender, as amended and amended and restated from time to time.

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

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

**“Security”** means:

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

or any agreement or arrangement to create any of them or allow them to exist.

**“Security Document”** means:

- (a) any Accession Letter;
- (b) the Account Bank Deed;
- (c) the Tripartite Documents;
- (d) the Canadian law pledge of the shares in the Borrower, dated on or around the date of this Agreement, granted by Heemskirk Canada Limited (a company incorporated in Alberta, Canada);
- (e) the Canadian law fixed and floating charge debenture, dated on or about the date of this Agreement, granted by the Borrower over all of its assets;
- (f) Canadian Law assignment of Material Project Documents required to be assigned by the Lender;

- (g) the Canadian law fixed and floating charge debenture, dated on or about the date of this Agreement, granted by Heemskirk Canada Limited (a company incorporated in Alberta, Canada) over all of its assets (including its bank accounts and contracts);
- (h) the Canadian law fixed and floating charge debenture, dated on or about the date of this Agreement, granted by Heemskirk Canada Holdings Limited (a company incorporated in British Columbia, Canada) over all of its assets (including its bank accounts and contracts); and
- (i) any other document designated as such by the Lender and the Borrower.

“**Subsidiary**” has the meaning given in the Corporations Act 2001, but as if *body corporate* includes any entity. It also includes any entity required by IFRS to be included in the consolidated annual financial report an entity or which would be required if that entity were a corporation.

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

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

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

“**Tax Payment**” means an increased payment made by an Obligor to the Lender under Clause 11.1 (*Tax gross-up*) or a payment under Clause 10.2 (*Tax indemnity*).

“**Termination Date**” means 28 February 2021.

“**Tripartite Documents**” means:

- (a) the consent and acknowledgement between the Lender, the Borrower and the Construction Contractor relating to construction works other than the foundation works; and
- (b) any other document designated as such by the Lender and the Borrower.

“**Unpaid Sum**” means any sum due and payable but unpaid by an Obligor under the Finance Documents.

“**US Tax Obligor**” means:

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

“**Utilisation**” means a utilisation of Facility A.

“**Utilisation Date**” means the date of a Utilisation, being the date on which the relevant Loan is to be made.

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

**“Withdrawals Certificate”** means a certificate substantially in the form set out in Schedule 8 (*Form of Withdrawals Certificate*).

## 1.2 Construction

- (a) Unless the contrary intention appears, any reference in a Finance Document to:
- (i) **"assets"** or **"property"** includes present and future properties, revenues and rights of every description;
  - (ii) a **"Finance Document"** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, replaced or novated;
  - (iii) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (iv) a **"person"** or **"entity"** includes any person, firm, company, body corporate, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and any reference to a particular person or entity (as so defined) includes a reference to that person's or entity's executors, administrators, successors, substitutes (including by novation) and assigns;
  - (v) a **"regulation"** includes any regulation, rule, official directive, treaty, request or guideline (whether or not having the force of law) of any Governmental Agency and if not having the force of law, with which responsible entities in the position of the relevant Party would normally comply;
  - (vi) the words **"including"**, **"for example"** or **"such as"** when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
  - (vii) a provision of law or a regulation is a reference to that provision as amended, consolidated, replaced or re-enacted;
  - (viii) \$, dollars or USD denotes the lawful currency of the United States of America;
  - (ix) C\$ or CAD denotes the lawful currency of Canada;
  - (x) A\$ denotes the lawful currency of the Commonwealth of Australia;
  - (xi) unless a contrary indication appears, a time of day is a reference to Sydney time;
  - (xii) **"law"** means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them);
  - (xiii) **"accounting standards"** is a reference to the accounting standards as defined in the Corporations Act and a reference to an accounting term is a reference to that term as it is used in those accounting standards,

or, if not inconsistent with those standards, in generally accepted accounting principles and practices in Australia;

- (xiv) a “**derivative transaction**” includes any derivative transaction entered into in connection with obtaining protection against, or a benefit from, fluctuation in any rate or price;
  - (xv) a reference to any thing (including an amount) is a reference to the whole and each part of it;
  - (xvi) “**know your customer checks**” means any “know your customer” or other identification checks or procedures under any law or regulation;
  - (xvii) “**security interest**” has the meaning given to it in the PPSA;
  - (xviii) The singular includes the plural and vice versa.
- (b) Section, Clause and Schedule headings are for ease of reference only.
  - (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
  - (d) A Review Event or Default is “**continuing**” if it has not been remedied to the satisfaction of the Lender or waived in writing.

### 1.3 **Code of Banking Practice**

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

## SECTION 2 THE FACILITY

### 2. THE FACILITY

#### 2.1 The Facility

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

#### 2.2 Purpose

The Borrower shall apply all amounts borrowed by it under Facility A for the Approved Purpose of Facility A.

#### 2.3 Monitoring

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

### 3. CONDITIONS OF UTILISATION

#### 3.1 Initial conditions precedent

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

#### 3.2 Further conditions precedent

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

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

#### 3.3 Maximum number of Loans

The Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation 5 or more Facility A Loans would be outstanding, excluding any Utilisation

made exclusively to pay interest or commitment fees payable by the Borrower pursuant to a Finance Document in respect of Facility A.

## **SECTION 3 UTILISATION**

### **4. UTILISATION**

#### **4.1 Delivery of a Utilisation Request**

The Borrower may utilise Facility A by delivering a Utilisation Request to the Lender no less than 15 Business Days (or such shorter period agreed between the Borrower and the Lender in writing) before a proposed Utilisation Date, duly completed and signed by an Authorised Officer of the Borrower.

#### **4.2 Completion of a Utilisation Request**

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

#### **4.3 Currency and amount**

- (a) The currency specified in a Utilisation Request must be USD.
- (b) The amount of the proposed Loan (excluding any Loan which will be made exclusively to pay interest and/or commitment fees which are payable pursuant to a Finance Document) must be a minimum of US\$2,500,000 (and an integral multiple of US\$500,000) or, if less, the Available Commitment.

#### **4.4 Lender's participation**

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



**SECTION 4  
REPAYMENT, PREPAYMENT AND CANCELLATION**

**5. REPAYMENT**

**5.1 Repayment of Facility A**

- (a) The Borrower shall repay the total of the outstanding Facility A Loans on the Termination Date.
- (b) The Borrower may not reborrow any part of the Facility A which is repaid.
- (c) On each Facility A Repayment Date, the Borrower shall repay the greater of:
  - (i) the Facility A Repayment Instalment set out opposite that Facility A Repayment Date below:

<b>Facility A Repayment Date</b>	<b>Facility A Repayment Instalment</b>
30 June 2019	\$150,000
30 September 2019	\$150,000
31 December 2019	\$1,500,000
31 March 2020	\$3,000,000
30 June 2020	\$2,250,000
30 September 2020	\$2,250,000
31 December 2020	\$2,500,000

and

- (ii) 70% of the CFADS for the period commencing on the day after the previous Facility A Repayment Date (or in the case of the first Facility A Repayment Date, 31 March 2019) until (and including) the applicable Facility A Repayment Date.
- (d) The total Facility A Commitment shall reduce on each Facility A Repayment Date by the amount of the Facility A Repayment Instalment set out opposite that Facility A Repayment Date in Clause 5.1(c)(i).

**6. PREPAYMENT AND CANCELLATION**

**6.1 Illegality**

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

- (a) that Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) upon the Lender notifying the Borrower, the Facility A Commitment will be immediately cancelled; and

- (c) the Borrower shall repay each Loan on:
  - (i) the later of the next Quarter End and the forty-fifth day after the Lender has notified the Borrower; or
  - (ii) if earlier, the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

#### 6.2 Voluntary cancellation

The Borrower may, if it gives the Lender not less than 10 Business Days' (or such shorter period as the Lender may agree) prior notice, cancel the whole or any part (being a minimum amount of US\$2,500,000 and a whole multiple of US\$500,000) of the Available Commitment.

#### 6.3 Voluntary prepayment of Loans

The Borrower may, if it gives the Lender not less than 10 Business Days' (or such shorter period as the Lender agrees) prior notice, prepay the whole or any part of a Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of US\$1,000,000 and a whole multiple of US\$500,000).

#### 6.4 Right of replacement or repayment and cancellation

- (a) If:
  - (i) any sum payable to the Lender by an Obligor is required to be increased under Clause 11.1 (*Tax gross-up - payments by Obligors*);
  - (ii) the Lender claims indemnification from the Borrower under Clause 10.2 (*Tax indemnity*) or Clause 11 (*Increased costs*); or
  - (iii) at any time on or after the date which is six Months before the earliest FATCA Application Date for any payment by a Party to a Lender, that Lender is not, or has ceased to be, a FATCA Exempt Party and, as a consequence, a Party will be required to make a FATCA Deduction from a payment to that Lender on or after that FATCA Application Date,

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

- (b) On receipt of a notice referred to in this Clause 6.4, the Facility A Commitment shall immediately be reduced to zero.
- (c) On the next Quarter End following a notice under this Clause 6.4 (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay the Loans.

#### 6.5 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 6 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation, repayment or prepayment is to be made and the amount of that cancellation, repayment or prepayment.

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

**6.6 Not Used**

**6.7 Capitalised Amounts**

- (a) Subject to Clause 6.7(c), the Borrower may pay, repay or prepay all or part of the Capitalised Amounts in accordance with this Clause 6.7 by procuring that NSC issue Parent Company Shares to the Lender, provided that each of the following conditions are met prior to any payment, repayment or prepayment under this clause 6.7:
  - (i) the Borrower has completed Phase 1 Project Completion Tests before 30 June 2019, to the satisfaction of the Lender;
  - (ii) NSC has obtained any consents required under the NSC USA in respect of the issuance of Parent Company Shares to the Lender as contemplated by Clause 6.7(c);
  - (iii) the payment, repayment or prepayment will not cause the aggregate of all Capitalised Amounts paid, repaid or prepaid in accordance with this Clause 6.7, at any time, to exceed \$8,500,000; and
  - (iv) the Lender has received evidence (to its satisfaction) of the satisfaction of each condition described in clauses 6.7(a)(i) to 6.7(a)(iii).
- (b) If the Borrower wishes to pay, repay or prepay the Capitalised Amount by procuring that NSC issue Parent Company Shares to the Lender, then subject to Clause 6.7(c):
  - (i) on the date of the payment, repayment or prepayment, NSC must issue to the Lender the number of Parent Company Shares equal to the Capitalised Amount or a portion thereof to be paid, repaid or prepaid by Parent Company Shares (expressed in CAD) divided by C\$0.075 (“NSC Share Consideration”);
  - (ii) on the date of the payment, repayment or prepayment, the Borrower will pay the Capitalised Amount or a portion thereof to be paid, repaid or prepaid by the Parent Company Shares (as a debt due and payable to NSC on that date) to NSC as consideration of the issue of the NSC to the Lender pursuant to clause 6.7(b)(i) above;
  - (iii) the Lender agrees that receipt of the NSC Share Consideration is deemed to be a payment, repayment or prepayment of the Capitalised

Amount (or part thereof) by the Borrower in an amount equal to the Capitalised Amount (or part thereof); and

- (iv) as at the date of this Agreement, NSC warrants that, except in respect of the NSC USA, there are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of NSC (including any option or right of pre-emption or conversion).
- (c) The Borrower may exercise its rights to pay, prepay or repay Capitalised Amounts in accordance with this Clause 6.7 once only.

**SECTION 5  
COSTS OF UTILISATION**

**7. INTEREST**

**7.1 Calculation of interest**

The rate of interest on each Loan for each Quarter End is:

- (a) unless and until the event listed in paragraph (b) below has occurred, 10% per annum; or
- (b) if the Phase 1 Project Completion Tests have not been successfully completed or passed, to the satisfaction of the Lender, by 31 January 2019, 12.5% per annum.

**7.2 Payment of interest**

- (a) Subject to paragraph (b) below, the Borrower shall pay accrued interest on each Loan:
  - (i) on each Quarter End;
  - (ii) whenever it repays or prepays such Loan (other than if on a Quarter End); and
  - (iii) on the Termination Date.
- (b) For each date accrued interest is payable prior to the successful completion or passing (to the satisfaction of the Lender) of the Phase 1 Project Completion Test, all interest payable will be capitalised.
- (c) Any interest which is capitalised in accordance with paragraph (b) above shall be added to, and from that time form part of, the principal amount of the Loan to which it relates on each Quarter End and shall reduce the Available Commitments accordingly.

**7.3 Default interest**

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after any judgment for the recovery of that amount) at a rate which, subject to paragraph (b) below, is the sum of 2 percent per annum and the rate of interest in Clause 7.1 (*Calculation of interest*). Any interest accruing under this Clause 7.1 shall be immediately payable by the Obligor on demand by the Lender.
- (b) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at each Quarter End but will remain immediately due and payable.

**8. QUARTER ENDS**

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

**9. FEES**

**9.1 Commitment Fee**

- (a) The Borrower shall pay to the Lender a fee in USD computed at the rate of 2% per annum on the Available Commitment under Facility A for the Availability Period applicable to Facility A.
- (b) Subject to paragraphs (c) and (d) below, the accrued commitment fee is payable on each Quarter End during the Availability Period, on the last day of the Availability Period and on the cancelled amount of the Facility A Commitment at the time the cancellation is effective.
- (c) Prior to the successful completion or passing (to the satisfaction of the Lender) of the Phase 1 Project Completion Tests, commitment fees payable by the Borrower under paragraph (b) will automatically be capitalised on the day due for payment under paragraph (b).
- (d) Any commitment fee which is capitalised in accordance with paragraph (c) above shall be added to, and from that time form part of, the principal amount of any one Facility A Loan outstanding on the date of capitalisation, and shall reduce the Available Commitments for Facility A.

**9.2 Establishment Fee**

- (a) The Borrower shall pay to the Lender a non-refundable fee in USD computed at the rate of 2% of the Facility A Commitment.
- (b) The establishment fee in this Clause 9.2 accrues on the date of this Agreement and is payable on the date of this Agreement.

**9.3 Payment of Establishment Fees**

The parties acknowledge and agree that the fees due and payable under and in accordance with clause 9.2 (*Establishment Fee*) will be paid by the Borrower to the Lender by the issue of that number of ordinary shares in Heemskirk Mining Pty Ltd (ACN 106 720 138) that equates to the fees due and payable under and in accordance with clause 9.2 (*Establishment Fee*) on the date of this Agreement.

**SECTION 6  
ADDITIONAL PAYMENT OBLIGATIONS**

**10. TAX GROSS UP AND INDEMNITIES**

**10.1 Tax gross-up**

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

**10.2 Tax indemnity**

- (a) If the Lender is or will be, for or on account of Tax, subject to any liability or required to make any payment or deduction in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under or in connection with a Finance Document then the Borrower shall (within three Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which that Lender determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Lender in respect of a Finance Document or a transaction, deduction or payment under or in connection with it.
- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on the Lender:
    - (A) under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which the Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

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

- (ii) to the extent the relevant loss, liability or cost is compensated for by an increased payment under Clause 11.1 (*Tax gross-up*), Clause 10.6 (*FATCA Deduction and gross-up by Obligor*) or Clause 10.7(b) (*FATCA Deduction by Lender*) or is compensated for by a payment under Clause 10.7(b) (*FATCA Deduction by Lender*).

### 10.3 Tax Credit

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

- (a) a Tax Credit is attributable to that Tax Payment; and
- (b) the Lender has obtained, utilised and retained that Tax Credit,

subject to Clause 26 (*Conduct of business by the Lender*) the Lender shall pay an amount to the Obligor which the Lender determines in its absolute discretion will leave it (after that payment) in the same after-Tax position as it would have been in had the circumstances not arisen which caused the Tax Payment to be required to be made by the Obligor.

### 10.4 Stamp duties and Taxes

The Borrower shall:

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

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

### 10.5 Indirect Tax

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



#### 10.6 **FATCA Deduction and gross-up by Obligor**

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

#### 10.7 **FATCA Deduction by Lender**

- (a) The Lender may make any FATCA Deduction it is required by FATCA to make, and any payment required in connection with that FATCA Deduction, and the Lender shall not be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction. If the Lender becomes aware that it must make a FATCA Deduction in respect of a payment to another Party (or that there is any change in the rate or the basis of such FATCA Deduction), it shall notify that Party.
- (b) The Borrower shall (within three Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered by the Lender as a result of another Party making a FATCA Deduction in respect of a payment due to it under a Finance Document. This paragraph shall not apply to the extent a loss, liability or cost is compensated for by an increased payment under Clause 11 (*Increased costs*).

#### 10.8 **Tax Credit and FATCA**

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

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

the Lender shall pay an amount to the Obligor which the Lender determines in its absolute discretion will leave it (after that payment) in the same after-Tax position as it

would have been in had the FATCA Payment not been required to be made by the Obligor.

#### 10.9 FATCA Information

- (a) Subject to Clause 10.9(c), each Party shall, within ten Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party; and
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA (including its applicable “passthru payment percentage” or other information required under the US Treasury Regulations or other official guidance including intergovernmental agreements) as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA.
- (b) If a Party confirms to another Party pursuant to Clause 10.9(a)(i) that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Clause 10.9(a) shall not oblige the Lender to do anything which would or might in its reasonable opinion constitute a breach of:
  - (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm its status or to supply forms, documentation or other information requested in accordance with Clause 10.9(a) (including, for the avoidance of doubt, where Clause 10.9(c) applies), then:
  - (i) if that Party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such Party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party; and
  - (ii) if that Party failed to confirm its applicable “passthru payment percentage” then such Party shall be treated for the purposes of the Finance Documents (and payments made thereunder) as if its applicable “passthru payment percentage” is 100%,

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

## 11. INCREASED COSTS

### 11.1 Increased costs

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

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

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

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

### 11.2 Increased cost claims

- (a) If the Lender intends to make a claim pursuant to this Clause 11 (*Increased costs*), it shall promptly notify the Borrower of the event giving rise to the claim.
- (b) The Lender shall, as soon as practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Costs.

### 11.3 Exceptions

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

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) attributable to a FATCA Deduction required to be made by an Obligor or the Lender;
- (c) compensated for by Clause 10.7(b) (*FATCA Deduction by Lender*);
- (d) compensated for by Clause 10.2 (*Tax indemnity*) (or would have been compensated for under Clause 10.2 (*Tax indemnity*) but was not so compensated solely because one of the exclusions in paragraph (b) of Clause 10.2 (*Tax indemnity*) applied); or

- (e) attributable to the wilful breach by the Lender or its Affiliates of any law or regulation.

## 12. OTHER INDEMNITIES

### 12.1 Currency indemnity

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

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

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

### 12.2 Other indemnities

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

- (a) the occurrence of any Review Event or Default or the investigation of any event which it reasonably believes is a Review Event or Default;
- (b) any other information produced or approved by an Obligor or on behalf of an Obligor under or in connection with the Finance Documents, or the transactions they contemplate, being or being alleged to be misleading or deceptive in any respect (including by omission);
- (c) any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Obligor or with respect to the transactions contemplated or financed under a Finance Document;
- (d) a failure by an Obligor to pay any amount due under a Finance Document on its due date;
- (e) funding, or making arrangements to fund, its participation in a Loan requested in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone);

- (f) acting or relying on any notice, request or instruction from an Obligor which it reasonably believes to be genuine, correct and appropriately authorised; or
- (g) a Loan (or part of a Loan) not being prepaid in accordance with a valid notice of prepayment given by the Borrower.

### 13. MITIGATION BY THE LENDER

#### 13.1 Mitigation

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

#### 13.2 Indemnity and limitation of liability

- (a) The Obligors shall indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under Clause 13.1 (*Mitigation*).
- (b) The Lender is not obliged to take any steps under Clause 13.1 (*Mitigation*) if, in the reasonable opinion of the Lender, to do so might be prejudicial to it.

### 14. COSTS AND EXPENSES

#### 14.1 Transaction expenses

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

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

including, for the avoidance of doubt, any costs and expenses incurred by the Lender in connection with, or from, the Independent Certifier.

#### 14.2 Amendment costs

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 27.7 (*Change of currency*), the Borrower shall, within three Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by or for the account of the Lender in complying with that request or requirement.

**14.3 Enforcement costs**

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

**14.4 Travel costs**

The Borrower shall reimburse the Lender for all costs and expenses reasonably incurred by the Lender in connection with travelling to and inspecting the Project Area and/or the Project assets (including the mining sites and equipment) once in each calendar year (unless a Review Event or Event of Default is subsisting, in which case the Borrower must reimburse the Lender for each inspection).

**SECTION 7  
GUARANTEE**

**15. GUARANTEE AND INDEMNITY**

**15.1 Guarantee and indemnity**

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to the Lender punctual performance by each Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with the Lender that whenever an Obligor does not pay any amount when due under or in connection with any Finance Document (or anything which would have been due if the Finance Document or the amount was enforceable, valid and not illegal), then subject to the relevant amount not having been paid by any other Obligor, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) indemnifies the Lender immediately on demand against any cost, loss or liability suffered by the Lender (including legal fees incurred by or on behalf of the Lender resulting from any action instituted in respect of the guaranteed obligations):
  - (i) if any obligation guaranteed by it (or anything which would have been an obligation guaranteed by it if not unenforceable, invalid or illegal) is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which the Lender would otherwise have been entitled to recover;
  - (ii) if an Obligor does not pay any amount when due under or in connection with any Finance Document;
  - (iii) if any of its obligations under Clauses 15.1(a) or (b) is or becomes unenforceable, invalid or illegal. The amount of the loss recovered under this sub-paragraph shall be equal to the amount which the Lender would otherwise have been entitled to recover;
  - (iv) if the Lender is obliged, or agrees, to pay an amount to a liquidator of an Insolvent person in connection with a payment by an Obligor (for example, a Lender may have to, or agree to, pay interest on the amount); or
  - (v) in connection with any person exercising, or not exercising, rights under this guarantee, undertaking and indemnity.

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

**15.2 Continuing guarantee**

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

### 15.3 Reinstatement

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

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

### 15.4 Waiver of defences

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

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



- (k) any assignment or other dealing with this guarantee, undertaking and indemnity or any Finance Document.

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

#### 15.5 Variations and replacements

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

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

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

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

#### 15.6 Immediate recourse

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

#### 15.7 Appropriations

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

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

#### 15.8 Deferral of Guarantors' rights

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

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

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

#### 15.9 Guarantor's right of proof limited

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

#### 15.10 Right to prove

- (a) Each Guarantor irrevocably appoints the Lender and each of its Authorised Officers severally as its attorney and agrees to formally approve all action taken by an attorney under this Clause 15.10.
- (b) Each attorney may:
  - (i) do anything which a Guarantor may lawfully do to exercise a right of proof in any form of administration of an Obligor or any other guarantor of, or provider of Security for, any Obligor's obligations under the Finance Documents (including liquidation, winding up, bankruptcy, voluntary administration, dissolution or receivership or any analogous process). (These things may be done in the

Guarantor's name or the attorney's name and they include signing and delivering documents, taking part in legal proceedings and receiving any dividend arising out of the right of proof); and

- (ii) delegate its powers (including this power) and may revoke a delegation; and
  - (iii) exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so.
- (c) No attorney need account to a Guarantor for any dividend received on exercising a right of proof under Clause 15.10(b) except to the extent that any dividend remains after the Lender has received all amounts payable to it under or in connection with the Finance Documents.

**15.11 Additional security**

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

**15.12 Approval**

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

**SECTION 8  
BANK ACCOUNTS**

**16. BANK ACCOUNTS**

**16.1 General**

- (a) The Borrower shall maintain the Bank Accounts in accordance with this Clause 16 (*Bank Accounts*).
- (b) Each Obligor shall give such notices as the Lender may require in connection with the perfection or protection of the Security over the Project Account, the Holdback Account, the Lock-up Account (if required in accordance with Clauses 16.4 (*Lock-up Account*) and 19.2 (*Lock up*), or for the purpose of giving effect to the provisions of this Clause 16 (*Project Accounts*).
- (c) The Bank Accounts shall be separate accounts which are held with an Account Bank. The Borrower must procure that the Account Bank in respect of the Project Account enter into an Account Bank Deed, and, if requested, in respect of the Lock-up Account.
- (d) The Bank Accounts must be denominated in US or Canadian dollars (except the Lock-up Account which must be denominated in US dollars). The Borrower acknowledges that all amounts advanced or payable hereunder shall be in US dollars and the Borrower bears all currency and foreign exchange risk.
- (e) If any Obligor or the Account Bank receives any moneys for crediting to the Bank Accounts (other than the Holdback Account which, for certainty, shall be denominated in Canadian dollars) in a currency other than dollars, that Obligor must convert those moneys into dollars (at the Account Bank's prevailing market rates for comparable transactions) on the date on which they are received. The amount must be paid into the Project Account or the Lock-up Account (if required in accordance with Clauses 16.4 (*Lock-up Account*) and 19.2 (*Lock Up*)) immediately after it is converted into the relevant currency.
- (f) The restrictions on the operation of, and withdrawal of funds from, the Bank Accounts contained in this Agreement will not affect the obligations of the Obligors to:
  - (i) make all payments required to be made to the Lender on the respective due dates for payment in accordance with the Finance Documents; or
  - (ii) in respect of the Holdback Account only, deposit funds into the Holdback Account, maintain funds in the Holdback Account, operate the Holdback Account and make payments of or withdraw amounts from the Holdback Account, in each case strictly in accordance with the provisions of the BLA. The parties to this Agreement agree that in the event of any conflict between the obligations of the Obligors under this Agreement and the obligations of the Obligors under the BLA, the Obligors shall comply with the obligations under the BLA only to the extent required in order to strictly comply with the provisions of the BLA.
- (g) The detailed operating procedures for the Bank Accounts will be agreed from time to time between the Borrower and the Account Bank. In the event of any

inconsistency between this Agreement and those procedures, this Agreement will prevail.

- (h) Neither the ability of the Borrower to make any withdrawal from any Bank Account in accordance with this Agreement nor any such withdrawal will be construed as a waiver by the Lender of any Security over the Bank Accounts. The Lender acknowledges that the amounts held in the Holdback Account are imposed with a trust in favour of certain contractors of the Obligors under and in accordance with the provisions of the BLA and, accordingly, any amounts paid by the Obligors from the Holdback Account in accordance with the provisions of the BLA shall not be the subject of any Security.
- (i) In receiving any payments into the Bank Accounts or making any withdrawals from any Bank Account, each Obligor shall ensure that it has obtained all such Authorisations as are necessary in order for such payment to be made into, or such withdrawal to be made from, the Bank Accounts.

## 16.2 Project Account

- (a) The Borrower shall open and maintain the Project Account and shall procure that the following amounts are paid into it:
  - (i) the proceeds of all Loans made to the Borrower; and
  - (ii) any insurance proceeds which are required to be deposited into the Project Account in accordance with clause 20.11(b).
- (b) Subject to Clause 16.5 (*Withdrawals*), the Borrower may only withdraw and use any amounts standing to the credit of the Project Account for the Approved Purpose.
- (c) Within 3 Business Days of the end of each Month, the Borrower will provide:
  - (i) a Withdrawals Certificate signed by two directors or officers of the Borrower itemising all withdrawals from the Project Account and confirming that each withdrawal was for the purposes of (and the funds were used for) the Approved Purpose; and
  - (ii) a copy of a bank statement confirming such withdrawals (which may be an online print-out) and the then-current balance of the Project Account.
- (d) The Borrower must, on request, provide the Lender with any evidence requested by the Lender supporting or demonstrating the withdrawals from the Project Account or the balance of the Project Account.
- (e) Within 10 days of receipt of a Withdrawal Certificate, the Lender (acting reasonably) must either:
  - (i) accept the Withdrawal Certificate; or
  - (ii) request the Borrower resubmit a revised Withdrawal Certificate addressing any comments of the Lender, and this clause will reapply; or
  - (iii) reject the Withdrawal Certificate and request that an independent auditor (at the cost of the Borrower) prepare the Withdrawal

Certificate, with such Withdrawal Certificate being the agreed and accepted Withdrawal Certificate for the purpose of this Agreement.

For the avoidance of doubt, acceptance of a Withdrawal Certificate by the Lender is not, and is not to be taken as, confirmation or acceptance by the Lender that the Withdrawal Certificate is correct or that the Lender has taken any steps to verify the Withdrawal Certificate or its contents.

### 16.3 Holdback Account

- (a) The Borrower shall open and maintain the Holdback Accounts into which shall be deposited Holdback Amounts or advances on account of Holdback Amounts.
- (b) The Borrower may only deposit funds into the Holdback Account, maintain funds in the Holdback Account, operate the Holdback Account and make payments of or withdraw amounts from the Holdback Account, in each case strictly in accordance with the provisions of the BLA. The parties to this Agreement agree that in the event of any conflict between the obligations of the Obligors under this Agreement and the obligations of the Obligors under the BLA, the Obligors shall comply with the obligations under the BLA only to the extent required in order to strictly comply with the provisions of the BLA.
- (c) The Borrower shall promptly, upon request of the Lender, provide evidence of the balance in the Holdback Account and such other information as the Lender shall reasonably require to confirm to the Lender that the Borrower is in compliance with all laws and regulations, including the BLA.

### 16.4 Lock-up Account

- (a) In the event that the Borrower is required to deposit funds into the Lock-up Account under 19.2 (*Lock up*), the Borrower must open and maintain the Lock-up Account with the Account Bank for the purpose of holdings amounts referred to in Clause 19.2 (*Lock up*).
- (b) The Borrower must give notice to the Lender once the Lock-up Account has been opened (along with all relevant account details), following which the Borrower must take all steps to perfect the Lender's Security over the Lock-up Account.
- (c) Subject to Clause 16.5 (*Withdrawals*), the Borrower:
  - (i) may at any time and to the extent that it otherwise would not have sufficient funds available (excluding for that purpose any funds standing to the credit of the Project Account) withdraw amounts from the Lock-up Account in or towards payment of any amounts due but unpaid under the Finance Documents (other than Clause 6.1 (*Illegality*) or 6.3 (*Voluntary prepayment of Loans*)); and
  - (ii) must, when required to do so by Clause 19.2 (*Lock up*), transfer all amounts standing to the credit of the Lock-up Account to the Project Account.

### 16.5 Withdrawals

- (a) No withdrawals from the Bank Accounts may be made except as expressly permitted by this Agreement or the applicable Account Bank Deed.

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

**16.6 Administration and miscellaneous**

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

**SECTION 9**  
**REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

**17. REPRESENTATIONS**

Each Obligor makes the representations and warranties set out in this Clause 17 to the Lender on the date of this Agreement and, in the case of the Repeating Representations, on the other dates set out in Clause 17.40 (*Repetition*).

**17.1 Status**

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

**17.2 Binding obligations**

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

**17.3 Non-conflict with other obligations**

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

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

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

**17.4 Power and authority**

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



## 17.5 Authorisations

- (a) All Authorisations required or desirable:
  - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations under the Finance Documents to which it is a party have been obtained or effected and are in full force and effect;
  - (ii) to ensure the Finance Documents to which it is a party are valid, enforceable and admissible in evidence in any applicable jurisdiction have been obtained or effected and are in full force and effect;
  - (iii) for it and its Subsidiaries to carry on their business (including any Environmental and Social Permit), where failure to obtain it might have a Material Adverse Effect, have or will be obtained or effected if and when required for purposes of the construction and operation of the Project, and are in full force and effect while so required; and
  - (iv) to enable it to create the Security to be created by it pursuant to any Security Document and to ensure that such Security has the priority and ranking it is expressed to have, have been obtained or effected and are in full force and effect..
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of each Obligor have been obtained or effected and are in full force and effect, if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.
- (c) Each Authorisation required to commence construction of Phase 1 has been obtained and is in full force and effect.
- (d) Each Authorisation required to operate the Project will be obtained and will be in full force and effect prior to such Authorisation being required.
- (e) Each Authorisation which has been obtained by or on behalf of the Borrower and is either issued in the Borrower's name or the Borrower and the Project are fully entitled to the use and benefit thereof in accordance with applicable law is not the subject of any appeals or further proceedings or to any unsatisfied condition that could reasonably be expected to result in material modification, suspension or revocation thereof.
- (f) The Borrower has no reasonable belief that any Authorisation which has been obtained will be suspended, cancelled or revoked.
- (g) The Borrower has no reasonable belief that, in connection with the Project, any Authorisation which has not yet been obtained but is of a type that is routinely granted on application and which would not normally be obtained at the current stage of construction or operation of the Project, will not be obtained prior to the time it becomes necessary for the current stage of construction or operation of the Project.
- (h) The Borrower is not in material violation of any Authorisation.
- (i) To the Borrower's knowledge, no counterparty to a Material Project Document is in material violation of any Authorisation.

**17.6 Governing law and enforcement**

- (a) The choice of law referred to in Clause 38 (*Governing law*) as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation and in New South Wales.
- (b) Any judgment obtained against it in any jurisdiction referred to in Clause 39 (*Enforcement*) in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation.

**17.7 Taxation**

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

**17.8 No filing or stamp taxes**

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

**17.9 No default**

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

**17.10 No misleading information**

- (a) Any factual information provided by or on behalf of an Obligor in writing in connection with the Finance Documents and the transactions they contemplate was true, complete and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) Any financial projections provided by or on behalf of an Obligor have been prepared by appropriately qualified persons on the basis of recent historical information and on the basis of reasonable assumptions.

- (c) Nothing has occurred or been omitted from the information provided in writing in connection with the Finance Documents or the transactions they contemplate and no information has been given or withheld that results in the information provided in writing in connection with the Finance Documents or the transactions they contemplate being untrue or misleading in any material respect.

#### 17.11 **Financial statements**

- (a) Its Original Financial Statements were prepared in accordance with IFRS consistently applied unless expressly disclosed to the contrary in those Original Financial Statements.
- (b) Its Original Financial Statements give a true and fair view and represent its financial condition and operations (on a consolidated basis) during the relevant financial year unless expressly disclosed to the contrary in those Original Financial Statements.
- (c) There has been no material adverse change in its business or financial condition (or the business or financial condition of the consolidated entity) since the date to which its most recent Financial Statements given to the Lender were prepared.

#### 17.12 **Ranking**

- (a) Its payment obligations under the Finance Documents rank ahead of the claims of all its other creditors, except for:
  - (i) obligations mandatorily preferred by law applying to companies generally; and
  - (ii) the security interest granted by Heemskirk Canada Limited in favour of Canadian Imperial Bank of Commerce, represented by PPSA registration no. 11082612805 and registered on August 26, 2011, as amended by registration nos. 14040911883, 15070638641, and 15071029726, and as otherwise amended from time to time.
- (b) The Security created pursuant to the Security Documents has or will have the ranking in priority which it is expressed to have in the Security Documents and it is not subject to any prior ranking or pari passu ranking Security.

#### 17.13 **No proceedings pending or threatened**

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

#### 17.14 **Trustee**

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

**17.15 Authorised Signatures**

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

**17.16 Permitted Security and Permitted Financial Indebtedness**

- (a) The Collateral is not subject to any Security other than the Permitted Security.
- (b) No Obligor has provided or incurred any Financial Indebtedness other than Permitted Financial Indebtedness.

**17.17 Shares**

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

**17.18 Compliance with laws**

It and each of its Subsidiaries is in compliance in all material respects with all laws and regulations that are applicable to it, its assets or any activity relating to the Project.

**17.19 Benefit**

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

**17.20 No immunity**

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

**17.21 Solvency**

It is not Insolvent.

**17.22 Anti-corruption**

Each Obligor has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintains policies and procedures designed to promote and achieve compliance with such laws.

### 17.23 Withdrawals

The aggregate of:

- (a) all amounts indicated in all Withdrawal Certificates issued and accepted in accordance with Clause 16.2(c)(ii) (*Project Account*);
- (b) all cash balances (held in the Project Account) available to the Borrower; and
- (c) all withdrawals from the Project Account, made in accordance with Clauses 16.2 (*Project Account*) and 16.5 (*Withdrawals*) since the last Withdrawal Certificate issued and accepted in accordance with Clause 16.2(c)(ii) (*Project Account*),

equals the total of all outstanding Loans.

### 17.24 Security

- (a) The Security created by the Security Documents constitutes legal, valid and enforceable security and, subject to:
  - (i) obligations mandatorily preferred by law applying to companies generally; and
  - (ii) the security interest granted by Heemskirk Canada Limited in favour of Canadian Imperial Bank of Commerce, represented by PPSA registration no. 11082612805 and registered on August 26, 2011, as amended by registration nos. 14040911883, 15070638641, and 15071029726, and as otherwise amended from time to time.

ranks as a first priority security interest over the assets described in the relevant Security Document.

- (b) To the extent that it has entered into any Security Document, it is the sole legal and beneficial owner of the assets over which Security is purported to be given under that Security Document.
- (c) No Security exists over all or any of the present or future assets of any Obligor other than as permitted by this Agreement.
- (d) To the extent that it has entered into a Security Document that creates, or purports to create, Security over any shares, the shares over which such Security has been created, or purported to be created, constitute the entire issued share capital of the relevant person that has issued such shares.
- (e) All of the Security which constitutes real property or tangible personal property is, or where installed pursuant to the Material Project Documents, will be, located in the Project Area.

### 17.25 Group Structure Chart

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

- (a) each Obligor, including current name and company registration number, its jurisdiction of incorporation, a list of shareholders and indicating whether a company is not a company with limited liability; and

- (b) all minority interests in any Obligor and any person in which any Obligor holds shares in its issued share capital or equivalent ownership interest of such person.

**17.26 Environmental and social undertakings**

- (a) Except as previously disclosed to the Lender in writing and accepted by the Lender in writing, the Borrower has performed and observed all Environmental and Social Authorisations applicable to it in all material respects.
- (b) Except as previously disclosed to the Lender in writing and accepted by the Lender in writing, no Material E&S Incident has occurred.
- (c) Except as previously disclosed to the Lender in writing there are no material Environmental or Social Claims current, pending or threatened against it or connected with the Project and no Obligor is in violation of any Environment and Social Law which violation could result in a Material Adverse Effect.
- (d) The Borrower has adopted and complies with an environmental policy that requires monitoring of and compliance with all Environmental and Social Laws and Environmental and Social Authorisations applicable to it.
- (e) There has been no storage, leakage, spillage, release or emission of a Dangerous Substance at, from or within the Project Area which:
  - (i) contravenes Environmental or Social Law or any Environmental and Social Authorisation in any material respect; or
  - (ii) is likely to have a Material Adverse Effect.

**17.27 Project documents**

- (a) The Material Project Documents:
  - (i) are in full force and effect (other than where termination of a Material Project Document is permitted under Clause 21.18 (*Material Project Documents*));
  - (ii) contain no restrictions, covenants and conditions that would adversely affect the use, possession, ownership, exploration, development, construction, operation and/or exploitation of the Project assets in the manner contemplated by the Finance Documents; and
  - (iii) are capable of being:
    - (A) assigned to the Lender; or
    - (B) the subject of a security granted to the Lender,without the consent of the applicable counterparty.
- (b) It is not in default under any Material Project Document and each other party to any Material Project Document has complied in all material respects with such Material Project Document and, in any event, no such other party to any Material Project Document is in default thereunder which remains outstanding.

- (c) No circumstances exist which would, or would be reasonably likely to, give any other party to a Material Project Document legal grounds to terminate, cancel or revoke that Material Project Document.
- (d) All material documents and contracts entered into by the Borrower relating to the Project:
  - (i) are entered into on terms no less favourable to the Borrower than arm's length terms;
  - (ii) contain no restrictions, covenants and conditions that would adversely affect the use, possession, ownership, exploration, development, construction, operation and/or exploitation of the Project assets in the manner contemplated by the Finance Documents; and
  - (iii) are capable of being:
    - (A) assigned to the Lender; or
    - (B) the subject of a security granted to the Lender,
 without the consent of the applicable counterparty.
- (e) The Lender has been provided with copies or details of all material documents and contracts entered into by the Borrower relating to the Project and no other agreements or arrangements exist which would materially affect the transactions or arrangements contemplated by:
  - (i) the Finance Documents; or
  - (ii) the Material Project Documents.

**17.28 Ownership of assets**

The Borrower:

- (a) has, or will when necessary have, good title to all assets necessary or desirable to implement the Project and the only interests in real property necessary for the construction and operation of the Project are listed in Schedule 11 (*Real Property Interests*);
- (b) has good and marketable title to all assets which are reflected in the latest audited Financial Statements;
- (c) has:
  - (i) good and valid rights to use and occupy the Project Area by way of good and valid leasehold title, easement rights, land use permits or similar rights and interests; and
  - (ii) the right to use all easements, wayleaves, rights of way and other rights (including water rights) necessary or desirable to implement the Project; and
- (d) has registered or filed for registration any easements in relation to the Project in the relevant registries of property, to the extent that these rights may be

registered at the relevant registries of property and as listed in Schedule 11 (*Real Property Interests*).

**17.29 Base Case Financial Model**

The Base Case Financial Model:

- (a) is based on reasonable assumptions;
- (b) is not inconsistent with the provisions of the Material Project Documents and the Finance Documents;
- (c) has been prepared in good faith and with due care; and
- (d) fairly represents its expectations.

**17.30 Insurance**

All insurances (and all re-insurance policies relating to them) which are required to be effected and maintained pursuant to this Agreement with respect to the Project and all activities relating to the Project:

- (a) have been so effected in accordance with this Agreement on such terms and against such risks that would normally be maintained by prudent persons (acting in accordance with good industry practice) having an interest in such assets or carrying out such activities; and
- (b) are in full force and effect and no event or circumstance has occurred, nor has there been any omission to disclose a fact, which would in either case entitle any insurer under those insurances (or the re-insurance policies relating to them) to avoid its liability or otherwise reduce its liability.

**17.31 Partnerships and Joint Ventures**

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

**17.32 Utilities**

All utility services necessary for the construction and operation of the Project for the intended purposes are available at the Project Area or will be available as and when required on commercially reasonable terms.

**17.33 Roads**

All roads necessary for the full utilisation of the Project for its intended purposes under the Material Project Documents have either been completed or the necessary rights of way therefor have been acquired.

**17.34 Construction of the Project**

All work done on the Project has been done substantially in accordance with the terms of the Material Project Documents, Good Operating Practice and all requirements of law.

**17.35 Intellectual Property**

Each Obligor owns or has the right to use all intellectual property which is necessary for the operation of the Project. No Obligor has received written notice or actual notice that:



- (a) any material product, process, method, substance, part or other material presently contemplated to be employed by the Borrower in connection with the Project will infringe in any manner any rights in intellectual property owned by any other person;
- (b) there is pending any claim or litigation against or affecting an Obligor contesting its right to use any such product, process, method, substance, part or other material; or
- (c) there is, or there is pending or proposed any patent, invention, device, application or any statute, law, rule, regulation, standard or code, which in such case could reasonably be expected to have a Material Adverse Effect.

**17.36 Zoning; Expropriation; Flood Designation**

- (a) No Obligor has received notice of any material proposed rezoning of all or any part of the Project Area;
- (b) No Obligor has received notice of any material expropriation of all or any part of the Project Area; and
- (c) The Project Area is not, in whole or in part, within a floodway, flood fringe, overland flooding area or any other flood related area designated by any Governmental Agency nor has an Obligor received any notice of any proposal to include any part of the Project Area within such an area.

**17.37 First Nation Matters**

No Obligor has received notice that the Project Area or either Project are subject to, and, to the Borrower's knowledge, there are no current or pending material First Nations claims affecting the Project Area. Other than as disclosed to the Lender in writing, the Borrower has not entered into any written or oral agreements with First Nations to provide benefits, pecuniary or otherwise, with respect to the Project at any stage of development and the Borrower has not offered First Nations any benefits with respect to the Project at any stage of development.

**17.38 No Management Fees**

The Borrower is not party to or bound by any contract or commitment to pay any royalty, license fee or management fee to an Affiliate in connection with the Project pursuant to any contract or agreement, except to the extent disclosed pursuant to the Material Project Documents.

**17.39 Independent Certifier**

- (a) The Borrower:
  - (i) acknowledges and agrees that the Independent Certifier has been appointed to perform the role of independent certifier certifying the matters set out in the Finance Documents, and that a different Independent Certifier may be appointed from time to time; and
  - (ii) acknowledges that PEC Consulting Group has previously advised the Lender in connection of the Project; and
  - (iii) acknowledges that the Lender is not liable for, and has no liability in respect of, the performance by the Independent Certifier of its role under the Finance Documents.

- (b) The parties will cooperate with the Independent Certifier and provide all information and documents within its possession, custody or control which are reasonably necessary to enable the Independent Certifier to perform its role.
- (c) The parties agree that any determination or certification of the Independent Certifier under the Finance Documents will be final and binding, unless the parties have agreed in writing within a 30 day period after the determination or certification that a manifest error has occurred, in which case, the parties will refer the determination or certification back to the Independent Certifier for redetermination or recertification in accordance with the terms of the Finance Documents.

#### 17.40 **Repetition**

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on:

- (a) the date of each Utilisation Request, each Calculation Date and each Quarter End; and
- (b) in the case of an Additional Guarantor, the day on which the company becomes (or it is proposed that the company becomes) an Additional Guarantor.

#### 17.41 **Reliance**

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

### 18. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 18 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or the Facility A Commitment is in force.

#### 18.1 **Financial Statements**

The Borrower shall supply to the Lender:

- (a) as soon as the same become available, but in any event within 90 days after the end of each of its financial years the audited consolidated Financial Statements of the Obligors and certain Related Bodies Corporate of the Obligors (including, but not limited to, each entity of the Northern Silica Group) for that financial year; and
- (b) as soon as the same become available, but in any event within 60 days after the end of each half of each of its financial years, the consolidated Financial Statements of the Obligors (and only the Obligors) for that financial half year.

#### 18.2 **Compliance Certificate**

- (a) The Borrower shall supply to the Lender, within 60 Business Days of each Quarter End, a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 19 (*Financial covenants*) as at the Quarter End.
- (b) Each Compliance Certificate shall be signed by a director or company secretary of the Borrower.

### 18.3 Requirements as to Financial Statements

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

Any reference in this Agreement to those Financial Statements shall be construed as a reference to those Financial Statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

- (c) The Borrower shall procure that each set of Financial Statements delivered pursuant to Clause 18.1 (*Financial Statements*) gives a true and fair view of the financial position and performance of the consolidated entity or relevant Obligor (as the case may be), in the case of financial position, as at the date stated in the Financial Statements, and, in the case of financial performance, for the financial year to which those Financial Statements relate.

### 18.4 Information: miscellaneous

The Borrower shall supply to the Lender:

- (a) **Annual Budget:** as soon as practicable, but no later than 30 days before 1 October of each year to which it relates, an updated version of the Annual Budget for the relevant year in a form and substance agreed between the Borrower and the Lender in accordance with clause 19.4 (*Base Case Financial Model and Annual Budget*);
- (b) **Environmental and social:**
  - (i) as soon as practicable but within 120 days after the end of the financial year to which it relates, a copy of an Annual Environmental

and Social Report which is in a form satisfactory to the Lender (acting reasonably) and which provides:

- (A) an update as to the Borrower's compliance with all applicable Environmental and Social Laws and Environmental and Social Authorisations; and
  - (B) any other relevant information that the Lender (acting reasonably) may require pursuant to the Equator Principles;
- (ii) details in writing as soon as reasonably practicable upon becoming aware of:
- (A) any Environmental or Social Claim which has been commenced or is threatened against an Obligor in respect of the Project; or
  - (B) any facts or circumstances which will or might reasonably be expected to result in any Environmental or Social Claim being commenced or threatened against any Obligor;
- (c) **Project:** promptly, details of any estimated increase in:
- (i) Project Costs or Operating Costs beyond those estimated in the Base Case Financial Model; and
  - (ii) as soon as practicable (but no later than 30 days after each calendar Month), copies of the Borrower's Construction Report for the applicable Month;
- (d) **Shareholding:** promptly, details of any material change to the shareholding of an Obligor (where, for the purpose of this Agreement, a material change to the shareholding is a change to 5% or more of the shareholding);
- (e) **Documents issued to shareholders:** all documents dispatched by an Obligor to its shareholders (or any class of them) or its creditors generally at the same time as they are despatched;
- (f) **Announcements:** promptly, any announcement, notice or other document relating specifically to an Obligor posted onto any electronic website maintained by any stock exchange on which shares in or other securities of the Obligor are listed or any electronic website required by any such stock exchange to be maintained by or on behalf of the Obligor;
- (g) **Canadian law:** promptly after it becomes aware of the same and the effect thereof, notice of a material change (including any change in interpretation thereof) in:
- (i) law or jurisprudence in Canada;
  - (ii) a regulation in Canada;
  - (iii) executive directive or order, or otherwise arising from a decision of a court in Canada;
  - (iv) the policy of a Canadian Governmental Agency;

- (v) any other rule, right, obligation or restriction in Canada; or
- (vi) the Constitution of Canada,

that have a Material Adverse Effect;

- (h) **Litigation documents:** promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings affecting any Obligor or any of their Subsidiaries or any of their assets (including the Project) which are current, threatened or pending, and which, if adversely determined, might reasonably be expected to have a Material Adverse Effect (either alone or together with other such adverse determinations);
- (i) **Governmental Agency:** promptly, any material notice, order or correspondence from or with a Governmental Agency relating to the Project which might reasonably be expected to have a Material Adverse Effect including, but not limited to, details of any actual or proposed nationalisation, expropriation, compulsory acquisition or seizure of any Project assets by any Governmental Agency (including through the imposition of confiscatory taxation);
- (j) **Insurance report:** on or about each anniversary of the date of this Agreement, a report on the insurance policies in respect of the Project at the date of the report, on claims and other material events with respect to those insurances during the past 12 Months and evidence of renewal of any existing insurance policy;
- (k) **Documents:**
  - (i) promptly, a copy of any Material Project Document that has not been previously provided to the Lender, in a form and substance acceptable to the Lender;
  - (ii) promptly, a copy of any material document or contract entered into by the Borrower relating to the Project that has not been previously provided to the Lender;
  - (iii) promptly, details of any termination, cancellation, rescission, discharge or material modification of any of the Material Project Documents or any other material document or contract entered into by the Borrower relating to the Project or Authorisation or any material provision thereof (together with any copies of any documents relating thereto);
  - (iv) promptly, a copy of any notice of material default (however described) served upon any Obligor under any Material Project Document;
  - (v) promptly after issue or receipt, a copy of any material notice, report, demand or correspondence relating to any notice of default under any Material Project Document;
  - (vi) promptly, but in any event within 7 days of becoming aware of the same, details of any potential or actual claim (with a value or potential value of more than US\$1,000,000 (or its equivalent)) or any other

material dispute under any Material Project Document or any material default (however described) under any Material Project Document;

- (l) **Authorisations:** promptly, copies of any Authorisation;
- (m) **Damage:** promptly upon becoming aware of the same, details of any event or circumstance which has resulted in any material physical damage to any material part of the facilities or infrastructure connected with the Project;
- (n) **Material Adverse Effect:** promptly, notice of any event(s) or circumstance(s) having a Material Adverse Effect;
- (o) **Specimen signatures:** promptly, notice of any change in authorised signatories of any Obligor signed by a director or company secretary of such Obligor accompanied by specimen signatures of any new authorised signatories; and
- (p) **Other information:** promptly, such further information regarding the financial condition, business and operations of any Obligor as the Lender may reasonably request.

#### 18.5 Notification of default

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

#### 18.6 “Know your customer” checks

The Borrower shall supply promptly all documents and other evidence reasonably requested by the Lender in order for the Lender or a proposed New Lender under Clause 23 (*Changes to the Lenders*) to carry out all necessary “know your customer” or other similar checks in relation to an Obligor or proposed Additional Guarantor under all applicable laws and regulations where such information is not already available to the recipient.

#### 18.7 Access to books and records

Upon the request of the Lender, the Borrower shall provide the Lender and any of its representatives and professional advisers with access to and permit inspection by them of the assets, premises, books and records of any Obligor in each case at reasonable times and upon reasonable notice.

### 19. FINANCIAL COVENANTS

#### 19.1 Financial condition

The Borrower shall ensure that, at each Calculation Date (in the case of the Historic DSCR, falling on or after the First Repayment Date):

- (a) the PLCR is not less than 1.3:1;

- (b) the Projected DSCR as at that Calculation Date and each future Calculation Date is not less than 1.1:1; and
- (c) the Historic DSCR is not less than 1.1:1.

**19.2 Lock up**

- (a) If the Projected DSCR as at a Calculation Date is less than 1.2:1, the Borrower shall place into the Lock-up Account, within 5 Business Days of the Calculation Date, all Projected Debt Service Costs.
- (b) At any time while there are amounts standing to the credit of the Lock-up Account and no amounts are due but unpaid under the Finance Documents (other than under Clauses 6.1 (*Illegality*) or 6.3 (*Voluntary prepayment of loans*)), if on a Calculation Date the Project DSCR is 1.2:1 or greater, the balance of the Lock-up Account must be paid to the Project Account.

**19.3 Financial testing**

- (a) Any amount or figure to be calculated or estimated under or for the purpose of a financial covenant in Clause 19.1 is to be calculated or estimated on the basis of
  - (i) the latest Base Case Financial Model and Financial Statements, Annual Budgets and Compliance Certificates delivered under Clause 18 (*Information Undertakings*) or, if the Borrower is at the relevant time in default in delivering such Financial Statements, Annual Budgets and Compliance Certificates under Clause 18 (*Information Undertakings*), as estimated by the Lender on the basis of the latest Base Case Financial Model and other accounts and information available to the Lender; and
  - (ii) the frac sand price agreed by the Borrower and the Lender (both acting reasonably), or if no frac sand price can be agreed by the Borrower and the Lender, the frac sand price determined by the Independent Market Expert.
- (b) The calculation of a financial covenant in Clause 19.1 by the Lender is, in the absence of manifest error, the final and agreed calculation of that ratio.

**19.4 Base Case Financial Model and Annual Budget**

- (a) The Borrower will provide the Lender with a draft updated Base Case Financial Model or draft Annual Budget as follows:
  - (i) on an annual basis, at least 60 days before 1 October of each year; and
  - (ii) if after consultation with the Borrower, the Lender acting reasonably considers a review is required because of any circumstance or matter which may have affected the accuracy or efficacy of the Base Case Financial Model or Annual Budget,(each a “**Review Date**”).
- (b) The Borrower will promptly provide the Lender with all information materially relevant to, or reasonably requested by the Lender in order to conduct, the review of the draft Base Case Financial Model or draft Annual Budget.

- (c) On reviewing the draft Base Case Financial Model or draft Annual Budget, the Lender must take into account:
  - (i) actual Operating Revenue and Operating Costs;
  - (ii) actual performance of the Project since the last Review Date;
  - (iii) the forecast performance to be determined by reference to the technical and economic assumptions determined pursuant to Clause 19.4(d).
- (d) The Lender may request and take into account the advice of any independent expert as may be agreed between the Lender and the Borrower (each acting reasonably), and may but need not rely on information supplied by the Borrower.
- (e) Any economic assumptions incorporated in the draft Base Case Financial Model or draft Annual Budget will be agreed from time to time by the Lender and the Borrower, each acting reasonably, or in the absence of agreement, as determined by the Lender.
- (f) If following review of the draft Base Case Financial Model or draft Annual Budget, the Lender determines that a revision is necessary because of any material change in the forecasts or assumptions used in the draft Base Case Financial Model or draft Annual Budget, it will as soon as practical notify the Borrower.
- (g) On receipt of that notice the Borrower must promptly revise the draft Base Case Financial Model or draft Annual Budget (as applicable) and provide the Lender with an updated draft Base Case Financial Model or draft Annual Budget (as applicable). That revision must:
  - (i) if the change relates to assumptions, be consistent with the basis for determining these under the previous draft Base Case Financial Model or draft Annual Budget and reflect any determination of technical assumptions and economic assumptions pursuant to Clause 19.4(d); and
  - (ii) be based on the principles and methodology used in preparing the initial Base Case Financial Model or Annual Budget (as applicable).
- (h) Paragraphs (b) to (g) of this clause will reapply until the draft Base Case Financial Model or draft Annual Budget (as applicable) is agreed. Once agreed the draft Base Case Financial Model or draft Annual Budget (as applicable) will be the Base Case Financial Model or Annual Budget (as applicable) for the purpose of this Agreement.

## 20. GENERAL UNDERTAKINGS

The undertakings in this Clause 20 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or the Facility A Commitment is in force.

### 20.1 Authorisations

Each Obligor shall promptly:



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

The Borrower shall not:

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

## 20.2 **Compliance with laws**

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

## 20.3 **Negative pledge**

- (a) Subject to Clause 20.3(c), no Obligor shall create or permit to subsist any Security over any of its assets.
- (b) Without limiting paragraph (a), no Obligor shall:
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other Obligor or its Affiliate;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter any title retention arrangement;

- (iv) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts or not repayable in certain circumstances; or
- (v) enter into any other preferential arrangement having a similar effect,

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

- (c) Paragraphs (a) and (b) above do not apply to:
  - (i) any Security created under a Finance Document;
  - (ii) any Security created or subsisting with the prior written consent of the Lender (in its absolute discretion);
  - (iii) any Security, arrangement or transaction listed in Schedule 7 (*Existing Security*) except to the extent the principal amount secured by that Security exceeds the amount stated in that Schedule;
  - (iv) any netting or set-off arrangement entered into by any Obligor in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances except to the extent the principal amount secured by that Security exceeds US\$200,000;
  - (v) any lien arising by operation of law and in the ordinary course of trading so long as the debt it secures is paid when due or contested in good faith and appropriately provisioned and any debt which remains due after final determination or settlement is paid promptly;
  - (vi) liens for taxes, rates, assessments or other governmental charges or levies not yet due, or for which instalments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that person, and if over US\$300,000, in respect of which appropriate reserves have been established or retained in working capital to the satisfaction of the Lender, so long as such proceedings shall not involve material danger of the sale, forfeiture or loss of the Project, the Project Area, the applicable leases or easements, as the case may be, the Borrower's title thereto, or any of the Borrower's interest thereon and shall not interfere in any material respect with the use or disposition of the Project, the Project Area, the applicable leases or easements, by the Borrowers or the use thereof for the purposes intended by such persons;
  - (vii) reservations, limitations, provisos and conditions expressed in any original grant from the Crown or other grants of real or immovable property, or interests therein;
  - (viii) licenses, permits, covenants, reservations, restrictions, servitudes, easements, rights-of-way and rights in the nature of easements (including licenses, easements, rights-of-way and rights in the nature of easements for railways, sidewalks, public ways, sewers, drains, gas, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) that do not materially

impair the use of the Project Area for the purpose for which it is used by that person;

- (ix) title defects, encroachments, irregularities or other matters relating to title that are of a minor nature and that in the aggregate do not materially impair the use of the affected property for the purpose for which it is intended to be used by that person;
- (x) the right reserved to or vested in any Governmental Agency by the terms of any lease, licence, franchise, grant or permit acquired by that person or by any statutory provision or terminate or modify any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (xi) the encumbrance resulting from the deposit of cash or securities in connection with contracts, tenders, bids, or expropriation proceedings, or other statutory obligations or to secure workmen's compensation, unemployment insurance, surety or appeal bonds, or costs of litigation, in each case when required by law or in the ordinary course of business;
- (xii) liens and claims incidental to current construction, mechanics', builders', warehousemen's, carriers' and other similar liens, and public, statutory and other like obligations incurred in the ordinary course of business, either:
  - (A) for amounts not yet due;
  - (B) which at the time have not yet been registered in accordance with applicable law against the Project Area or part thereof; or
  - (C) for amounts being contested in good faith and by appropriate proceedings so long as such proceedings shall not involve any imminent danger of the sale, forfeiture or loss of any part of the Project or the Project Area, as the case may be, title thereto or any interest therein and shall not interfere with the use or disposition of the Project or the Project Area provided that all holdbacks have been retained by the Borrower in respect of the foregoing required to be made pursuant to the BLA or that appropriate cash reserves have been established or retained in working capital to the reasonable satisfaction of the Lender;
- (xiii) security given to a public utility or any Governmental Agency when required by such utility or authority in connection with the operations of that person in the ordinary course of its business;
- (xiv) the encumbrance created by a court or arbitral proceeding, as long as the judgment or arbitral award is being contested diligently and in good faith by appropriate proceedings by that person and does not result in an Event of Default and as long as appropriate cash reserves have been established or retained in working capital to the reasonable satisfaction of the Lender;
- (xv) pledges or deposits of cash or securities in connection with any appeal, review or contestation of any encumbrance or any matter giving rise to an encumbrance;

- (xvi) all encumbrances in respect of any execution, judgment rendered, or claims filed, against such person at any time which are being contested in good faith by such Person and in respect of which if in excess of US\$300,000 there shall have been paid into court a bond or other security or deposited with the Lender collateral in an amount sufficient to pay such judgment or claim together with any interest thereon and costs in respect thereof;
- (xvii) all encumbrances created by others upon lands in respect of leases or easements applicable to the Project that have been or will be acquired by such Person which do not and will not in the aggregate at any time involve material danger of the sale, forfeiture or loss of the Project, the Project Area, the applicable leases or easements, as the case may be, the Borrower's title thereto, or any of the Borrower's interest therein, materially and adversely affect the Security or materially impair their use in the operation of the business of the Borrower or in respect of which the Borrower has obtained a non-disturbance agreement, if applicable, or in respect of which the registered owners of such lands have certified that the instruments giving rise to such encumbrances are expired or otherwise no longer in force or effect in respect of such lands or in respect which the Borrower has obtained a non-disturbance agreement from the mortgagee of the relevant landlord, if applicable;
- (xviii) any zoning, building by-laws or private deed restrictions, easements, reservations from title, rights of way, development agreements, subdivision agreements, site plan agreements, cross-easement agreements, servitudes, leases or other similar encumbrance or privileges in respect of particular real property which in the aggregate at any time do not materially impair the use or intended use of such property by such person in the operation of its business;
- (xix) encumbrances or any rights of distress reserved in or exercisable under any lease; or
- (xx) purchase money security interests securing debt in respect of purchase money security interests and capital leases granted by any Obligor, not to exceed an aggregate of US\$500,000 at any time.

#### 20.4 Disposals

- (a) No Obligor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, licence, transfer or otherwise dispose of any asset or assets or any interest in any asset or assets where the value of the asset or assets (alone or in aggregate) is in excess of an aggregate of US\$500,000.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal:
  - (i) is in respect of the Project, but only if the sale, lease, transfer or disposal is made in the ordinary course of trading of the Borrower;
  - (ii) made with the prior written consent of the Lender (in its absolute discretion);
  - (iii) from one Obligor to another, provided that if the asset or interest was the subject of a Security before the disposal, that at all times the asset

or interest continues to be subject to an equivalent Security under a Security Document after the sale, lease, transfer or other disposal;

- (iv) of assets in exchange for other assets comparable or superior as to type, value and quality and for a similar purpose;
- (v) of worn out or obsolete assets;
- (vi) of the Product on arm's length terms and for a market price;
- (vii) which is a Permitted Distribution; or
- (viii) expressly permitted in Clause 20.3(c) (*Negative pledge*).

#### 20.5 **Merger**

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

#### 20.6 **Change of business**

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

#### 20.7 **Taxation**

Each Obligor shall:

- (a) not change its tax residence;
- (b) procure that all Taxes payable by, or assessed upon, it are paid when due save to the extent that:
  - (i) such payment is being contested in good faith and being lawfully withheld and a sufficient reserve (as reasonably determined by it) has been set aside for the purposes of meeting such payment; and
  - (ii) the withholding of such payment, or such failure to pay, in each case, would not (or would not be reasonably likely to) result in a Material Adverse Effect;
- (c) to the fullest extent it is able to do so, apply any and all tax credits, losses, reliefs or allowances taken into account in the Base Case Financial Model at any time in the manner, at the time and to the extent that they were so taken into account; and
- (d) file all tax returns required to be filed by it in any jurisdiction within the period required by law to the extent that any failure to file such tax returns would, or would be reasonably likely to, result in a Material Adverse Effect.

#### 20.8 **Pari passu ranking**

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

- (a) obligations mandatorily preferred by law applying to companies generally; and

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

#### 20.9 **Arm's length basis**

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

#### 20.10 **Insurance**

- (a) The Borrower shall take out and maintain (and shall ensure that each Obligor takes out and maintains) insurances with a reputable insurer in the manner and to the extent which is in accordance with prudent business practice having regard to the nature of the business and assets of the Obligors (including all insurance required by applicable law).
- (b) The insurances maintained in accordance with Clause 20.10(a) must be:
  - (i) on terms and conditions which are customary for the relevant type of insurance (or terms and conditions which are more favourable to the Borrower or Obligor); and
  - (ii) in the names of the Borrower or Obligor, and the Lender for their respective rights and interests. However, insurances need not be in the name of the Lender if it is not customary practice in the insurance industry for that type of insurance to be in the name of the Lender.
- (c) The Borrower shall promptly produce evidence satisfactory to the Lender of current insurance cover (including a certified copy of each policy or a certificate of currency) whenever the Lender asks.
- (d) The Borrower shall promptly notify the Lender if:
  - (i) an event occurs which gives rise, or may give rise, to an insurance claim of US\$500,000 or more; or
  - (ii) an insurance claim of US\$500,000 or more is refused either in whole or in part.
- (e) The Borrower shall ensure that proceeds from an insurance claim are:
  - (i) used to reinstate the affected assets or business; or
  - (ii) if an Event of Default is continuing and the Lender directs the Borrower to use or hold the proceeds in a particular way, used or held as directed.
- (f) If an Event of Default is continuing and the Lender notifies the Borrower, the Lender may take over the relevant Obligor's rights to make, pursue or settle an insurance claim. The Lender may exercise those rights in any manner it chooses.

#### 20.11 **Insurance proceeds**

- (a) If any part of the Secured Property is lost, stolen, damaged or destroyed, then:

- (i) if the sum received under any insurance policy is less than US\$1,000,000, no Default has occurred and is continuing, and nothing which has or is likely to have a Material Adverse Effect has occurred, then the sum received will be applied at the option of the Borrower:
  - (A) towards the replacement or repair of such Secured Property; or
  - (B) in or towards repayment or reduction of any financial accommodation under any Finance Document in accordance with the applicable Finance Document; or
- (ii) in any other case, the sum received under any insurance policy will be applied at the option of the Lender:
  - (A) towards the replacement or repair of such Secured Property; or
  - (B) in or towards repayment or reduction of any financial accommodation under any Finance Document in accordance with the applicable Finance Document.
- (b) If any insurance proceeds are received before they are needed to pay for repair or replacement, the insurance proceeds will be deposited into the Project Account until needed.

**20.12 Constitution**

No Obligor shall (and the Borrower shall ensure that no Obligor will) amend:

- (a) its constitution in any material respect;
  - (b) its name;
  - (c) its fiscal year; or
  - (d) the location of its chief executive office and principal place of business,
- except with the prior written consent of the Lender.

**20.13 Incurring Financial Indebtedness**

- (a) Subject to paragraph (b) below, no Obligor shall incur or permit to subsist any Financial Indebtedness.
- (b) Clause 20.13(a) does not apply to any Financial Indebtedness:
  - (i) incurred or subsisting under a Finance Document;
  - (ii) incurred or subsisting with the prior written consent of Lender (in its absolute discretion);
  - (iii) owing to an Obligor as at the date of this Agreement and the terms and quantum of which has been disclosed to the Lender in writing prior to the date of this document;
  - (iv) incurred or subsisting in respect of the acquisition of an asset and where recourse in respect of the Financial Indebtedness is limited to the asset being acquired;

- (v) incurred for the sole purpose of paying, prepaying or repaying all Facility A Loans, provided Facility A is cancelled and prepaid or repaid at the same time;
- (vi) any Financial Indebtedness listed in Schedule 7 (*Existing Security*) except to the extent the principal amount exceeds the amount stated in that Schedule; or
- (vii) any netting or setting-off arrangement entered into by any Obligor in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances except to the extent the principal amount of the Financial Indebtedness exceeds US\$100,000.

**20.14 Providing Financial Indebtedness**

- (a) No Obligor shall be a creditor in respect of any Financial Indebtedness.
- (b) Clause 20.14(a) does not apply to:
  - (i) any Financial Indebtedness provided by any Obligor with the prior written consent of the Lender (in its absolute discretion); or
  - (ii) any Financial Indebtedness provided by one Obligor to another Obligor as at the date of this document and which has been disclosed to the Lender in writing prior to the date of this document.

**20.15 Tax**

Each Obligor shall pay:

- (a) all Taxes due and payable by it except those which are being contested in good faith and as long as the member has set aside sufficient reserves of liquid assets to satisfy the liability if the contest is unsuccessful; and
- (b) all Taxes which remain due and payable by it after final determination or settlement of a contest described in paragraph (a).

**20.16 Not Used**

**20.17 Project**

The Borrower shall:

- (a) promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation that is required to carry out the Project in accordance with the Material Project Documents and the Base Case Financial Model;
- (b) ensure that the Project is:
  - (i) designed, constructed and completed in a proper and workmanlike manner and in accordance with the designs, plans and specifications in or contemplated by the Material Project Documents except to the extent those designs, plans and specifications are varied with the prior written consent of the Lender (acting reasonably); and
  - (i) diligently developed, operated, managed and maintained in accordance with the Base Case Financial Model, and in accordance with Good Operating Practice;



- (c) ensure that the Project is diligently operated and the Product is diligently processed in a good and workmanlike manner as would a prudent operator and producer in accordance with Good Operating Practice;
- (d) ensure that there is no material change in the design, development or operation of the Project from that assumed in or contemplated by the Base Case Financial Model without the Lender's prior written consent;
- (e) promptly on becoming aware of it, notify the Lender of any material adverse change to the processing methods for the Project from those provided for in the Base Case Financial Model and/or in existence as at the date of this Agreement;
- (f) notify the Lender promptly of any unscheduled stoppages of or disruption to construction, development or operation at the Project for a period greater than 5 consecutive days;
- (g) ensure that the Project is not abandoned or placed on a "care and maintenance" basis without the prior written consent of the Lender;
- (h) ensure that the Project assets are maintained in accordance with Good Operating Practice;
- (i) maintain full and proper technical and financial records in relation to the Project; and
- (j) promptly pay, when due, the development costs, operating expenditure, capital expenditure, royalties and all other amounts, costs and expenses in connection with the Project and the Material Project Documents.

**20.18 Project documents**

The Borrower shall:

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

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

- (e) without prejudice to paragraphs (a) and (b), not agree to or permit any termination, cancellation, rescission, discharge or material modification of any Material Project Document, in each case, without the prior written consent of the Lender (which shall not be unreasonably withheld or delayed in the case of a proposed modification of a Material Project Document) unless:
  - (i) the termination or discharge of a Material Project Document follows full and final performance of the parties' obligations under that Material Project Document; or
  - (ii) it is demonstrated to the reasonable satisfaction of the Lender that such Material Project Document, or the arrangements contemplated by such Material Project Document, have been replaced by a replacement Material Project Document, or alternative arrangements, that is or are satisfactory to the Lender (acting reasonably) before that occurrence;
- (f) not assign its rights hereunder or under any Material Project Document to any person except as permitted hereunder;
- (g) duly and properly perform and comply with, in all material respects, its obligations under the Material Project Documents and any material document or contract entered into by the Borrower relating to the Project (except to the extent, if any, they are inconsistent with the obligations of the relevant Obligors under the Finance Documents);
- (h) enforce its rights with a view to ensuring the other parties to the Material Project Documents and any material document or contract entered into by the Borrower relating to the Project perform their material obligations thereunder;
- (i) exercise its rights, and (so far as within its power) ensure that others exercise their respective rights, under and in respect of the Material Project Documents and any material document or contract entered into by the Borrower relating to the Project consistently with the obligations of the Obligors under the Finance Documents;
- (j) not enter into any Material Project Document and any material document or contract entered into by the Borrower relating to the Project, the entry into or performance of which would, or would be reasonably likely to, result in a Material Adverse Effect;
- (k) ensure that there is a Tripartite Document in full force and effect between itself, the Lender and the Construction Contractor at all times while the Construction Contract (in respect of the construction work for Phase 1 (other than foundation work)) has not been entirely discharged by performance; and
- (l) use commercially reasonable efforts to enter into, and give effect to, the Engineering Contract required for Phase 1 of the Project by the date that is 2 months after the first Utilisation of Facility A; and
- (m) enter into and use commercially reasonable efforts to cause counterparties to Material Project Documents to enter into Tripartite Deeds in respect of such Material Project Documents upon the request of the Lender from time to time.

#### 20.19 Access

Each Obligor shall:

- (a) permit the Lender and/or accountants or other professional advisers of the Lender, on reasonable notice, to inspect the financial, mining and operational records of any Obligor, the Project Area and the Project assets (including mining sites and equipment) at any time; and
- (b) do everything reasonable to assist that inspection.

There may be no more than one inspection by the Lender in any three Month period (unless a Review Event or Event of Default is subsisting, in which case inspections are without restriction as to frequency or notice).

#### 20.20 Annual Budget

- (a) The Borrower must not, without the written consent of the Lender, materially amend or vary the Annual Budget other than in accordance with clause 19.4 (*Base Case Financial Model and Annual Budget*).
- (b) The Borrower must comply with the then-current Annual Budget, subject to a 10% cost overrun allowance.

#### 20.21 Group structure

Each Obligor will ensure that:

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

is a Guarantor (including by procuring its accession as an Additional Guarantor in accordance with Clause 24 (*Changes to the Obligors*)) and (other than NSC and Heemskirk Mining Pty Ltd (ACN 106 720 138)) has provided Security over all of its assets which is in form and substance satisfactory to the Lender, unless the Lender agrees otherwise (in its absolute discretion).

#### 20.22 PPSA Policies and Steps

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

#### 20.23 Application of FATCA

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

20.24 **Environmental and social compliance**

- (a) Each Obligor shall:
- (i) comply in all material respects with all Environmental and Social Law and Environmental and Social Authorisations that are required in connection with the Project;
  - (ii) obtain, maintain and ensure compliance in all material respects with all requisite Environmental and Social Permits;
  - (iii) use all reasonable precautions to avoid any act or omission that might result in a Material E&S Incident;
  - (iv) implement procedures to monitor compliance with and to prevent liability under any Environmental and Social Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

- (b) Each Obligor shall (through the Borrower), promptly upon becoming aware of the same, inform the Lender in writing of:
- (i) any claim, proceeding, formal notice or investigation by any person in respect of any Environmental and Social Law against any Obligor which is current, pending or threatened; and
  - (ii) any facts or circumstances which are reasonably likely to result in any claim, proceeding, formal notice or investigation by any person in respect of any Environmental and Social Law being commenced or threatened against any Obligor,

where the claim, if determined against that Obligor, has or is reasonably likely to have a Material Adverse Effect.

- (c) If any Material E&S Incident does arise:
- (i) the Borrower shall, in consultation with the Lender, devise a plan (a "**Corrective Action Plan**") for remedying, managing, mitigating or otherwise addressing the effects of such Material E&S Incident;
  - (ii) each Obligor shall ensure that each material aspect of each Corrective Action Plan is implemented in accordance with that Corrective Action Plan and within the timescales provided for in that Corrective Action Plan; and
  - (iii) each Obligor shall, in any event, comply with any remedial action prescribed by any Governmental Agency in connection with the occurrence of such Material E&S Incident.
- (d) Each Obligor shall take all such steps as may reasonably be required by the Lender to ensure that the Lender and the transactions contemplated by the Finance Documents, in each case, comply with the Equator Principles.

20.25 **Anti-corruption law**

- (a) No Obligor shall (and the Borrower shall ensure that no other Obligor will) directly or indirectly use the proceeds of Facility A for any purpose which

would breach the United Kingdom's Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.

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

#### 20.26 Sanctions

Notwithstanding any other provision in this Agreement, the Borrower shall not:

- (a) use the proceeds of any Loan for the purpose of financing directly or indirectly the activities of any person or entity (or otherwise make available to any person or entity) which is currently listed on the SDN List (or any European Union or World Bank equivalent) or in a country which is currently subject to any OFAC Sanctions (or any European Union or World Bank equivalent), to the extent such financing would currently be prohibited by OFAC Sanctions (or any European Union or World Bank equivalent) if conducted by a person in the United States of America or the European Union (as applicable); and/or
- (b) contribute or otherwise make available the proceeds of any Loan to any other person or entity if the Borrower has knowledge that such party intends to use such proceeds for the purpose of financing the activities of any person or entity which is currently on the SDN List (or any European Union or World Bank equivalent) or in a country which is subject to any OFAC Sanctions (or any European Union or World Bank equivalent), to the extent such financing would currently be prohibited by OFAC Sanctions (or any European Union or World Bank equivalent) if conducted by a person in the United States of America or the European Union (as applicable).

#### 20.27 Distributions

- (a) Subject to paragraph (b) below, each Obligor must ensure that it does not make a Distribution other than a Permitted Distribution.
- (b) The parties acknowledge that:
  - (i) Heemskirk Canada Limited (a company incorporated in Alberta, Canada) and the Borrower have previously paid management fees of approximately \$1,000,000 per annum to Heemskirk Technical Services Pty Ltd (ACN 114 482 987), a fully owned subsidiary of Heemskirk Mining Pty Ltd (ACN 106 720 138), pursuant to documents titled "Management Services Agreement" and "Revised Transfer Pricing Policy" in the form of these documents as at the date of this Agreement ("**Agreed Management Fees**"); and
  - (ii) Heemskirk Canada Limited (a company incorporated in Alberta, Canada) and the Borrower have previously paid interest on promissory notes to Heemskirk Mining Pty Ltd (ACN 106 720 138), in amounts required by those notes in their forms as at the date of this agreement ("**Agreed Interest Amounts**").

The parties further acknowledge and agree that, in the event that any Agreed Management Fees or Agreed Interest Amounts are required (by the terms of the relevant contracts or notes) to be paid or settled by Heemskirk Canada Limited (a company incorporated in Alberta, Canada) or the Borrower (as applicable) during the term of this Agreement, then the Obligor will pay or settle such amounts:

- (iii) without limiting paragraph (iv), by capitalising them or settling them in another way which is agreed by the Lender in writing (in its absolute discretion); and
- (iv) in a manner which does not prejudice the Lender or any security held by the Lender.

#### 20.28 Further assurance

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

**20.29 Event of Eminent Domain**

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

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

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

**20.30 Additional Authorisations**

The Borrower shall diligently obtain or cause to be obtained each of the Authorisations (including the Authorisations prior to the time it becomes necessary in all material respects for the current stage of construction or operation of the Project). Promptly upon obtaining the same (but in any event within 30 days after the receipt thereof), the Borrower shall deliver a copy of each Authorisation to the Lender. The Borrower shall also promptly deliver (but in any event within thirty days after the receipt thereof) any material amendment, supplement or other modification to any Authorisation received by an Obligor after the date hereof.

**20.31 Existence, Conduct of Business, Properties, etc**

Each Obligor shall maintain and preserve its existence as a corporation under its jurisdiction of incorporation; and the Borrower shall engage only in the business of ownership, operation and maintenance of the Project.

**20.32 Obligations**

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

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

**20.33 Acquisitions and Investments**

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

**20.34 Use of Project Site**

The Borrower shall not use or permit to be used, by persons under control of the Borrower, the Project and/or any applicable lease or easement for any purpose other than for the construction, operation and maintenance of the Project as contemplated by the Material Project Documents, or as contemplated by the leases or reserved by the lessor or grantor under the leases or any easement, without the prior written consent of the Lender, or locate any portion of the Project on a site other than the Project Area or the applicable easements.

**20.35 Abandonment of Project**

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

**20.36 Hazardous Substances**

The Borrower shall not release into the environment any hazardous substances in violation of any Environmental and Social Laws, requirements of law or Authorisations which could result in a Material Adverse Effect.

**20.37 Settlement**

The Borrower shall not without the written consent of the Lender which shall not be unreasonably withheld settle any claim with respect to performance liquidated damages or warranty claims in excess of US\$200,000.

**20.38 Not Used**

**20.39 Employees and contractors**

The Borrower and Heemskirk Canada Limited (a company incorporated in Alberta, Canada):

- (a) must, at all times, employ all of the people (other than any advisor, contractor or subcontractor) working on the Project or providing services to any Obligor in respect of the Project;
- (b) will, if requested by the Lender (acting reasonably), provide to the Lender all contracts of service and letters of appointment for each employee;
- (c) will, if requested by the Lender (acting reasonably), provide to the Lender full details of the names and terms of engagement of all independent contractors who provide personal services to any Obligor, whether directly or pursuant to a contract between a corporate entity and the Obligor, in connection with the Project;
- (d) must provide to the Lender full details of any material disciplinary action or grievance procedure taken against or involving any employee;
- (e) must provide to the Lender to the extent it is aware, having made due enquiry, details of any employee which has pending or threatened claims against an Obligor;



- (f) will provide to the Lender full details of any damages, compensation, award or termination payment to any employee, prior to making the payment;
- (g) must ensure that that each employee holds every licence or qualification which they are required to hold to perform their normal duties in respect of the Project;
- (h) must pay all amounts which are presently due and payable in respect of the employees, directors and officers of the Borrower and Heemskirk Canada Limited (a company incorporated in Alberta, Canada);
- (i) will ensure that the employment of each employee can be lawfully terminated in accordance with their written contracts of employment (if any) or, in any other case, in accordance with the obligations imposed by relevant statute or law; and
- (j) will ensure that they are not liable to pay any material allowance, annuity, benefit, lump sum, pension, premium or other payment in respect of the death, disability, retirement, resignation or dismissal of any persons other than that specified in a written contract of employment or, in any other case, in accordance with the obligations imposed by relevant statute or law.

## 21. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 21 is an Event of Default.

### 21.1 Non-payment

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

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

### 21.2 Financial covenants

Any requirement of Clause 19.1 (*Financial condition*) is not satisfied.

### 21.3 Other obligations

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 21.1 (*Non-payment*), and Clause 21.2 (*Financial covenants*) or with any condition of any waiver or consent under or in connection with any Finance Document).
- (b) The aggregate of:
  - (i) all amounts indicated in all Withdrawal Certificates issued and accepted in accordance with Clause 16.2(c)(ii) (*Project Account*);
  - (ii) all cash balances (held in the Project Account) available to the Borrower; and
  - (iii) all withdrawals from the Project Account, made in accordance with Clauses 16.2 (*Project Account*) and 16.5 (*Withdrawals*) since the last

Withdrawal Certificate issued and accepted in accordance with Clause 16.2(c)(ii) (*Project Account*),

does not equal the total of all outstanding Loans.

- (c) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within:
  - (i) subject to paragraph (ii), 15 Business Days (or such longer period agreed by the Lender in its absolute discretion) of; or
  - (ii) in the case of clauses 21.5(c), 21.5(d), 21.9 and 21.12 only, 30 Business Days (or such longer period agreed by the Lender in its absolute discretion) of,

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

#### 21.4 **Misrepresentation**

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

#### 21.5 **Cross default**

- (a) Any Financial Indebtedness of any Obligor (other than pursuant to the Finance Documents) is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default or review event (however described).
- (c) Any commitment for any Financial Indebtedness of any Obligor is cancelled or suspended by a creditor of any Obligor as a result of an event of default or review event (however described).
- (d) Any creditor of any Obligor becomes entitled to declare any Financial Indebtedness of any Obligor due and payable prior to its specified maturity as a result of an event of default or review event (however described).
- (e) No Event of Default will occur under this Clause 21.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than US\$500,000 (or its equivalent in any other currency or currencies).

#### 21.6 **Insolvency**

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

#### 21.7 **Prior claims**

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

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

#### 21.8 **Ownership**

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

#### 21.9 **Material adverse change**

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

#### 21.10 **Reduction of capital**

An Obligor takes any action to reduce its share capital, buy back any of its shares or make any of its shares capable of being called up only in certain circumstances without the written consent of the Lender.

#### 21.11 **Cessation of business**

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

**21.12 Judgment**

A judgment is obtained against an Obligor in an amount greater than US\$500,000 which may otherwise have a Material Adverse Effect which:

- (a) has not been satisfied or stayed within 21 days or such longer period as agreed by the Lender; or
- (b) has not been appealed in good faith and is not being diligently pursued.

**21.13 Revocation of Authorisation**

- (a) An Authorisation which is:
  - (i) required for the performance by any Obligor of a Finance Document or Material Project Document, or the validity and enforceability of a Finance Document or a Material Project Document; or
  - (ii) material to the security of the Lenders; or
  - (iii) necessary for the Project

is repealed, revoked or terminated or expires or is modified or amended or conditions are attached to it in a manner unacceptable to the Lender.

- (b) An Obligor commits a material breach or default under an Authorisation referred to in paragraph (a) and that material breach or default is not rectified within 30 days of such breach or default.

**21.14 Finance Documents**

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

**21.15 Default under other Finance Document**

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

**21.16 Governmental Authority intervention**

Any measure or series of measures taken, directed, authorised, ratified or approved by any Governmental Authority (including through the imposition of confiscatory taxation) which results in:

- (a) all or any material part of any material Project asset, or all or any part of the share capital of any Obligor, or any material amount of the revenues derived from any Project asset or the capital stock or share capital of any Obligor, being nationalised, expropriated, compulsorily acquired or seized by a Governmental Authority; or
- (b) the assumption of custody or control by a Governmental Authority of:
  - (i) any material Project asset or any material amount of revenues derived from any Project asset; or
  - (ii) any material portion of the business or operations of any Obligor.

**21.17 Material Project Documents**

- (a) It is or becomes unlawful for an Obligor to perform any of its material obligations under a Material Project Document or a Material Project Document ceases to be in full force and effect other than by expiry or performance in accordance with its terms.
- (b) Notice is given by any party to a Material Project Document to terminate, cancel, discharge or rescind such Material Project Document or any Material Project Document is terminated, cancelled, discharged or rescinded or becomes capable of being terminated, cancelled, discharged or rescinded unless:
  - (i) the termination or discharge of a Material Project Document follows full and final performance of the parties' obligations under that Material Project Document; or
  - (ii) it is demonstrated to the reasonable satisfaction of the Lender that such Material Project Document, or the arrangements contemplated by such Material Project Document, have been replaced by a replacement Material Project Document, or alternative arrangements, that is or are satisfactory to the Lender (acting reasonably) before that occurrence.
- (c) A Material Project Document is or becomes void, illegal, invalid, unenforceable, or of limited force or effect or is materially amended without the prior written consent of the Lender.
- (d) Any party to a Material Project Document becomes Insolvent unless it is demonstrated to the reasonable satisfaction of the Lender that such Material Project Document, or the arrangements contemplated by such Material Project Document, have been replaced by a replacement Material Project Document (on terms and with a counterparty), or alternative arrangements, that is or are satisfactory to the Lender (acting reasonably) within 60 days of that occurrence.
- (e) Any party to a Material Project Document repudiates or evidences an intention to repudiate either the whole or a material part of a Material Project Document unless the party which repudiates or evidences an intention to repudiate is not

an Obligor and it is demonstrated to the reasonable satisfaction of the Lender that such Material Project Document, or the arrangements contemplated by such Material Project Document, have been replaced by a replacement Material Project Document (on terms and with a counterparty), or alternative arrangements, that is or are satisfactory to the Lender (acting reasonably) within 60 days of that occurrence.

**21.18 Abandonment**

The Borrower permanently abandons or cancels or evidences an intention to permanently abandon or cancel the construction or operation of the whole or a substantial part of the Project.

**21.19 Insurance cancelled**

- (a) Any insurances (and all re-insurance policies relating to them) which are required to be effected and maintained pursuant to this Agreement with respect to the Project and all activities relating to the Project:
  - (i) are not, or cease to be, in full force and effect;
  - (ii) are unavailable at the time they are required to be effected; or
  - (iii) are or are likely to become void or cancelled.
- (b) No Event of Default under paragraph (a) above will occur if the relevant insurance is replaced in compliance with Clause 20.10 (*Insurance*) within 10 Business Days of the earlier of:
  - (i) the Lender giving notice to the Borrower; and
  - (ii) the Borrower becoming aware of the event described in paragraph (a) above.

**21.20 Failure in respect of Project Completion**

The Phase 1 Project Completion Tests have not been successfully completed or passed, to the satisfaction of the Lender, by 30 June 2019 (or such other date agreed between the Lender and the Borrower).

**21.21 Consequences of an Event of Default**

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

- (a) cancel the Facility A Commitment whereupon it shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- (c) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be payable on demand, whereupon they shall immediately become payable on demand by the Lender; and/or
- (d) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents (including any rights of enforcement).

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

#### 21.22 **Investigation of an Event of Default or Review Event**

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

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

Each Obligor shall co-operate with the person and shall comply with every reasonable request they make (and ensure that its officers, employees, agents and attorneys do the same). This includes giving them access to all records and assets during normal business hours and giving them any document or other information that they reasonably request. The Borrower agrees to ensure that each Obligor (and its officers, employees, agents and attorneys) complies with this Clause 21.22.

#### 22. **REVIEW EVENTS**

Each of the events or circumstances set out in this Clause 22 is a Review Event.

##### 22.1 **Change in Control**

- (a) There is a Change in Control of the Borrower.
- (b) For the purposes of this Clause 22.1, "**Change in Control**" means an event which results in a person not in control of the Borrower subsequently acquiring control of the Borrower, or a person in control of the Borrower subsequently losing control of the Borrower. For the purposes of this definition, "control" and "controlling" have the meaning given to them in section 50AA of the Corporations Act and, in the case of a corporation, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors of that corporation, the voting rights of the majority of the voting shares of the corporation or the management of the affairs of the corporation. In addition to the foregoing, a person shall be deemed to have acquired control of the Borrower if such person has:
  - (i) ownership, directly or indirectly, of securities of the Borrower to which are attached more than 50% of the votes that may be cast to elect directors of the Borrower, other than by way of security only, by or for the benefit of that person; or
  - (ii) ownership, directly or indirectly, of securities of the Borrower, where the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the Borrower; or
  - (iii) the power to direct or cause the direction of the management or policies of the Borrower, whether through the ability to exercise voting power, by contract or otherwise.

**22.2 Consequences of a Review Event**

- (a) If a Review Event occurs, the Lender may by notice to the Borrower:
  - (i) cancel the Facility A Commitment whereupon it shall immediately be cancelled; and
  - (ii) require the Borrower to repay all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents within 90 days of the notice.



**SECTION 10  
CHANGES TO PARTIES**

**23. CHANGES TO THE LENDER**

**23.1 Assignments and transfers by the Lender**

Subject to this Clause 23, the Lender (the "**Existing Lender**") may:

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

under the Finance Documents to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (including credit derivatives) (the "**New Lender**").

**23.2 Assignment to Canadian Collateral Agent**

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

**23.3 Conditions of assignment or transfer**

- (a) The consent of the Borrower is required for an assignment or transfer by the Lender, unless:
  - (i) the assignment or transfer is to an Affiliate of the Lender or pursuant to Section 23.2;
  - (ii) an Event of Default is continuing or any Security has been enforced against an Obligor; or
  - (iii) the assignment or transfer is to a securitisation or funding vehicle where the Lender remains lender of record.
- (b) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed or subject to unreasonable conditions. The Borrower will be deemed to have given its consent ten Business Days after the Lender has requested it unless consent is expressly refused by the Borrower within that time.

- (c) Where the Lender assigns rights but does not transfer by novation obligations, then for the purposes of Clause 28, any amount received or recovered by the assignee will be taken to be received by that Lender.
- (d) If:
  - (i) the Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 10 (*Tax gross-up and indemnities*) or Clause 11 (*Increased costs*),

then the New Lender, or Lender acting through its new Facility Office, is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.
- (e) A Lender may not assign or transfer any of its rights or obligations under the Finance Documents or change its Facility Office, if the New Lender or the Lender acting through its new Facility Office would be entitled to exercise any rights under Clause 6.1 (*Illegality*) as a result of circumstances existing at the date the assignment, transfer or change is proposed to occur.
- (f) A Lender must bear its own costs and expenses (including legal fees) in connection with any such assignment or transfer.

#### 23.4 **Limitation of responsibility of Existing Lender**

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

and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities and any other person in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and

- (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities and any other person whilst any amount is or may be outstanding under the Finance Documents or the Facility A Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
  - (i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause 23; or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor or any other person of its obligations under the Finance Documents or otherwise.

### 23.5 **Disclosure of confidential information**

The Lender may disclose:

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

any information about any Obligor and the Finance Documents as that Lender shall consider appropriate, however in the case of disclosure under paragraphs (a), (b), or (c), only after the disclosee has agreed in writing to be bound by confidentiality obligations which are consistent with this clause 23.5.

## 24. **CHANGES TO THE OBLIGORS**

### 24.1 **Assignments and transfer by Obligors**

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

#### 24.2 Additional Guarantors

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

#### 24.3 Repetition of Representations

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

#### 24.4 Resignation of a Guarantor

- (a) The Borrower may request that a Guarantor ceases to be a Guarantor by delivering to the Lender a Resignation Letter.
- (b) The Lender shall accept a Resignation Letter and notify the Borrower of its acceptance if:
  - (i) no Default is continuing or would result from the acceptance of the Resignation Letter (and the Borrower has confirmed this is the case);
  - (ii) Clause 20.21 (*Group structure*) will still be complied with following that resignation,

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

#### 24.5 Compulsory resignation of FATCA FFIs and US Tax Guarantors

If so directed by the Lender, the Borrower shall procure that any Guarantor which is a FATCA FFI or a US Tax Obligor shall resign as a Guarantor prior to the earliest FATCA Application Date relating to any payment by that Guarantor. For the purposes

of Clause 24.4 (*Resignation of a Guarantor*) the Lender consents to the resignation of a Guarantor required pursuant to this Clause 24.5.

**SECTION 11  
THE LENDER'S BUSINESS**

**25. ROLE OF THE LENDER**

**25.1 No fiduciary duties**

Nothing in this Agreement constitutes the Lender as a trustee or fiduciary of any other person.

**25.2 Business with the Obligors**

The Lender may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Obligor.

**25.3 Rights and discretions of the Lender**

- (a) The Lender may rely on:
  - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
  - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Lender may assume (unless it has received notice to the contrary) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 21.1 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party has not been exercised; and
  - (iii) any notice or request made by the Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) The Lender may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Lender may act in relation to the Finance Documents through its personnel and agents.
- (e) Notwithstanding any other provision of any Finance Document to the contrary, the Lender is not obliged to do or to omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

**26. CONDUCT OF BUSINESS BY THE LENDER**

No provision of this Agreement will:

- (a) interfere with the right of the Lender to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige the Lender to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

- (c) oblige the Lender to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

**SECTION 12  
ADMINISTRATION**

**27. PAYMENT MECHANICS**

**27.1 Payments to the Lender**

- (a) On each date on which an Obligor is required to make a payment under a Finance Document, that Obligor shall make the same available to the Lender (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Lender specifies (in its absolute discretion).
- (c) Unless a contrary indication appears in a Finance Document, an Obligor satisfies a payment obligation only when the Lender receives the amount.

**27.2 Distributions to an Obligor**

The Lender may (with the consent of the Obligor or in accordance with Clause 28 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

**27.3 Partial payments**

- (a) If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Lender shall apply that payment towards the obligations of that Obligor under the Finance Documents in any order selected by the Lender.
- (b) Paragraph (a) above will override any appropriation made by an Obligor.

**27.4 No set-off by Obligors**

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

**27.5 Business Days**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal or the Unpaid Sum at the rate payable on the original due date.

**27.6 Currency of account**

- (a) Subject to paragraphs (b) to (e) below, USD is the currency of account and payment for any sum due from an Obligor under any Finance Document.



- (b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than USD shall be paid in that other currency.

#### 27.7 **Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender (acting reasonably and after consultation with the Borrower) ; and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably and after consultation with the Borrower).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Lender (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the relevant country and otherwise to reflect the change in currency.

#### 28. **SET-OFF**

If a Default is continuing the Lender may, but need not, set off any matured obligation due from an Obligor under the Finance Documents against any obligation owed by the Lender (whether or not matured), regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

#### 29. **NOTICES**

##### 29.1 **Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax, letter or email.

## 29.2 Addresses

The address, fax number and email address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) that specified in Schedule 1 (*The Original Parties*) or notified in writing to the Lender on or prior to the date on which it becomes a Party; or
- (b) any substitute address, fax number, email address, or department or officer as the Party may notify to the other Parties by not less than five Business Days' notice.

## 29.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

- (i) if by way of fax, when received in legible form; or
- (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address; or
- (iii) if by way of email, the earlier of:
  - (A) the time the sender receives an automated message confirming delivery; or
  - (B) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

unless the sender receives an automated message confirming that the email was not delivered, in which case the email will not be effective,

and, except for communications sent by email, if a particular department or officer is specified as part of its address details provided under Clause 29.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).
- (c) Any communication or document made or delivered to the Borrower in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.
- (d) Subject to Clause 29.5 (*Reliance*), all notices must be signed by an Authorised Officer of the sender.

## 29.4 Communications by email

- (a) Communications sent by email must state the first and last name of the sender, who must be an Authorised Officer.

- (b) Communications sent by email are deemed to be made in writing and signed by the named sender.

#### 29.5 **Reliance**

Any notice sent under this Clause 29 can be relied on by the recipient if the recipient reasonably believes the notice to be genuine and if it bears what appears to be the signature (original or facsimile) of an Authorised Officer of the sender (without the need for further enquiry or confirmation). Each Party must take reasonable care to ensure that no forged, false or unauthorised notices are sent to another Party.

#### 29.6 **English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

#### 29.7 **Borrower and Obligors**

Each Obligor irrevocably authorises the Borrower to give and receive notices and communications on its behalf (including Utilisation Requests). Other Parties may rely on any such notice or communication by the Borrower as given on behalf of the Obligor, and the Obligor is bound by it.

### 30. **CALCULATIONS AND CERTIFICATES**

#### 30.1 **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are sufficient evidence of the matters to which they relate unless the contrary is proved.

#### 30.2 **Certificates and Determinations**

Any certification or determination by the Lender of an exchange rate, a rate of interest or amount under Clause 10 (*Tax gross up and indemnities*), Clause 11 (*Increased costs*) or under any Finance Document is sufficient evidence of the matters to which it relates and any certification or determination by the Lender of any other matter is sufficient evidence of the matters to which it relates unless the contrary is proved.

#### 30.3 **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days.

### 31. **PARTIAL INVALIDITY**

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or

enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

**32. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**33. AMENDMENTS AND WAIVERS**

No term of the Finance Documents may be amended or waived without the prior written consent of the Lender and the Borrower and any such amendment or waiver will be binding on all Parties.

**34. COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

**35. INDEMNITIES AND REIMBURSEMENT**

All indemnities and reimbursement obligations in each Finance Document are continuing and survive termination of the Finance Document, repayment of the Loans and cancellation or expiry of the Facility A Commitment.

**36. GENERAL**

**36.1 Application to Finance Documents**

If anything in this Section 12 is inconsistent with a provision in another Finance Document, then the provision in the other Finance Document prevails to the extent of the inconsistency for the purposes of that Finance Document.

**36.2 Consents and waivers**

Each Obligor shall comply with all conditions in any consent or waiver the Lender gives under or in connection with a Finance Document.

**36.3 Discretion in exercising rights**

Unless specified otherwise, the Lender may exercise a right or remedy or give or refuse its consent under or in connection with a Finance Document in any way it considers appropriate and in its absolute discretion (including by imposing conditions).

**36.4 No liability for loss**

The Lender is not liable to any Obligor for any loss, liability, costs, expenses or fees caused by the exercise or attempted exercise of, or failure to exercise, or delay in exercising, a right or remedy under or in connection with a Finance Document.

**36.5 Conflict of interest**

The Lender may exercise its rights or remedies under or in connection with a Finance Document even if this involves a conflict of duty or the Lender has a personal interest in their exercise.

**36.6 Rights and obligations are unaffected**

Rights given to the Lender under or in connection with a Finance Document, and an Obligor's obligations under it are not affected by any act or omission or any other thing which might otherwise affect them under law or otherwise.

**36.7 Inconsistent law**

To the extent permitted by law, each Finance Document prevails to the extent it is inconsistent with any law.

**36.8 Supervening law**

Any present or future law which varies the obligations of an Obligor under or in connection with a Finance Document with the result that the Lender's rights or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

**36.9 Confidentiality**

Each Party shall not disclose information provided by any other party that is not publicly available (including the existence of or contents of any Finance Document) except:

- (a) to any person in connection with an exercise of rights or a dealing with rights or obligations under a Finance Document in connection with preparatory steps such as negotiating with any potential transferee or sub-participant or any other person who is considering contracting with the Lender in connection with a Finance Document; or
- (b) to a person considering entering into (or who enters into) a credit default swap with the Lender involving credit events relating to an Obligor or any of its Affiliates; or
- (c) to officers, employees, agents, contractors, legal and other advisers and auditors of an Obligor or Lender; or
- (d) to any Obligor or the Lender or any Affiliate of any of them, provided the recipient agrees to act consistently with this Clause 36.9; or
- (e) with the consent of the Party who provided the information (such consent not to be unreasonably withheld); or
- (f) any disclosure the disclosing Party reasonably believes is required by any law, stock exchange or rating agency (except this paragraph does not permit the Lender to disclose any information under section 275(4) of the Australian PPSA unless section 275(7) of the Australian PPSA applies).

Each Party consents to disclosures made in accordance with this Clause 36.9.

**36.10 Further assurances**

Whenever the Lender reasonably requests an Obligor to do anything lawful:

- (a) to enable the Lender to exercise its rights under or in connection with any Finance Document;

- (b) to bind the Obligor and any other person intended to be bound under any Finance Document;
- (c) to enable the Lender to register any power of attorney in any Finance Document or any similar power;
- (d) to show whether the Obligor is complying with the Finance Documents;
- (e) to ensure any Finance Document (or any security interest (as defined in the PPSA) or other Security, right or power under any Finance Document) is fully effective, enforceable and perfected with the contemplated priority;
- (f) for more satisfactorily assuring or securing to the Lender the property the subject of any such security interest or other Security in a manner consistent with the Finance Documents; or
- (g) for aiding the exercise of any right or power in any Finance Document,

the Obligor shall do it promptly at its own cost. This may include obtaining consents, getting documents completed and signed, supplying information, delivering documents and evidence of title and executed blank transfers, and giving possession or control with respect to any property the subject of any security interest or Security.

#### 36.11 Exclusion of Australian PPSA provisions

If a Finance Document (or a transaction in connection with it) is or contains a security interest for the purposes of the Australian PPSA, each Party agrees that to the extent the law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the Australian PPSA:
  - (i) the Lender need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
  - (ii) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the Australian PPSA, the Lender need not comply with sections 132 and 137(3);
- (c) if the Australian PPSA is amended after the date of this Agreement to permit a grantor and secured party to agree to not comply with or to exclude other provisions of the Australian PPSA, the Lender may notify the grantor of a security interest that any of these provisions is excluded, or that the Lender need not comply with any of these provisions, as notified to the grantor by the Lender; and
- (d) the grantor of a security interest agrees not to exercise its rights to make any request of the Lender under section 275 of the Australian PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

#### 36.12 Exercise of rights by Lender

If the Lender exercises a right or remedy in connection with this Agreement, that exercise is taken not to be an exercise of a right or remedy under the PPSA unless the Lender states otherwise at the time of exercise. However, this Clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

**36.13 No notice required unless mandatory**

To the extent the law permits, a grantor of a security interest waives:

- (a) its rights to receive any notice that is required by:
  - (i) any provision of the PPSA (including a notice of a verification statement); or
  - (ii) any other law before a secured party or receiver exercises a right, power or remedy; and
- (b) any time period that must otherwise lapse under any other law before a secured party or receiver exercises a right, power or remedy.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

However, nothing in this Clause prohibits the Lender from giving a notice under the PPSA or any other law.

**37. ACKNOWLEDGEMENT**

Except as expressly set out in the Finance Documents none of the Asia Pacific Loan Market Association, the Lender or any of their advisers have given any representation or warranty or other assurance to any Obligor in relation to the Finance Documents and the transactions they contemplate, including as to tax or other effects. The Obligors have not relied on any of them or on any conduct (including any recommendation) by any of them. The Obligors have obtained their own tax and legal advice.

**SECTION 13  
GOVERNING LAW AND ENFORCEMENT**

**38. GOVERNING LAW**

This Agreement is governed by New South Wales law. To the extent permitted by law, the law of the Commonwealth as it applies in that jurisdiction governs a security interest provided for under this Agreement.

**39. ENFORCEMENT**

**39.1 Jurisdiction**

- (a) The courts having jurisdiction in New South Wales have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) and, to the extent permitted by law, all matters in connection with this Agreement including any non-contractual matters (a "**Dispute**").
- (b) The Parties agree that those courts are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Each Party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within paragraph (a).
- (d) This Clause 39.1 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

**39.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in Australia):
  - (i) irrevocably appoints Heemskirk Mining Pty Ltd (ACN 106 720 138) as its agent for service of process in relation to any proceedings in connection with any Finance Document;
  - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) Heemskirk Mining Pty Ltd (ACN 106 720 138) accepts its appointment as process agent under this Clause 39.2
- (c) Each Party expressly agrees and consents to the provisions of this Clause 39.2.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**



**SCHEDULE 1  
THE ORIGINAL PARTIES**

**PART I  
THE ORIGINAL OBLIGORS**

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

Heemskirk Canada  
Limited

A company incorporated  
in Alberta, Canada

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

Fax number: 1-403-264-2959

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

Attention: Reid MacDonald / Jarrad  
Blanchard

**PART II  
THE ORIGINAL LENDER**

<b>Name of Lender</b>	<b>Facility A Commitment</b>	<b>Notice details</b>
Taurus Resources No. 2 B.V.	US\$25,000,000, as increased from time to time for any amounts capitalised in accordance with clause 9.1(d)	Jachthavenweg 109H, 1081 KM Amsterdam, The Netherlands  with a copy to be provided to:  Martin Boland Suite 4101, Level 41, Gateway 1 Macquarie Place Sydney NSW 2000 Australia

**SCHEDULE 2  
CONDITIONS PRECEDENT**

**PART IA**

**NOT USED**

**PART IB**

**NOT USED**

**PART II**  
**CONDITIONS PRECEDENT REQUIRED TO BE DELIVERED**  
**BY AN ADDITIONAL GUARANTOR**

1. An Accession Letter and Security Documents, duly executed by the Additional Guarantor and/or the Borrower, together with:
  - (a) executed copies of any other documents or things which are required to ensure that each Finance Document which must be stamped or registered can be stamped or registered (including payment of any stamp duty or registration fees); and
  - (b) original share or unit certificates and blank, executed transfer forms in respect of any shares or units which are secured pursuant to the new Security Documents.
2. A certified copy of the constitutional documents of the Additional Guarantor (if any).
3. A certified copy of a resolution of the board of directors of the Additional Guarantor:
  - (a) approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute the Accession Letter and any other Finance Document;
  - (b) confirming that it is in its best interests to execute the Finance Documents to which it is a party;
  - (c) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf and/or a power of attorney for execution of the Finance Documents to which it is a party;
  - (d) confirming that it is able to pay its debts as and when they become due; and
  - (e) authorising a specified person or persons, on its behalf, as Authorised Officers to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents.
4. If relevant, an original power of attorney for the execution of the Finance Documents to which it is a party, from the Additional Guarantor executed under common seal or by two directors or a director and a secretary.
5. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
6. A certificate of each Original Obligor (signed by two directors or a director and a company secretary) confirming and certifying that:
  - (a) borrowing or guaranteeing, as appropriate, the Facility A Commitment would not cause any borrowing, guaranteeing or similar limit binding on the Additional Guarantor to be exceeded
  - (b) each copy document relating to it specified in this Part II of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of its accession; and
  - (c) if it is incorporated in Australia, such Additional Guarantor is not in breach of Chapter 2E of the Corporations Act 2001.

7. A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Additional Guarantor accordingly) in connection with the entry into and performance of the transactions contemplated by the Accession Letter or for the validity and enforceability of any Finance Document to which the Additional Guarantor is a party.
8. If available, the latest audited Financial Statements of the Additional Guarantor.
9. A legal opinion of the legal advisers to the Borrower or Lender in Australia in respect of the Additional Guarantor and the laws of New South Wales.
10. If the Additional Guarantor is incorporated in a jurisdiction outside Australia, a legal opinion of the legal advisers to the Borrower in the jurisdiction in which the Additional Guarantor is incorporated in respect of the Additional Guarantor and the laws of that jurisdiction.
11. If the proposed Additional Guarantor is incorporated in a jurisdiction outside Australia, evidence that the process agent specified in Clause 39.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Guarantor.
12. A certificate signed by an authorised signatory of the Additional Guarantor, setting out details required by the Lender for purposes of registering financing statements or financing changes statements on the PPSR or otherwise perfecting security interests arising under the Finance Documents.
13. A schedule of all registrations on the PPSR in respect of the each Obligor and its assets.
14. Evidence to the reasonable satisfaction of the Lender that all PPSA registrations required by the Lender have been made.
15. All documents and other evidence reasonably requested by the Lender in order for the Lender to carry out all necessary “know your customer” or other similar checks in relation to the Additional Guarantor under all applicable laws and regulations where such information is not already available to the recipient.

**SCHEDULE 3  
UTILISATION REQUEST**

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

To: [Lender]

Dated:

Dear Sirs

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

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

Facility:	A
Proposed Utilisation Date:	[ ] (or, if that is not a Business Day, the next Business Day)
Currency of Loan:	USD
Amount:	[ ] or, if less, the Available Commitment for Facility A
3. We confirm that each condition specified in Clause 3.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. As of the date hereof, the amount of any holdbacks required to be made under the BLA is \$[ ] and [such holdbacks have been made] OR [or an amount of \$[ ] is standing to credit in the Holdback Account].
5. We confirm that, on the date of this Utilisation Request and on the proposed Utilisation Date:
  - (a) the PLCR is [insert];
  - (b) the Projected DSCR is [insert]; and
  - (c) the Historic DSCR is [insert].
6. The proceeds of this Loan should be credited to [insert account details].
7. This Utilisation Request is irrevocable.

Yours faithfully

.....  
Authorised Officer



HCA Mountain Minerals (Moberly) Limited

**SCHEDULE 4  
FORM OF ACCESSION LETTER**

To: [ ] as Lender

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

Dated:

Dear Sirs

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

1. We refer to the Agreement. This is an Accession Letter. Terms used in the Agreement shall have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [*Subsidiary*] agrees to become an Additional Guarantor and to be bound by the terms of the Agreement as an Additional Guarantor pursuant to Clause 25.2 (*Additional Guarantors*) of the Agreement.
3. [*Subsidiary*] is a company duly incorporated under the laws of [*name of relevant jurisdiction*].
4. [*Subsidiary's*] administrative details are as follows:  
  
Address:  
  
Fax No:  
  
Email address:  
  
Department/officer:
5. This Accession Letter may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Accession Letter.
6. This Accession Letter or any non-contractual obligation arising out of or in connection with it are governed by New South Wales law.

This Accession Letter is executed as a deed.

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

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

[*Insert execution clause for Lender*]

**SCHEDULE 5  
FORM OF RESIGNATION LETTER**

To: [ ] as Lender

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

Dated:

Dear Sirs

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

1. We refer to the Agreement. This is a Resignation Letter. Terms used in the Agreement shall have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to Clause 24.4 (*Resignation of a Guarantor*), we request that [*resigning Obligor*] be released from its obligations as a Guarantor under the Agreement.
3. We confirm that:
  - (a) no Default or Review Event is continuing or would result from the acceptance of this request; and
  - (b) Clause 20.13 will still be complied with following the release.
4. This Resignation Letter may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Resignation Letter.
5. This Resignation Letter or any non-contractual obligation arising out of, or in connection with, it are governed by New South Wales law.

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

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

[*Insert execution clause for Lender*]

**SCHEDULE 6  
FORM OF COMPLIANCE CERTIFICATE**

To: [ ] as Lender

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

Dated:

Dear Sirs

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

1. We refer to the Agreement. This is a Compliance Certificate. Terms used in the Agreement shall have the same meaning in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that, as at the date of this certificate:
  - (a) the PLCR is *[insert]*;
  - (b) the Projected DSCR is *[insert]*; and
  - (c) the Historic DSCR is *[insert]*.
3. We confirm that no Default or Review Event is continuing.\*

Signed: .....

Director  
Of HCA Mountain Minerals (Moberly) Limited

.....

Director  
Of HCA Mountain Minerals (Moberly) Limited

---

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

**SCHEDULE 7  
EXISTING SECURITY**

**Alberta security registrations**

<b>Name of Debtor</b>	<b>Secured Party</b>	<b>Registration No. (of the Personal Property Registry (Alberta))</b>	<b>Expiry Date</b>
Heemskirk Canada Limited	Canadian Imperial Bank of Commerce	11082612805; 14040911883; 15070638641; 15071029726; 15071435786; 16051217637; 16051224947	August 26, 2021
Heemskirk Canada Limited	Jack Carter Chevrolet Cadillac Buick GMC	160314088293	March 14, 2021
Heemskirk Canada Limited	Jack Carter Chevrolet Cadillac Buick GMC	17091428352	September 14, 2021
Heemskirk Canada Limited	ATB Financial	18020635821	February 6, 2028

**British Columbia security registrations**

<b>Name of Debtor</b>	<b>Secured Party</b>	<b>Registration No. (of the Personal Property Registry (British Columbia))</b>	<b>Expiry Date</b>
HCA Mountain Minerals (Moberly) Limited	Caterpillar Financial Services Limited	167729J	March 15, 2020
HCA Mountain Minerals Moberly Ltd.	Britco Boxx Limited Partnership	548538K	February 2, 2019

**SCHEDULE 8  
FORM OF WITHDRAWALS CERTIFICATE**

To: [ ] as Lender

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

Dated:

Dear Sirs

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

1. We refer to the Agreement. This is a Withdrawals Certificate. Terms used in the Agreement shall have the same meaning in this Withdrawals Certificate unless given a different meaning in this Withdrawals Certificate.
2. The balance of the **Project Account** as at the last Withdrawals Certificate was [US/Cdn]\$. [ ].
3. The balance of the **Holdback Account** as at the last Withdrawals Certificate was [US/Cdn]\$. [ ].
4. We have made the following withdrawals from the **Project Account** since the last Withdrawals Certificate:

Withdrawal ([US/Cdn]\$ amount)	Purpose of withdrawal (and identify of payee in respect of Holdback Account disbursements, if applicable)

We confirm that all of these withdrawals were made for the Approved Purpose.

5. The balance of the **Project Account** as at the date of this Withdrawals Certificate is [US/Cdn]\$. [ ].
6. The balance of the **Holdback Account** as at the date of this Withdrawals Certificate is [US/Cdn]\$. [ ].
7. We confirm that the statement attached to this Withdrawal Certificate gives a true and complete picture of all Project Account and Holdback Account transactions since the date of the last Withdrawals Certificate.
8. No Default has occurred which is continuing.

9. We confirm that the Holdback Account withdrawals detailed below are either (1) permitted to pay Holdback Amounts pursuant to the requirements of the BLA or (2) have been paid to remove a construction encumbrance.

<b>Withdrawal ([US/Cdn]\$ amount)</b>	<b>Purpose of withdrawal (and identify of payee in respect of Holdback Account disbursements, if applicable)</b>

Signed: .....

Director  
Of HCA Mountain Minerals (Moberly) Limited

.....

Director  
Of HCA Mountain Minerals (Moberly) Limited

**SCHEDULE 9  
FORM OF CONSTRUCTION REPORT**

To: [ ] as Lender

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

Dated:

Reporting Period: [previous month][year]

Dear Sirs

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

10. We refer to the Agreement. This is a Construction Report. Terms used in the Agreement shall have the same meaning in this Construction Report unless given a different meaning in this Construction Report.

**11. Executive Summary**

(a) [Summary of key activities, events and issues for the previous month]

**12. Status of Project**

(a) [Details of all construction work undertaken in the previous month]

(b) [Details of progress of construction work against [timetables] in the Construction Contract and Engineering Contract]

(i) [Expected date for completion of Phase [1/2] / date for compliance with Phase [1/2] Completion Tests]

(ii) [Explanation for any delays in progress of construction work / Details of any anticipated delays in progress of construction work]

(iii) [Details of strategies implemented to overcome delays / avoid potential delays]

(iv) [Details of any extensions of time / variations claimed under the Construction Contract and Engineering Contract]

(v) [Details of any updates or amendments to any works plans/programmes]

(c) [Details of any anticipated changes required to designs, plans or specifications]

(d) [Details of compliance with quality management / assurance systems, including any quality issues or anticipated quality issues (including defects / potential defects)]

**13. Subcontracting and Material Project Documents**



- (a) *[Details of all new subcontractors engaged by the Construction Contractor or the Engineering Contractor]*
- (b) *[Details of any disputes with a subcontractor relating to the Project (if applicable)]*
- (c) *[Confirmation that no party to any Material Project Document is in default and that each party to any Material Project Document has complied in all material respects with such Material Project Document]*
  - (i) *[Any non-compliances with the Material Project Documents are to be detailed and any corrective actions taken in respect of any non-compliance]*

**14. Project Budgeting**

- (a) *[Summary of project budgeting position, including explanation of any differences between actual and forecast Project and/or Operating Costs]*

**14.2 Project Costs**

<b>Project Costs</b>	<b>Forecast Cost [Previous Month]</b>	<b>Actual Cost [Previous Month]</b>	<b>Forecast Cost [Next Month]</b>
<b><i>TOTAL Project Costs</i></b>	<b><i>[total]</i></b>	<b><i>[total]</i></b>	<b><i>[total]</i></b>
<i>[detailed breakdown of components of Project Costs, as defined in clause 1.1]</i>			

**14.3 Operating Costs**

<b>Operating Costs</b>	<b>Forecast Cost [Previous Month]</b>	<b>Actual Cost [Previous Month]</b>	<b>Forecast Cost [Next Month]</b>
<b><i>TOTAL Operating Costs</i></b>	<b><i>[total]</i></b>	<b><i>[total]</i></b>	<b><i>[total]</i></b>
<i>[detailed breakdown of components of Operating Costs, as defined in clause 1.1]</i>			

**15. Environmental & Social Compliance and industrial relations**

- (a) *[Details of compliance with Environmental & Social Authorisations; Environmental & Social Law; Environmental & Social Permits; Authorisations]*
  - (i) *[Details of corrective action to address any issues with compliance with Environmental & Social Authorisations; Environmental & Social Law; Environmental & Social Permits; Authorisations]*
- (b) *[Details of any material Environmental or Social Claims current, pending or threatened against the Borrower or connected with the Project (if applicable)]*
  - (i) *[Details of corrective action to address any material Environmental or Social Claims current, pending or threatened against the Borrower or connected with the Project ]*
- (c) *[Details of any Environmental issues]*
  - (i) *[Details of corrective action to address any Environmental issues]*
- (d) *[Details of any industrial relations disputes relating to the Project,, including any Material E&S Incidents or potential Material E&S Incidents (if applicable)]*
  - (i) *[Details of corrective action to address any Material E&S Incident / prevent potential Material E&S Incidents]*

**16. Other Information**

- (a) *[Any other information requested from time to time by the Lender]*
- (b) *[Any other information the Borrower wishes to disclose to the Lender in respect of the construction works]*

Signed:

.....

Director  
Of HCA Mountain Minerals (Moberly) Limited

.....

Director  
Of HCA Mountain Minerals (Moberly) Limited

***Annexures***

- A. [Photographs of Project Area]**
- B. [A copy of any construction report and any progress claim received from the Construction Contractor or the Engineering Contractor under the Construction Contract or Engineering Contract]**
- C. [Authorisations obtained for the Project and [pending Authorisations / applications for Authorisations] (including Environmental and Social Authorisations and Environmental and Social Permits)]**

- D. [Notices, orders or directions received by a Governmental Agency in relation to the Project]**
- E. [Other certifications / reports under the Construction Contract or Engineering Contract]**
- F. [Any other information requested from time to time by the Lender]**

**SCHEDULE 10  
FORM OF INITIAL COST TO COMPLETE CERTIFICATE**

**Initial Cost to Complete Certificate**

To: [ ] as Lender

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

Dated:

Dear Sirs

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

We refer to the Agreement. This is the Initial Cost to Complete Certificate. Terms used in the Agreement shall have the same meaning in this Initial Cost to Complete Certificate unless given a different meaning in this Initial Cost to Complete Certificate.

**The Company certifies** as follows.

1. *Project completion tests*
  - (i) The forecast date of completion or passing of the “Physical Completion Tests” in Part I of the Phase 1 Project Completion Tests is [insert date] (“**Physical Completion Date**”).
  - (ii) The forecast date of completion or passing of the Phase 1 Project Completion Tests is [insert date].
2. *Funds available*
  - (i) The Available Commitment for Facility A of the Term Loan Facility is US\$[25,000,000].
  - (ii) The aggregate amount standing to the credit of the Project Account is US\$[insert]. [Note: Borrower to note that it will need to move any funds to the Project Account if it wishes those funds to be included in the cost to complete calculations]
3. *Funds required*
  - (i) The total fee payable to the Construction Contractor under the contract described at paragraph (a)(ii) of the definition of “Construction Contract” in the Agreement is [insert figure and currency].
  - (ii) The aggregate amount of the Project Costs (including any of the cost described at paragraph 2(a)), Operating Costs and Financing Costs (each in respect of Phase 1 only) which have been incurred by the Company as at the date of this certificate and which will be payable by the Company prior to the Physical Completion Date, is (without

duplication) US\$[insert] comprising the following costs and expenditure:

- (A) Project Costs of US\$[insert];
  - (B) Operating Costs of US\$[insert]; and
  - (C) Financing Costs of US\$[insert].
- (iii) The aggregate amount of Project Costs (including the cost described at paragraph 2(a)), Operating Costs and Financing Costs (each in respect of Phase 1 only), which the Company forecasts to be payable by it between the date of this certificate and the Physical Completion Date is (without duplication) US\$[insert], comprising the following costs and expenditure:
- (A) Project Costs of US\$[insert];
  - (B) Operating Costs of US\$[insert]; and
  - (C) Financing Costs of US\$[insert].
- (iv) Any other costs which the Company forecasts it will incur in respect of (i) the construction of Phase 1 only or (ii) in respect of the Project prior to the Physical Completion Date, are:
- (A) [insert description of the applicable cost] in the amount of US\$[insert].

4. *Cost to complete test*

The aggregate amount in paragraphs 2(i) and 2(ii) above is greater than the aggregate amount in paragraphs 3(ii), 3(iii) and 3(iv) above.

Date:

Signed:

.....

Director  
Of HCA Mountain Minerals (Moberly) Limited

.....

Director  
Of HCA Mountain Minerals (Moberly) Limited

INDEPENDENT CERTIFIER CONFIRMATION

I,....., for and on behalf of the Independent Certifier, certify that:

- (a) the factual information set out in this Initial Cost to Complete Certificate is true, correct and not misleading as at the date set out below; and

(b) the non-factual information (including any forecasts and projections) set out in this Initial Cost to Complete Certificate is true, correct and not misleading as at the date set out below.

Date:

Signed:

.....

Name:

For and on behalf of the Independent Certifier

**SCHEDULE 11  
REAL PROPERTY INTERESTS**

**Mining Leases**

- (a) The Mining Leases.

**Leases**

- (b) The Project Lease.

**Owned Lands**

- (a) Nil.

**Easements**

- (a) Nil

**SCHEDULE 12**  
**PHASE 1 PROJECT COMPLETION TESTS**

**Phase 1 Project Completion Tests**

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Each of the tests set out below as:

- (a) Part I (Physical Completion Test);
- (b) Part II (Operational Completion Test); and
- (c) Part III (Financial Completion Tests),

need to be completed to the satisfaction of the Independent Certifier as part of the Phase 1 Project Completion Tests.

In this schedule, the term “**Reference Materials**” means each of the following:

- (a) the Base Case Financial Model;
- (b) the document titled “Moberly Definitive Feasibility Study”, prepared by the Borrower and dated on or about 3 February 2015, as updated by the document described in paragraph (c) below;
- (c) the document titled “Review of the Heemskirk Moberly Frac Sand Plant”, prepared by Morrison Hershfield / Sansabar Inc. and dated on or about May 2015; and
- (d) the Production Forecasts.

**Part I (Physical Completion Test)**

For the achievement of “physical completion” the following tests must be completed to the satisfaction of the Independent Certifier, based on site inspections and other information and documentation provided by the Borrower:

1. Phase 1 of the Project has been built substantially in accordance with the Reference Materials (each of which have been provided to and are in form and substance satisfactory to the Lender), all necessary upfront development capital expenditure has been spent, and such infrastructure and plant will be capable of achieving the requirements of the Reference Materials and the forecasts in the Base Case Financial Model, in the sole opinion of the Independent Certifier, acting in good faith and on an impartial basis.
2. The Borrower has formally accepted all work by the Construction Contractors and Engineering Contractor and any other applicable contractor, in accordance with the Construction Contracts and any other applicable contractual obligations and agreements, including that all necessary rectification work (other than minor omissions and defects) has been completed. All performance tests included in the Construction Contract and Engineering Contract or any other applicable contractual obligations and agreements have been passed, except where any failures will have no material impact on the financial performance of Phase 1 of the Project.
3. All Authorisations (including any Environmental and Social Authorisations) required for the normal operation of Phase 1 of the Project have been obtained and remain in full force and effect.
4. The plant will meet all current standards for safety as determined by Canadian and British Columbia safety standards.



5. The Borrower has certified that there are no outstanding actual or potential claims from or against any of its goods and services providers, suppliers or contractors, except:
  - (i) claims made in good faith and for which appropriate reserves have been made; or
  - (ii) claims for an aggregate maximum claim amount not exceeding US\$1,000,000.
6. The Borrower has provided to the Independent Certifier a schedule of critical capital spares, operating spares and consumables held on, or within, the Project Area, and, in the opinion of the Independent Certifier:
  - (i) such critical capital spares, operating spares and consumables on, or within, the Project Area are in sufficient quantities taking account of the Project location and seasonal variations; and
  - (ii) the Borrower has in place adequate systems for maintaining suitable inventory levels of critical capital spares, operating spares and consumables.
7. All necessary operating manuals, maintenance procedures and other relevant documentation have been received by the Borrower from its suppliers and contractors.
8. The Borrower has provided to the Independent Certifier certification confirming that all necessary transport facilities and arrangements are in place for transport of reagents, stores, personnel and consumables to the Project Area and transport of Product from the Project Area to the market.
9. The Borrower has recruited adequate technically trained staff to ensure safe and continuous operation of Phase 1 of the Project. The Borrower has provided to the Independent Certifier:
  - (i) a manning chart showing the management and technical staff for Phase 1 of the Project; and
  - (ii) relevant details of experience, training and qualifications of the Project technical managers and superintendents.

## **Part II (Operational Completion Test)**

The “Combined Operational Completion Tests” (as set out below) will only commence after confirmation from the Independent Certifier that Phase 1 of the Project is operating at steady state production levels as pre-defined in the Reference Materials and forecasts in the Base Case Financial Model and the Borrower has passed each test described in Part I (Physical Completion Test) set out above.

Before the “Combined Operational Completion Test” may commence:

- (a) the Borrower will provide a minimum of 14 days’ notice to the Lender and the Independent Certifier of its intention to commence the Operational Completion Test; and
- (b) a measurement and sampling procedure must be agreed between the Lender, the Independent Certifier and the Borrower. The measurement and sampling procedure must detail the measurements and methodology that will be used in carrying out the “Combined Operational Completion Tests” as well as the required levels/targets/outcomes of the “Combined Operational Completion Tests”.

In the case of agreement not being reached in accordance with paragraph (b) above, the decision of the Independent Certifier will prevail.

The Independent Certifier may be present during the test period, as deemed necessary by the Independent Certifier. The Borrower will ensure that the Independent Certifier has access to the Project Area for the purpose of being present while the “Combined Operational Completion Tests” are being conducted.

### **Combined Operational Completion Tests**

Over a period of three consecutive months selected by the Borrower during which the Project is operating at full steady-state production and after the Borrower has passed each test described in Part I (Physical Completion Test) set out above (the **Operational Completion Test Period**), the Borrower must demonstrate that the following conditions are satisfied, as measured against the projections set forth in the Base Case Financial Model:

1. **Production Performance Criteria:**

- (i) **Supply:**
  - (A) **Tonnage:** A minimum 30,000 tonnes of run of mine frac sand quality ore is stockpiled within the Project Area for processing at the Phase 1 processing plant for the Project and such mine ore is available for processing operations.
- (ii) **Processing:**
  - (A) **Tonnage:** The Phase 1 processing plant for the Project achieves throughput rates not less than [90]% of the projected frac sand quality tonnages as per the Base Case Financial Model.
  - (B) **Product Yield:** The Project achieves, and demonstrated, an average yield of saleable frac sand quality Product of not less than [90]% of the projected recovery as per the Base Case Financial Model. The recovery, calculated after any required allowance for internal stock movements as detailed in the measurement and sampling procedure, will be based upon saleable product in accordance with size fractions of Product contemplated in the Base Case Financial Model.
  - (C) **Marketing and Shipment:** The Project shall have completed sale of frac sand quality Product to customers of not less than [xx]% of the projected tonnage of Product over the Operational Completion Test Period, with no more than [5]% rejections and penalties to have no more than [5]% impact on overall payment.

2. **Economic Performance Criteria:**

- (i) The average revenue per tonne of Product sold should not be less than [90]% of the projected average unit revenue per ton (in C\$/tonne) of Product contemplated in the Base Case Model for the Operational Completion Test Period.
- (ii) The average unit operating cost per tonne of run of mine ore delivered and stockpiled within the Project Area for processing at the Phase 1 processing plant for the Project should not exceed [110]% of the projected unit operating cost (in C\$/tonne of run of mine ore) in the Base Case Financial Model for the Operational Completion Test Period.

- (iii) The average unit processing operating cost per tonne of run of mine ore processed should not exceed [110]% of the projected unit operating cost (in C\$/ton run of mine ore) in the Base Case Financial Model for the Operational Completion Test Period.
- (iv) The total Operating Costs should not exceed [110]% of the projected Operating Costs (in C\$) in the Base Case Financial Model for the Operational Completion Test Period.
- (v) The total Operating Revenue should exceed [90]% of the projected Operating Revenue (in C\$) in the Base Case Financial Model for the Operational Completion Test Period.

3. Other Performance Criteria:

Demonstration by the Borrower, to the satisfaction of the Independent Certifier, that:

- (i) the Project is operating according to Good Industry Practice;
- (ii) the Project is operating within accordance of its permits and Authorisations;
- (iii) there are sufficient critical capital spares, operating spares and consumables on, or within, the Project Area are in sufficient quantities taking account of the Project location and seasonal variations to enable the Project to be operated according to the Reference Materials;
- (iv) there are sufficient qualified management and workforce to enable the Project to be operated according to the Reference Materials;
- (v) the Project's staff have appropriate skills and expertise to maintain sustainable operations in accordance with the Reference Materials;
- (vi) run-of-mine stockpiles of mine ore are such that steady state operations are ensured for a period of 1 month;
- (vii) all production will meet current standards for frac sand quality products;
- (viii) waste material dumping is in accordance with standard operating practice; and
- (ix) the Independent Certifier has not notified the Lender of any event, circumstance or projection that is reasonably likely to prejudice the long-term operation of the Project in accordance with the Reference Materials.

4. Insurances

Evidence by the Borrower that each insurance policy required to be taken out under the Material Project Documents, Finance Documents or recommended to be in place in connection with the operation of Phase 1 of the Project, is in full force and effect (including certified copies of each insurance policy and confirmations of currency) in accordance with clauses 17.30 (*Insurance*) and 20.10 (*Insurance*).

### **Part III (Financial Completion Tests)**

The Borrower must demonstrate that:

1. No Event of Default or Review Event has occurred and is continuing.
2. Each requirement of clause 19.1 (*Financial condition*) is satisfied.

**SIGNATURE PAGE**

**[Signing page not replicated]**

This is Exhibit "D" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



---

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

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

**TITLE SEARCH PRINT**

2020-05-19, 15:38:26

File Reference: 273913

Requestor: Jessica Villella

**\*\*CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN\*\***

<b>Title Issued Under</b>	SECTION 98 LAND TITLE ACT
<b>Land Title District</b> Land Title Office	NELSON NELSON
<b>Title Number</b> From Title Number	CA3503445 CA3503444 LB483512
<b>Application Received</b>	2013-12-11
<b>Application Entered</b>	2013-12-20
<b>Registered Owner in Fee Simple</b> Registered Owner/Mailing Address:	HEEMSKIRK CANADA HOLDINGS LIMITED, INC.NO. BC0727165 SUITE 204 - 1212 1ST STREET SE CALGARY, AB T2G 2H8
<b>Taxation Authority</b>	East Kootenay Assessment Area
<b>Description of Land</b> Parcel Identifier: Legal Description:	029-224-861 LOT A SECTION 29 TOWNSHIP 28 RANGE 22 WEST OF THE 5TH MERIDIAN KOOTENAY DISTRICT PLAN EPP30862
<b>Legal Notations</b>	HERETO IS ANNEXED EASEMENT CA7140469 OVER LOT 2 PLAN 4182
<b>Charges, Liens and Interests</b>	
Nature:	UNDERSURFACE AND OTHER EXC & RES
Registration Number:	CA3503443
Registration Date and Time:	2013-12-11 14:48
Registered Owner:	THE CROWN IN RIGHT OF BRITISH COLUMBIA
Remarks:	PURSUANT TO SECTION 50 LAND ACT
Nature:	MORTGAGE
Registration Number:	CA5058473
Registration Date and Time:	2016-03-22 15:54
Registered Owner:	TAURUS RESOURCES NO. 2 B.V.

**TITLE SEARCH PRINT**

2020-05-19, 15:38:26

File Reference: 273913

Requestor: Jessica Villella

Nature: ASSIGNMENT OF RENTS  
Registration Number: CA5058474  
Registration Date and Time: 2016-03-22 15:54  
Registered Owner: TAURUS RESOURCES NO. 2 B.V.

Nature: STATUTORY RIGHT OF WAY  
Registration Number: CA5059767  
Registration Date and Time: 2016-03-23 10:53  
Registered Owner: BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Nature: STATUTORY RIGHT OF WAY  
Registration Number: CA5059768  
Registration Date and Time: 2016-03-23 10:53  
Registered Owner: TELUS COMMUNICATIONS INC.  
INCORPORATION NO. A0097809

**Duplicate Infeasible Title** NONE OUTSTANDING

**Transfers** NONE

**Pending Applications** NONE



This is Exhibit "E" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



---

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

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

December 16, 2019

The Directors  
Taurus Resources No. 2 B.V.  
Van Heuven Goedhartlaan 935A, 1181 LD  
Amstelveen, The Netherlands

Dear Directors,

RE: Waiver request – various items

We refer to:

the US\$25,000,000 Secured Facility Agreement dated 15 July 2015 between HCA Mountain Minerals (Moberly) Limited (a company incorporated in British Columbia) (the “**Borrower**”), the entities listed in Part I of Schedule 1 as original guarantors, Taurus Funds Management Pty Limited as trustee for Taurus Resources No.2 L.P and Taurus Funds Management Pty Limited as trustee for Taurus Resources No.2 Trust, as amended and novated to Taurus Resources No. 2 B.V. (the “**Lender**”) by the agreement entitled “HCA Mountain Minerals (Moberly) US\$40m Secured Facility Agreement – Novation and Amendment Deed 1”) dated 10 February 2016 and as amended and novated to the Lender by the agreement entitled “Amending and Accession Deed” dated 21 December 2018 (the “**Agreement**”).

Unless otherwise defined, capitalised terms in this letter have the meanings given to those terms in the Agreement.

## **1 Background and consent request**

The Parties entered into the Agreement for the purpose of the Lender providing financial accommodation to or for the benefit of the Borrower and the Guarantors in connection with the Moberly Frac Sand Project (the “Project”). The Borrower seeks to waive certain requirements and accept the proposed amendments under the Agreement. This Waiver letter evidences the Borrower and the Lender’s agreement to waive any **Default of Event of Default** that may have occurred and accept the Borrowers proposed amendments in relation to the various matters outlined below in the schedule on non-compliance.

Commissioning of the Moberly Frac Sand Project was delayed by factors including supplemental capital projects required to sustain winter operations by providing sufficient storage and lower than expected proppant demand. This has impacted certain assumptions made in The Borrower’s revised Based Case Financial Model dated 21 December 2018 (“BCFM”). Actual sales volumes and realized sales prices that have been materially lower than expected in response to week demand for proppant in Western Canada. In addition, both capital and operating expenditures have been higher than expected in the BCFM due to commissioning delays and ongoing remediation projects required to allow for name-plate production.

The Company has identified a requirement for an additional \$23.5 million of capital to fund ongoing capital requirements and commissioning operations through June 2020 of which \$18.0 million has been advanced through a secured working capital facility from QMetco Limited.

## 2 Schedule of Non-Compliance

Ref	Applicable section of Agreement	Event of non-compliance	Proposed amendments
Non-payment: 21.1 & Repayment schedule: 5.1(c)(i)	"An Obligor does not pay or repay on the due day any amount payable..." Facility repayment dates: 30 June 2019 - \$150,000; 30 September 2019 - \$150,000; 31 December 2019 - \$1,500,000; 31 March 2020 - \$3,000,000	The Company does not have sufficient liquidity to make payments under the repayment schedule	30 June 2018, 30 September 2019, 31 December 2019, 31 March 2020 payments interest and commitment fee payments are deferred until 30 June 2020
Project completion test: 21.20	"The Phase 1 Project Completion Tests have not been successfully completed or passed, to the satisfaction of the Lender, by 30 June 2019..."	The Completion Test has not been completed as at the date of this waiver letter, nor is it expected to be compliant by 31 December 2019.	Temporary waive the completion date requirement up to 30 June 2020.
Financial covenants: 21.2 & 19.1	Financial covenants as defined in 19.1-19.3	The Company is not compliant with the established financial covenants at the date of this letter, nor is it expected to be compliant by 31 December 2019.	Temporary waive the default condition for non-compliance with financial covenants up to 30 June 2020.
Project account 16.2(c)	"Within 3 Business Days of the end of each Month the Borrower will provide a Withdrawals Certificate ... a copy of a bank statement"	The project account is no longer active as all funding from this facility has been advanced and withdrawn.	Permanently waive the reporting requirements associated with the project account so long as there is not activity within the project account.
Construction report 18.4(c)	Form of construction report (Schedule 9) to be provided no later than 30 days after the end of each Month	Construction of the facility has completed therefore reporting requirements contemplated in schedule 9 are no longer appropriate	Permanently waive the reporting requirements associated with the Construction report and accept the Company's consolidated monthly operations report as a satisfactory monthly report under its reporting obligations.

## 3 General

The Borrower must pay all reasonable costs and expenses of the Lender in relation to the negotiation, preparation, execution, delivery, stamping and completion of this letter.

Each party to this letter must do all things and execute all further documents necessary to give full effect to this letter.

Each party is bound by the Agreement.

The Lender agrees that this letter is designated as a Finance Document for the purposes of the Agreement and the other Finance Documents.

This letter is governed by the laws of New South Wales.

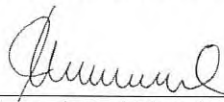
This document may be signed in counterparts. All counterparts, taken together, constitute one instrument. A party may execute this document by signing any counterpart.

**Borrower**

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

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

By: \_\_\_\_\_

  
Name: Jerrad Blanchard  
Title: Chief Financial Officer

I have authority to bind the above.

---

### Consent

We refer to the letter from HCA Mountain Minerals (Moberly) Limited dated 16 December 2019 entitled "Waiver Requests – Various Items". The Lender gives the consents requested in section 1 of the letter.

**IN WITNESS WHEREOF**, the undersigned by its respective officers or other representatives thereunto duly authorized have caused this letter to be duly executed and delivered as of the date stated at the beginning of this letter.

TAURUS RESOURCES NO. 2 B.V.

By: 

Name: *J. van der Brack*

Title: *Director A*

By: 

Name:

Title:

**Jules de Korn**  
**Managing Director**

*20-12-2019*

This is Exhibit "F" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



---

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

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

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

Dated 6 December 2019

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

**King & Wood Mallesons**  
Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
T +61 2 9296 2000  
F +61 2 9296 3999  
DX 113 Sydney  
[www.kwm.com](http://www.kwm.com)

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

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

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

## General terms

---

### 1 Definitions

#### 1.1 Definitions

These meanings apply unless the contrary intention appears:

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

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

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

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

**Agreed Budget** means:

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

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

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

**Authorisation** means:

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

**Authorised Officer** means:

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

**Available Commitment** means the Commitment minus:

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

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

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

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

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

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

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

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

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

**Code** means the US Internal Revenue Code of 1986.

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

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

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

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

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

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

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

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

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

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

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

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

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

**FATCA** means:

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

**FATCA Application Date** means:

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

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

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

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

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

**FATCA Payment** means:

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

**Finance Document** means:

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

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

**Financial Indebtedness** means any indebtedness for or in respect of:

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



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

**Financial Statement** means:

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

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

**Governmental Agency** means:

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

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

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

**Increased Costs** means:

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

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

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

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

A person is **Insolvent** if:

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

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

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

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

**Lender** means:

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

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

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

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

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

**Material Adverse Effect** means a material adverse effect on:

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

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

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

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

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

**Obligor** means a Borrower or a Guarantor.

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

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

**Permitted Financial Indebtedness** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Security means:**

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

**Security Document means:**

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

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

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

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

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

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

**Termination Date** means the earlier of:

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

**US Tax Obligor** means:

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

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

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

## 1.2 Interpretation

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



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

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

### 1.3 Code of Banking Practice

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

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## **2 The loan**

### **2.1 The Facility**

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

### **2.2 Specific purpose**

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

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

### **2.3 Monitoring**

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

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## **3 Conditions of Utilisation**

### **3.1 Initial conditions precedent**

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

### **3.2 Further conditions precedent**

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

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

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## **4 Utilisation**

### **4.1 Delivery of a Utilisation Request**

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

### **4.2 Completion of a Utilisation Request**

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

### **4.3 Currency and amount**

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

### **4.4 Lender's participation**

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

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## **5 Repayment**

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

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## **6 Prepayment and cancellation**

### **6.1 Illegality**

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

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

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

## 6.2 Voluntary cancellation

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

## 6.3 Voluntary prepayment of Amounts Owing

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

## 6.4 Right of replacement or repayment and cancellation

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

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

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

## 6.5 Restrictions

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

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

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

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## **7 Interest**

### **7.1 Calculation of interest**

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

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

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

### **7.2 Payment of interest**

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

### **7.3 Default interest**

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

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

#### 7.4 Interest Act (Canada)

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

#### 7.5 Criminal Code (Canada)

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

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### 8 Month Ends

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

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### 9 Fees

#### 9.1 Arranging fee

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

## 9.2 Commitment fee

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

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## 10 Tax gross-up and Indemnities

### 10.1 Tax gross-up

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

### 10.2 Tax indemnity

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

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

- (b) Paragraph (a) above shall not apply:
- (i) with respect to any Tax assessed on the Lender or required to be withheld, deducted or remitted by the Borrower:
    - (A) under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which the Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction,  
  
if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender; or
    - (C) by reason of the Lender and the Borrower not dealing at arm's length for purposes of the Income Tax Act (Canada) at the relevant time; or
    - (D) by reason of the Lender being a "specified shareholder" of the Borrower (within the meaning of subsection 18(5) of the Income Tax Act (Canada)) at the time of any payment or deemed payment, or by reason of the Lender not dealing at arm's length for the purposes of the Income Tax Act (Canada) with a "specified shareholder" of the Borrower at the time of any payment or deemed payment; or
  - (ii) to the extent the relevant loss, liability or cost is compensated for by an increased payment under clause 10.1 (*Tax gross-up*), clause 10.6 (*FATCA Deduction and gross-up by Obligor*) or clause 10.7(b) (*FATCA Deduction by Lender*) or is compensated for by a payment under clause 10.7(b) (*FATCA Deduction by Lender*).

### 10.3 Tax Credit

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

- (a) a Tax Credit is attributable to that Tax Payment; and
- (b) the Lender has obtained, utilised and retained that Tax Credit,

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

### 10.4 Stamp duties and Taxes

The Borrower shall:

- (a) pay; and



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

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

#### **10.5 Indirect Tax**

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

#### **10.6 FATCA Deduction and gross-up by Obligor**

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

#### **10.7 FATCA Deduction by Lender**

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

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

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

## 10.8 Tax Credit and FATCA

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

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

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

## 10.9 FATCA Information

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

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

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

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## 11 Increased Costs

### 11.1 Increased costs

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

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

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

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

### 11.2 Increased cost claims

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

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

### 11.3 Exceptions

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

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

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## 12 Other Indemnities

### 12.1 Currency indemnity

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

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

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

## 12.2 Other indemnities

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

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

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## 13 Mitigation by the Lender

### 13.1 Mitigation

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

### 13.2 Indemnity and limitation of liability

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

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

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## 14 Costs and Expenses

### 14.1 Transaction expenses

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

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

### 14.2 Amendment costs

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

### 14.3 Enforcement costs

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

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## 15 Guarantee and Indemnity

### 15.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

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

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

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

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

## **15.2 Continuing guarantee**

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

## **15.3 Reinstatement**

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

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

## **15.4 Waiver of defences**

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

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

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

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

## 15.5 Variations and replacements

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

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

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

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



## 15.6 Immediate recourse

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

## 15.7 Appropriations

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

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

## 15.8 Deferral of Guarantors' rights

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

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

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

#### **15.9 Guarantor's right of proof limited**

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

#### **15.10 Right to prove**

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

#### **15.11 Additional security**

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

#### **15.12 Approval**

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

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## 16 Bank Accounts

### 16.1 General

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

### 16.2 Project Account

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

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

### 16.3 Lock-up Account

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

### 16.4 Withdrawals

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

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

## **16.5 Administration and miscellaneous**

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

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## **17 Representations**

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

### **17.1 Status**

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

### **17.2 Binding obligations**

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

### **17.3 Non-conflict with other obligations**

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

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

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

#### 17.4 Power and authority

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

#### 17.5 Authorisations

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

#### 17.6 Governing law and enforcement

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

### **17.7 Taxation**

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

### **17.8 No filing or stamp taxes**

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

### **17.9 Compliance with laws and regulatory compliance**

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

### **17.10 No default**

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

### **17.11 No misleading information**

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

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

#### **17.12 No proceedings pending or threatened**

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

#### **17.13 Trustee**

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

#### **17.14 Partnerships and Joint Ventures**

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

#### **17.15 Shares**

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

#### **17.16 Benefit**

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

#### **17.17 No immunity**

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



### **17.18 Authorised Signatures**

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

### **17.19 Anti-corruption**

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

### **17.20 Solvency**

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

### **17.21 Permitted Security and Permitted Financial Indebtedness**

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

### **17.22 Group Structure Chart**

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

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

### **17.23 Repetition**

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

### **17.24 Reliance**

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

### **17.25 Ranking**

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

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

## 17.26 Security

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

## 17.27 Project documents

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

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## 18 Information Undertakings

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

### 18.1 Financial Statements

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

### 18.2 Compliance Certificate

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

### 18.3 Requirements as to Financial Statements

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

### 18.4 Notification of Material Adverse Effect or default

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

### 18.5 "Know your customer" checks

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

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

## **18.6 Documents and other information**

The Borrower shall supply to the Lender:

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

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## **19 General Undertakings**

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

### **19.1 Authorisations**

Each Obligor shall promptly:

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

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

The Borrower shall not:

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

## 19.2 Compliance with laws

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

## 19.3 Negative pledge

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

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

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

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

#### **19.4 Disposals**

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

#### **19.5 Merger**

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

#### **19.6 Change of business**

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

#### **19.7 Taxation**

Each Obligor shall:

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

### **19.8 Pari passu ranking**

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

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

### **19.9 Arm's length basis**

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

### **19.10 Incurring Financial Indebtedness**

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

### **19.11 Providing Financial Indebtedness**

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

### **19.12 Tax**

Each Obligor shall pay:

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



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

### 19.13 Project documents

The Borrower shall:

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

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

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

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

#### 19.14 Group structure

Each Obligor will ensure that:

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

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

#### 19.15 PPSA Policies and Steps

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

#### 19.16 Application of FATCA

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

#### 19.17 Anti-corruption law

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

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

#### 19.18 Sanctions

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

#### 19.19 Distributions

The Borrower must not:

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

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

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

#### 19.20 Further assurance

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

#### 19.21 Event of Eminent Domain

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

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

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

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

#### **19.22 Existence, Conduct of Business, Properties, etc**

Each Obligor shall:

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

#### **19.23 Obligations**

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

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

#### **19.24 Acquisitions and Investments**

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

#### **19.25 Abandonment of Project**

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

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## **20 Default**

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

## 20.1 Non-payment

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

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

## 20.2 Other obligations

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

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

## 20.3 Misrepresentation

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

## 20.4 Cross default

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

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

## **20.5 Insolvency**

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

## **20.6 Prior claims**

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

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

## **20.7 Ownership**

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

## **20.8 Material adverse effect**

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

## **20.9 Change in Control**

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

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

#### **20.10 Cessation of business**

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

#### **20.11 Revocation of Authorisation**

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

#### **20.12 Finance Documents**

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



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

### **20.13 Default under other Finance Document**

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

### **20.14 Material Project Documents**

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

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

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

#### **20.15 Consequences of an Event of Default**

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

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

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

#### **20.16 Investigation of an Event of Default**

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

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

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

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## 21 Assignment and transfers

### 21.1 Assignments and transfers by the Lender

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

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

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

### 21.2 Assignment to Canadian Collateral Agent

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

### 21.3 Conditions of assignment or transfer

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

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

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

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

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

#### **21.4 Limitation of responsibility of Existing Lender**

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

and any representations or warranties implied by law are excluded.

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

#### **21.5 Disclosure of confidential information**

The Lender may disclose:

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

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

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

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## 22 Changes to the Obligors

### 22.1 Assignments and transfers by any Obligor

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

### 22.2 Additional Guarantors

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

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

### **22.3 Repetition of Representations**

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

### **22.4 Resignation of a Guarantor**

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

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

### **22.5 Compulsory resignation of FATCA FFIs and US Tax Guarantors**

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

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## **23 General**

### **23.1 General**

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

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

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

### 23.2 Governing Law

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

### 23.3 Jurisdiction

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

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

#### **23.4 Counterparts**

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

**EXECUTED** as a deed



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

## Schedule 1 Original Obligors

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

Heemskirk Canada  
Limited

A company incorporated in  
Alberta, Canada

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

Fax number: 1-403-264-2959

Email address:  
sbroughton@northern silica /  
jblanchard@northern silica.com

Attention: Scott Broughton / Jarrad  
Blanchard

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

## PART 1

### INITIAL CONDITIONS PRECEDENT

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#### 1 Obligors

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

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

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## 2 Finance Document

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

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

---

## 3 KYC requirements

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

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## 4 Other documents and evidence

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

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

## PART 2

### CONDITIONS PRECEDENT REQUIRED TO BE DELIVERED BY AN ADDITIONAL GUARANTOR

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#### 1 Additional Guarantor

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

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

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## 2 Finance Documents

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

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

---

## 3 KYC requirements

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

---

## 4 Other documents and evidence

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

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



**HCA Mountain Minerals (Moberly) Limited  
– Secured Working Capital Facility  
Agreement  
Schedule 3 Utilisation Request**

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

To: [Lender]

Dated:

Dear Sirs

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

dated [ ] (the "Agreement")

- 1 We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement shall have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
- 2 We wish to borrow a Loan on the following terms:  
  
Proposed Utilisation Date: [ ] (or, if that is not a Business Day, the next Business Day)  
  
Currency of Loan: CAD  
  
Amount: [ ] or, if less, the Available Commitment for that Facility
- 3 We confirm that each condition specified in clause 3 (*Conditions of utilisation*) is satisfied on the date of this Utilisation Request.
- 4 The proceeds of this Loan should be credited to [insert account details].
- 5 This Utilisation Request is irrevocable.

Yours faithfully

.....  
Authorised Officer

HCA Mountain Minerals (Moberly) Limited

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

To: [Lender] as Lender

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

Dated:

Dear Sirs

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

**dated [ ] (the "Agreement")**

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

Signed:

.....

Director  
Of HCA Mountain Minerals (Moberly) Limited

.....

Director  
Of HCA Mountain Minerals (Moberly) Limited

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

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

## Schedule 5 Form of Resignation Letter

To: [ ] as Lender

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

Dated:

Dear Sirs

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

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

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

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

[Insert execution clause for Lender] [Insert execution clause for Lender]

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

To: [ ] as Lender

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

Dated:

Dear Sirs

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

- 1 We refer to the Agreement. This is an Accession Letter. Terms used in the Agreement shall have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
- 2 [*Subsidiary*] agrees to become an Additional Guarantor and to be bound by the terms of the Agreement as an Additional Guarantor pursuant to clause 22.2 (*Additional Guarantors*) of the Agreement.
- 3 [*Subsidiary*] is a company duly incorporated under the laws of [*name of relevant jurisdiction*].
- 4 [*Subsidiary's*] administrative details are as follows:  
  
Address:  
  
Fax No:  
  
Email address:  
  
Department/officer:
- 5 This Accession Letter may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Accession Letter.
- 6 This Accession Letter or any non-contractual obligation arising out of or in connection with it are governed by New South Wales law.

This Accession Letter is executed as a deed.

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

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

[*Insert execution clause for Lender*]

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

**DATED:** 6 December 2019

**Borrower**

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

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

**By:** \_\_\_\_\_

**Name:** Scott Broughton  
**Title:** CEO

I have authority to bind the above.

**Original Guarantors**

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

**NORTHERN SILICA CORPORATION.**

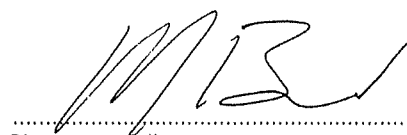
By: \_\_\_\_\_

Name:

Title:

I have authority to bind the above.

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



Signature of director

MARTIN BOLAND

Name of director (block letters)

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

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

**HEEMSKIRK CANADA HOLDINGS LIMITED.**

By: \_\_\_\_\_

Name:

Title:

I have authority to bind the above.



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

HEMSKIRK CANADA LIMITED.

By: \_\_\_\_\_

Name: *Sudil Broughton*

Title: *CEO*

I have authority to bind the above.



**Lender**

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

**QMetco Limited**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

I have authority to bind the above.

This is Exhibit "G" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



---

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

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

## INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT is dated as of December 6, 2019

**BY:** HCA MOUNTAIN MINERALS (MOBERLY) LIMITED,  
(together with any other entity that may become a party hereto,  
the "Borrower")

**AND:** TAURUS RESOURCES NO. 2 B.V.,  
(together with its successors and assigns, the "Subordinated  
Lender")

**IN FAVOUR OF:** QMETCO LIMITED, in its capacity as lender under the Credit  
Agreement, as defined below  
  
(together with its successors and assigns, the "Senior Lender").

### RECITALS:

- A. The Borrower, as borrower, and the Senior Lender, as lender, among others, are party to a secured working capital facility agreement dated as of the date hereof (such credit agreement, as it may be amended, restated, supplemented or otherwise modified or restated from time to time, the "Senior Credit Agreement").
- B. It is a condition precedent to the extension of the credit facilities by the Lender pursuant to the Senior Credit Agreement that the Borrower and the Subordinated Lender enter into this Agreement.

**NOW THEREFORE** in consideration of the Senior Lender making available the credit facilities on the terms set forth in the Senior Credit Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto as follows:

### 1. Definitions

- (a) Unless otherwise defined herein, terms defined in the Senior Credit Agreement and used herein shall have the meanings given to them in the Senior Credit Agreement.

The following terms shall have the following meanings:

"**Agreement**" means this Intercreditor Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

"**Event of Default**" means any event that the occurrence of which entitles the Senior Lender to accelerate the maturity of any of the Senior Obligations and includes an Event of Default (as defined in the Senior Credit Agreement).

**"Insolvency Event" means:**

- (a) the Borrower commencing any case, proceeding or other action: (i) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts; or (ii) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Borrower making a general assignment for the benefit of its creditors; or
- (b) there being commenced against the Borrower any case, proceeding or other action of a nature referred to in clause (a) above which (i) results in the entry of an order for relief or any such adjudication or appointment or (ii) remains undismissed, undischarged or unbonded for a period of 30 days; or
- (c) there being commenced against the Borrower any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, of stayed or bonded pending appeal within 30 days from the entry thereof; or
- (d) the Borrower taking any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (a), (b) or (c) above; or
- (e) the Borrower generally not paying, or being unable to pay, or admitting in writing its inability to pay, its debts as they become due; or
- (f) any Canadian Obligor is or becomes Insolvent (as such term is defined in the Senior Credit Agreement).

**"Senior Credit Agreement"** has the meaning given to such term in the recitals hereto.

**"Senior Loans"** means all loans made by the Senior Lender to the Borrower pursuant to the Senior Credit Agreement.

**"Senior Loan Documents"** means the Senior Credit Agreement all other documents that from time to time evidence the Senior Obligations or secure payment or performance thereof including the Security Documents and other Finance Documents.

**"Senior Obligations"** means the unpaid principal of and interest on the Senior Loans and all other obligations and liabilities of the Borrower and other Obligors to the Senior Lender of whatever kind or nature (including, without limitation, interest accruing at the then applicable rate provided in the Senior Credit Agreement after the maturity of the Senior Loans and interest accruing at the then applicable rate provided in the Senior Credit Agreement after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, whether arising under, out of, or in connection with, the Senior Credit Agreement, this Agreement, the other Senior Loan Documents or any other document made, delivered or given by Borrower or other Obligors, in each case whether on account of principal interest, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Senior Lender that are required to be paid by the Borrower and other Obligor pursuant to the terms of the Senior Credit Agreement or this Agreement or any other Senior Loan Document).

**"Subordinated Loan Agreement"** means the secured facility agreement dated February 10, 2016 between, among others, the Debtor, as borrower, and the Subordinated Lender, as lender, as amended and acceded to by Northern Silica Corporation on 21 December 2018.

**"Subordinated Loan Documents"** means the documents or instruments that from time to time evidence the Subordinated Obligations or secure or support payment or performance thereof including all Finance Documents (as defined in the Subordinated Loan Agreement).

**"Subordinated Loans"** means the secured loans in the initial aggregate principal amount of up to US \$40,000,000 made by the Subordinated Lender pursuant to the Subordinated Loan Agreement.

**"Subordinated Obligations"** means the unpaid principal and interest on the Subordinated Loans and all other obligations and liabilities of the Borrower and other Obligors to the Subordinated Lender (including, without limitation, interest accruing at the then applicable rate provided in the Subordinated Loan Documents and interest accruing at the then applicable rate provided in the Subordinated Loans after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, the Subordinated Loan Agreement, this Agreement, or any other Subordinated Loan Document, in each case whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the

Subordinated Lender that are required to be paid by the Borrower or other Obligor pursuant to the terms of the Subordinated Loan Agreement, or this Agreement or any other Subordinated Loan Document); provided that the maturity date of the Subordinated Obligations shall not be prior to the maturity of all Senior Obligations.

**"Termination Date"** means the date on which the Senior Obligations are indefeasibly paid in full and Senior Lender's obligations to extend credit under the Senior Loan Documents shall have been irrevocably terminated.

- (b) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and paragraph references are to this Agreement unless otherwise specified.
- (c) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

## 2. Acknowledgements of Lenders

- (a) The Senior Lender acknowledges receipt of a copy of the Subordinated Loan Agreement and other Subordinated Loan Documents as of the date hereof. The Senior Lender consents to the Borrower and each other Obligor, as applicable: (i) creating, incurring or assuming the Subordinated Loans and (ii) executing, delivering and performing its obligations under the Subordinated Loan Documents, including the grant of security thereunder, and payment of interest and principal in the amounts and at the times payable under the Subordinated Loan Documents prior to an Event of Default. The Senior Lender confirms that those actions do not and will not constitute an Event of Default under, or otherwise contravene, any of the Senior Loan Documents.
- (b) The Subordinated Lender acknowledges receipt of a copy of the Senior Loan Agreement and other Senior Loan Documents as of the date hereof. The Subordinated Lender consents to the Borrower and each other Obligor, as applicable: (i) creating, incurring or assuming the Senior Loans and (ii) executing, delivering and performing its obligations under the Senior Loan Documents, including the grant of security thereunder, and payment of interest and principal in the amounts and at the times payable under the Senior Loan Documents. The Subordinated Lender confirms that those actions do not and will not constitute an Event of Default under, or otherwise contravene, any of the Subordinated Loan Documents.

## 3. Rights and Obligations

- (a) Notwithstanding the terms of the agreements, instruments or other documents giving rise to the Senior Loans or Subordinated Loans, the time of default under or the dates of any advances or creation of the Senior Loans or Subordinated Loans,

the parties agree that all and any of their rights in respect of the Senior Loans and the Subordinated Loans shall be subject to the terms of this Agreement.

- (b) So long as any Senior Obligations are outstanding and until the Senior Obligations shall have been indefeasibly paid in full and in cash, performed in full and finally satisfied and the Senior Loan Documents have been terminated:
- (i) the payment of all Subordinated Obligations is postponed and subordinated to the indefeasible payment in full and in cash, performance in full and final satisfaction of all obligations of the Borrower to repay debt which is senior to the Subordinated Obligations, including without limitation, the Senior Obligations, and the Subordinated Lender will not directly or indirectly, accept from the Borrower, in any manner, directly or indirectly, payment of, or consideration for the reduction of, the whole or in part of the Subordinated Obligations, and if any such payment is received or made on the Subordinated Obligations, such payment shall be held by the Subordinated Lender in trust for the benefit of, and shall be promptly paid over in the form received to an authorized representative of the holders of all debt of the Borrower which is senior to the Subordinated Obligations, including the Senior Lender. Notwithstanding the foregoing, prior to the Subordinated Lender's and the Borrower's receipt of a notice that an Event of Default has occurred and is continuing, the Borrower shall be entitled to pay all interest, principal and royalties required to be paid by it on the Subordinated Obligations in accordance with the terms of the Subordinated Loan Agreement (for greater certainty, not including any voluntary prepayments of the Subordinated Obligations);
  - (ii) in the event that proceedings are commenced by or against the Borrower or any other Obligor as a result of its bankruptcy or insolvency or in the event of the liquidation, dissolution or winding-up of the Borrower or any other Obligor or in the event that proceedings are commenced which effect a reorganization, arrangement, or compromise of debt of the Borrower or any other Obligor, the Senior Lender shall be entitled to receive payment in full of all Senior Obligations (including interest accruing after the commencement of any such proceedings at the rate specified in the applicable Senior Loan Document, whether or not such interest is an allowable claim in any such proceedings) before the Subordinated Lender is entitled to receive any payment on account of principal, interest or any other amount in respect of any Subordinated Obligations; and
  - (iii) the Subordinated Lender shall not realize upon or otherwise exercise any rights in respect of the Subordinated Obligations or, with respect to the Subordinated Loans, commence, consent to or join with any other creditor in commencing, any creditor proceedings with respect to the Borrower or any other Obligor except with the prior written consent of the Senior Lender.

- (c) When all Senior Obligations have been paid in full and the Senior Loan Documents no longer are in effect the Subordinated Lender shall have the right to enforce the provisions of the Subordinated Loan Documents and exercise remedies thereunder.
- (d) The Subordinated Lender hereby covenants with the Senior Lender as follows:
- (i) the Subordinated Lender shall not accelerate any of the Subordinated Obligations or otherwise declare any of the Subordinated Obligations (including interest thereon) due and payable without the prior written consent of the Senior Lender;
  - (ii) the Subordinated Lender shall not petition for (or vote in favour of any resolution for) or indicate or support or take any steps with a view to any winding up, bankruptcy, insolvency, liquidation, reorganization, moratorium, administration, dissolution or other analogous proceedings or any voluntary arrangement or assignment for the benefit of creditors or any similar proceedings involving the Borrower without the prior written consent of the Senior Lender;
  - (iii) the Subordinated Lender shall not bring or support any other legal proceedings against the Borrower in respect of any Subordinated Obligations without the prior written consent of the Senior Lender;
  - (iv) the Subordinated Lender shall not assert in any action, suit or proceeding whatsoever the invalidity, unenforceability or ineffectiveness of the indebtedness of the Borrower to the Senior Lender or any security held by the Senior Lender or participate in or co-operate with any other Person to pursue any such action, suit or proceeding;
  - (v) the Subordinated Lender shall not sell or otherwise dispose of any Subordinated Obligations;
  - (vi) the Subordinated Lender shall not take or omit to take any action whereby the subordination arrangements provided for in this Agreement may be impaired;
  - (vii) the Subordinated Lender shall not amend, modify, supplement or restate any Subordinated Loan Document (or provide any waiver or consent to like effect) without prior written notice to the Senior Lender of such amendment or other modification, and such amendment or modification shall be deemed and applied to amend or modify the applicable Senior Loan Document(s) *mutatis mutandis*.
  - (viii) the Subordinated Lender shall provide notice to the Senior Lender of any notice, action, extension or waiver under the Subordinated Loan Documents, including any change in the interest rate applicable thereunder; and



- (ix) the Subordinated Lender shall not exercise any rights or take any action under any Account Bank Deed (as such term is defined in the Subordinated Loan Agreement) without prior written notice to the Senior Lender. In addition, the Subordinated Lender shall at all times cooperate with and take instruction from the Senior Lender in respect of actions to be taken by the Subordinated Lender under the Account Bank Deed (as such term is defined in the Subordinated Loan Agreement) and any Withdrawals Certificate (as such term is defined in the Subordinated Loan Agreement).

**4. Consent of the Subordinated Lender**

The Subordinated Lender waives any and all notice of the creation, renewal, extension or accrual of any of the Senior Obligations and notice of or proof of reliance by the Senior Lender upon this Agreement. The Senior Obligations, and any of them, shall be deemed conclusively to have been created, contracted or incurred in reliance upon this Agreement, and all dealings between the Borrower and the Senior Lender shall be deemed to have been consummated in reliance upon this Agreement. The Subordinated Lender acknowledges and agrees that the Senior Lender has relied upon the subordination provided for herein in entering into the Senior Credit Agreement and in making funds available to the Borrower thereunder. The Subordinated Lender waives notice of or proof of reliance on this Agreement and protest, demand for payment and notice of default.

**5. Waiver of Claims**

To the maximum extent permitted by law, the Subordinated Lender waives any claim it might have against the Senior Lender with respect to, or arising out of, any action or failure to act or any error of judgment, negligence, or mistake or oversight whatsoever on the part of the Senior Lender, or its directors, officers, employees or agents with respect to any exercise of rights or remedies under the Senior Loan Documents.

**6. Provisions Applicable After Bankruptcy**

The provisions of this Agreement shall continue in full force and effect notwithstanding the occurrence of any Insolvency Event.

**7. Further Assurances**

The Subordinated Lender and the Borrower, at their own expense and at any time from time to time, upon the written request of the Senior Lender will promptly and duly execute and deliver such further instruments and documents and take such further actions as the Senior Lender reasonably may request for the purposes of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted.

**8. Provisions Define Relative Rights**

This Agreement is intended solely for the purpose of defining the relative rights of the Senior Lender on the one hand and the Subordinated Lender on the other, and no other Person shall have any right, benefit or other interest under this Agreement.

**9. Notices**

All notices, requests and demands to or upon the Senior Lender or the Borrower or the Subordinated Lender to be effective shall be in writing (or by fax or electronic mail confirmed in writing) and shall be deemed to have been duly given or made: (a) when delivered by hand; or (b) if given by mail, when deposited in the mail by registered certified mail, return receipt requested; or (c) if by fax or electronic mail, when sent and receipt has been confirmed, addressed as follows:

If to the Senior Lender:

Qmetco Limited  
Level 12, 300 Queen Street  
Brisbane, Qld, 4000, Australia  
Attention: John Fisher-Stamp  
E-Mail: john.fisher-stamp@gmetco.com.au

If to the Borrower:

HCA Mountain Minerals (Moberly) Limited  
Suite 204, 1212 – 1<sup>st</sup> Street SE  
Calgary, Alberta  
T2G 2H8  
Attention: President  
Fax No.: 1.403.264.2959  
Email: jblanchard@northernsilica.com / sbroughton@northernsilica.com

If to the Subordinated Lender:

Taurus Resources No. 2 B.V.  
Jachthavenweg 10911, 1081 KM  
Amsterdam, The Netherlands  
Attention: Martin Boland  
Fax No.: +61 2 8314 5555

**10. Counterparts**

This Agreement may be executed by one or more of the parties on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one

and the same instrument. A set of the counterparts of this Agreement signed by all the parties shall be lodged with the Senior Lender.

**11. Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**12. Amendments In Writing; No Waiver: Cumulative Remedies**

- (a) None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Senior Lender, the Borrower and the Subordinated Lender; *provided* that any provision of this Agreement may be waived by the Senior Lender in a letter or agreement executed by the Senior Lender or by facsimile or other electronic transmission from the Senior Lender.
- (b) No failure to exercise, nor any delay in exercising, on the part of the Senior Lender, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right power or privilege.
- (c) The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

**13. Section Headings**

The section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

**14. Successors And Assigns**

This Agreement shall be binding upon the successors, heirs, administrators, executors and assigns of the Borrower and the Subordinated Lender and shall enure to the benefit of the Senior Lender and their successors and assigns.

**15. Specific Performance**

The Senior Lender is hereby authorized to demand specific performance of this Agreement at any time when the Subordinated Lender shall have failed to comply with any of the provisions of this Agreement applicable to the Subordinated Lender whether or not the Borrower shall have complied with any of the provisions hereof applicable to the Borrower,

and the Subordinated Lender hereby irrevocably waives any defense based on the adequacy of a remedy at law which might be asserted as a bar to such remedy of specific performance.

**16. Governing Law**

This Agreement is governed by the laws of the Province of British Columbia and the federal laws of Canada applicable therein, excluding any rule or principle of conflicts of law that may provide otherwise.


**17. Submission To Jurisdiction**

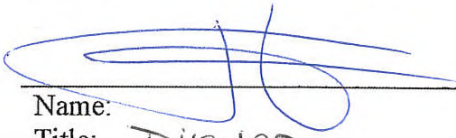
The parties irrevocably attorn to the jurisdiction of the courts of British Columbia, which will have non-exclusive jurisdiction over any matter out of this agreement.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

**TAURUS RESOURCES NO. 2 B.V.**

By:   
Name: TORIS VAN DER BRAAK  
Title: DIRECTOR

By:   
Name:  
Title: DIRECTOR.  
12 December 2019

**QMETCO LIMITED**

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

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

**HCA MOUNTAIN MINERALS  
(MOBERLY) LIMITED**

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

**TAURUS RESOURCES NO. 2 B.V.**

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

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

**QMETCO LIMITED**

By: \_\_\_\_\_  
Name: PAUL FREDERIKS  
Title: COMPANY SECRETARY

By: \_\_\_\_\_  
Name: JOHN FISHER STAMP  
Title: CHIEF FINANCIAL OFFICER

**HCA MOUNTAIN MINERALS  
(MOBERLY) LIMITED**

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

**TAURUS RESOURCES NO. 2 B.V.**

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


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

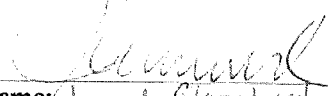
**QMETCO LIMITED**

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

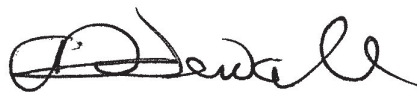
By: \_\_\_\_\_  
Name:  
Title:

**HCA MOUNTAIN MINERALS  
(MOBERLY) LIMITED**

By:   
Name: Scott Broughton  
Title: CEO

By:   
Name: Jerrad Blanchard  
Title: CFO

This is Exhibit "H" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



---

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

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



January 28, 2020

To QMetco Limited  
Level 12, 300 Queen Street, Brisbane, Qld, 4000  
Australia

Dear Sirs

**HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement  
Deed of Amendment**

**1 Introduction**

We refer to the HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement dated 13 December 2019 between HCA Mountain Minerals (Moberly) Limited (**Borrower**) and QMetco Limited (**QMetco**) (**Secured Working Capital Facility Agreement**). The Borrower requests the Lender's consent to amend the Secured Working Capital Facility Agreement on the following terms.

The terms defined and expressions used in the Secured Working Capital Facility Agreement have the same meaning and construction when used in this document, unless the contrary intention appears.

**2 Amendments**

On and from the Effective Date (defined below):

- (a) the definition of "Availability Period" in clause 1.1 ("Definitions") of the Secured Working Capital Facility Agreement is amended by deleting the word "31 January 2020" and replacing it with the word "29 February 2020";
- (b) The definition of "Commitment" in clause 1.1 ("Definitions") of the Secured Working Capital Facility Agreement is amended by deleting the word "C\$18,000,000" and replacing it with the word "C\$19,000,000.
- (c) the definition of "Termination Date" in clause 1.1 ("Definitions") of the Secured Working Capital Facility Agreement is amended by deleting the word "31 January 2020" and replacing it with the word "29 February 2020";

**3 Conditions Precedent**

The amendments in paragraph 2 do not take effect until the date on which the Borrower provides the Lender with a copy of any Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by this document or which relate to the validity and enforceability of any Finance Document (**Effective Date**).

**4 Finance Document**

The Lender and the Borrower designate this letter as a “Finance Document” for the purposes of the Unsecured Working Capital Facility Agreement.

**5 Conflict**

If there is a conflict between a Finance Document and this letter, the terms of this letter prevail.

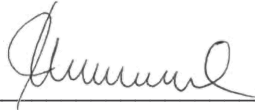
**6 Counterparts**

This document may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this letter.

**EXECUTED** as a deed

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

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

By:  \_\_\_\_\_

Name: Jerrad Blanchard  
Title: Director, CFO  
I have authority to bind the above.

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

**QMetco Limited**

By:  \_\_\_\_\_

Name: John Fisher-Stamp  
Title: Chief Financial Officer  
I have authority to bind the above.

February 28, 2020

To QMetco Limited  
Level 12, 300 Queen Street, Brisbane, Qld, 4000  
Australia

Dear Sirs

**HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement  
Deed of Amendment**

**1 Introduction**

We refer to the HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement dated 13 December 2019 and amended 28 January 2020 between HCA Mountain Minerals (Moberly) Limited (**Borrower**) and QMetco Limited (**QMetco**) (**Secured Working Capital Facility Agreement**). The Borrower requests the Lender's consent to amend the Secured Working Capital Facility Agreement on the following terms.

The terms defined and expressions used in the Secured Working Capital Facility Agreement have the same meaning and construction when used in this document, unless the contrary intention appears.

**2 Amendments**

On and from the Effective Date (defined below):

- (a) the definition of "Availability Period" in clause 1.1 ("Definitions") of the Secured Working Capital Facility Agreement is amended by deleting the word "29 February 2020" and replacing it with the word "31 March 2020";
- (b) the definition of "Termination Date" in clause 1.1 ("Definitions") of the Secured Working Capital Facility Agreement is amended by deleting the word "29 February 2020" and replacing it with the word "31 March 2020".

**3 Conditions Precedent**

The amendments in paragraph 2 do not take effect until the date on which the Borrower provides the Lender with a copy of any Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by this document or which relate to the validity and enforceability of any Finance Document (**Effective Date**).

**4 Finance Document**

The Lender and the Borrower designate this letter as a "Finance Document" for the purposes of the Secured Working Capital Facility Agreement.

**5 Conflict**

If there is a conflict between a Finance Document and this letter, the terms of this letter prevail.

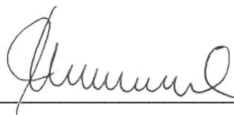
**6 Counterparts**

This document may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this letter.

**EXECUTED** as a deed

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

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

By:  \_\_\_\_\_

Name: **Jerrad Blanchard**  
Title: **Director, CFO**  
I have authority to bind the above.

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

**QMetco Limited**

By:  \_\_\_\_\_

Name: **John Fisher-Stamp**  
Title: **Chief Financial Officer**  
I have authority to bind the above.

March 31, 2020

To QMetco Limited  
Level 12, 300 Queen Street, Brisbane, Qld, 4000  
Australia

Dear Sirs

**HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement  
Deed of Amendment**

**1 Introduction**

We refer to the HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement dated 13 December 2019 and amended 28 January 2020 and 28 February 2020 between HCA Mountain Minerals (Moberly) Limited (**Borrower**) and QMetco Limited (**QMetco**) (**Secured Working Capital Facility Agreement**). The Borrower requests the Lender's consent to amend the Secured Working Capital Facility Agreement on the following terms.

The terms defined and expressions used in the Secured Working Capital Facility Agreement have the same meaning and construction when used in this document, unless the contrary intention appears.

**2 Amendments**

On and from the Effective Date (defined below):

- (a) the definition of "Availability Period" in clause 1.1 ("Definitions") of the Secured Working Capital Facility Agreement is amended by deleting the word "31 March 2020" and replacing it with the word "30 April 2020";
- (b) the definition of "Termination Date" in clause 1.1 ("Definitions") of the Secured Working Capital Facility Agreement is amended by deleting the word "31 March 2020" and replacing it with the word "30 April 2020".

**3 Conditions Precedent**

The amendments in paragraph 2 do not take effect until the date on which the Borrower provides the Lender with a copy of any Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by this document or which relate to the validity and enforceability of any Finance Document (**Effective Date**).

**4 Finance Document**

The Lender and the Borrower designate this letter as a "Finance Document" for the purposes of the Secured Working Capital Facility Agreement.

**5 Conflict**

If there is a conflict between a Finance Document and this letter, the terms of this letter prevail.

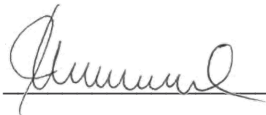
**6 Counterparts**

This document may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this letter.

**EXECUTED** as a deed


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

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

By:  \_\_\_\_\_

Name: Jerrad Blanchard  
Title: Chief Financial Officer  
I have authority to bind the above.

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

**QMetco Limited**  
By:  \_\_\_\_\_

Name: John Fisher-Stamp  
Title: Chief Financial Officer  
I have authority to bind the above.

April 28, 2020

To QMetco Limited  
Level 12, 300 Queen Street, Brisbane, Qld, 4000  
Australia

Dear Sirs

**HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement  
Deed of Amendment**

**1 Introduction**

We refer to the HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement dated 13 December 2019, 28 January 2020, 28 February 2020 and 31 March 2020 between HCA Mountain Minerals (Moberly) Limited (**Borrower**) and QMetco Limited (**QMetco**) (**Secured Working Capital Facility Agreement**). The Borrower requests the Lender's consent to amend the Secured Working Capital Facility Agreement on the following terms.

The terms defined and expressions used in the Secured Working Capital Facility Agreement have the same meaning and construction when used in this document, unless the contrary intention appears.

**2 Amendments**

On and from the Effective Date (defined below):

- (a) the definition of "Availability Period" in clause 1.1 ("Definitions") of the Secured Working Capital Facility Agreement is amended by deleting the word "30 April 2020" and replacing it with the word "31 May 2020";
- (b) The definition of "Commitment" in clause 1.1 ("Definitions") of the Secured Working Capital Facility Agreement is amended by deleting the word "C\$19,000,000" and replacing it with the word "C\$20,000,000
- (c) the definition of "Termination Date" in clause 1.1 ("Definitions") of the Secured Working Capital Facility Agreement is amended by deleting the word "30 April 2020" and replacing it with the word "31 May 2020".

**3 Conditions Precedent**

The amendments in paragraph 2 do not take effect until the date on which the Borrower provides the Lender with a copy of any Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by this document or which relate to the validity and enforceability of any Finance Document (**Effective Date**).

**4 Finance Document**



The Lender and the Borrower designate this letter as a "Finance Document" for the purposes of the Secured Working Capital Facility Agreement.

**5 Conflict**

If there is a conflict between a Finance Document and this letter, the terms of this letter prevail.

**6 Counterparts**

This document may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this letter.

**EXECUTED** as a deed

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

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

By: \_\_\_\_\_

Name:

Title:

I have authority to bind the above.

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

**QMetco Limited**

By:  \_\_\_\_\_

Name: **John Fisher-Stamp**

Title: **Chief Executive Officer**

I have authority to bind the above.

May 26, 2020

To QMetco Limited  
Level 12, 300 Queen Street, Brisbane, Qld, 4000  
Australia

Dear Sirs

**HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement  
Deed of Amendment**

**1 Introduction**

We refer to the HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement dated 13 December 2019, 28 January 2020, 28 February 2020, 31 March 2020 and April 28 2020 between HCA Mountain Minerals (Moberly) Limited (**Borrower**) and QMetco Limited (**QMetco**) (**Secured Working Capital Facility Agreement**). The Borrower requests the Lender's consent to amend the Secured Working Capital Facility Agreement on the following terms.

The terms defined and expressions used in the Secured Working Capital Facility Agreement have the same meaning and construction when used in this document, unless the contrary intention appears.

**2 Amendments**

On and from the Effective Date (defined below):

- (a) the definition of "Availability Period" in clause 1.1 ("Definitions") of the Secured Working Capital Facility Agreement is amended by deleting the word "31 May 2020" and replacing it with the word "30 Jun 2020";
- (b) the definition of "Termination Date" in clause 1.1 ("Definitions") of the Secured Working Capital Facility Agreement is amended by deleting the word "31 May 2020" and replacing it with the word "30 Jun 2020".

**3 Conditions Precedent**

The amendments in paragraph 2 do not take effect until the date on which the Borrower provides the Lender with a copy of any Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by this document or which relate to the validity and enforceability of any Finance Document (**Effective Date**).

**4 Finance Document**

The Lender and the Borrower designate this letter as a "Finance Document" for the purposes of the Secured Working Capital Facility Agreement.

**5 Conflict**

If there is a conflict between a Finance Document and this letter, the terms of this letter prevail.

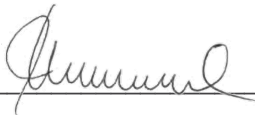
**6 Counterparts**

This document may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this letter.

**EXECUTED** as a deed

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

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

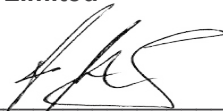
By:  \_\_\_\_\_

Name: **Jerrad Blanchard**  
Title: **Director**

I have authority to bind the above.

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

**QMetco Limited**

By:  \_\_\_\_\_

Name: **John Fisher-Stamp**  
Title: **Chief Executive Officer**

I have authority to bind the above.

This is Exhibit "I" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



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

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

# Cassels

June 17, 2020

joliver@cassels.com  
tel: 1 403 351 2921  
file # 54614-1

## By Email

McMillan LLP  
TD Canada Trust Tower, Suite 1700  
421 7th Avenue SW  
Calgary, AB T2P 4K9

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

Dear Sir:

**Re: HCA Mountain Minerals (Moberly) Limited (the “Borrower”) credit facilities with Taurus Resources No. 2 B.V. (“Taurus”) and QMetco Limited (“QMetco” and, together with Taurus, the “Lenders”)**

We are the solicitors for the Lenders with respect to:

1. the US\$25,000,000 secured facility agreement between Taurus, as lender, the Borrower, as borrower, and Northern Silica Corporation, Heemskirk Mining Pty Limited, Heemskirk Canada Limited and Heemskirk Canada Holdings Limited as guarantors (together, the “**Guarantors**”), dated July 15, 2015, as novated and amended on February 10, 2016 and further amended and acceded by an amending and accession deed dated December 21, 2018 (as amended, restated, supplemented or otherwise modified from time to time, the “**Taurus Facility**”); and
2. the secured working capital facility agreement between QMetco, as lender, the Borrower, as borrower, and the Guarantors, as guarantors, dated December 6, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “**QMetco Facility**”).

We are writing to you in your capacity as counsel to the Borrower and the Guarantors.

We are advised by the Lenders that, as at June 15, 2020, the Borrower is indebted to the Lenders as follows (the “**Indebtedness**”):

1. in respect of the Taurus Facility, in the principal amount of US\$25,000,000 plus approximately US\$14,109,485 of capitalized interest and fees; and
2. in respect of the QMetco Facility, in the principal amount of CAD\$19,600,000 plus approximately CAD\$1,900,000 of capitalized interest.

As the Indebtedness is guaranteed by the Guarantors, the Lenders may look to the Guarantors for the immediate repayment of the Indebtedness upon the maturity of the Taurus Facility and QMetco Facility.

We are advised by the Lenders that certain waivers have been executed under the Taurus Facility and QMetco Facility, among other things, extending the maturity dates of such facilities to June 30, 2020.

On behalf of the Lenders, we hereby confirm that the Lenders are not prepared to provide any further funding to the Borrower under either of the Taurus Facility or the QMetco Facility. Indeed, pursuant to the terms of such facilities, the Borrower does not have sufficient time before June 30, 2020 to deliver a utilization request in relation to any further advances in any event, and the Lenders would not agree to waive the required time periods between the Borrower’s delivery of a utilization request and the utilization date. We also advise that the Lenders will not agree to any further extensions of the maturity dates of the Taurus Facility or the QMetco Facility beyond the previously agreed June 30, 2020 date.

In these circumstances, the Lenders request that the Borrower and the Guarantors provide responses to the following questions:

1. Are the Borrower and each Guarantor insolvent?
2. Are the Borrower and each Guarantor able to repay their obligations as they generally become due?
3. Does the Borrower and each Guarantor intend to repay the Indebtedness in full by no later than June 30, 2020, and have the financial ability to do so? If the answer to both of these questions is “yes”, what are the Borrower’s expected sources of financing to repay the Indebtedness?

We trust that the above is clear. Please let us know if you have any questions. We look forward to receipt of your response.

Yours truly,  
Cassels Brock & Blackwell LLP

A handwritten signature in black ink that reads "Jeffrey Oliver". The signature is written in a cursive, flowing style.

Jeffrey Oliver  
Partner

This is Exhibit "J" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



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

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





Reply to the Attention of: Preet Saini  
Direct Line: 403.531.4716  
Email Address: preet.saini@mcmillan.ca  
Our File No.: 273913  
Date: June 18, 2020

## EMAIL

Jeffrey Oliver  
Partner  
Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West, 888 3 St SW,  
Calgary, AB T2P 5C5

Dear Sir,

Re: **HCA Mountain Minerals (Moberly) Limited (the "Borrower") credit facilities with Taurus Resources No. 2 B.V. ("Taurus") and QMetco Limited ("QMetco" and, together with Taurus, the "Lenders") and Northern Silica Corporation, Heemskirk Mining Pty Limited, Heemskirk Canada Limited and Heemskirk Canada Holdings Limited as guarantors (together, the "Guarantors")**

As you are aware, we act as counsel for the Borrower and each Guarantor. We write in response to your letter dated June 17, 2020.

As you are aware, our clients were recently forced to suspend their silica mining operations for a number of reasons, including the decline in the demand for frac sand in North America and the resulting decline in pricing.

As a result of these and other challenges, without additional financial support from their lenders, the Borrower and Guarantors are or will soon be unable to repay their obligations as they generally become due. For this reason, and because the realizable value of our clients' assets does not appear to be sufficient to enable payment of all of their obligations as they come due, it appears that our clients are insolvent.

With respect to the Indebtedness referred to in your letter, our clients are not currently in a position to repay the Indebtedness nor do they expect to be in a position to do so by June 30, 2020.

Please do not hesitate to contact us if you wish to discuss this matter.

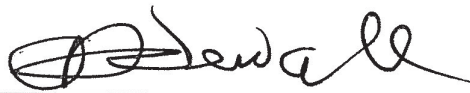
Yours truly,

A handwritten signature in blue ink, appearing to read 'Preet Saini', with a long horizontal flourish extending to the right.

Preet Saini

cc: Adam Maerov and Kourtney Rylands

This is Exhibit "K" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



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

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

Red Deer North Gaetz Crossing  
6794 - 50 Avenue  
Red Deer, Alberta T4N 4E1  
Phone: 403-350-0716

February 10, 2020

Custom Bulk Services Inc.  
33 - 38311 Range Road 270  
Red Deer County, Alberta T4E 1B5

Attn: Jerrad Blanchard and Scott Broughton

Dear Sirs:

ATB Financial, previously Alberta Treasury Branches ("ATB") has approved and offers financial assistance on the terms and conditions in the attached Commitment Letter. This agreement amends and restates in its entirety our previous letter(s). Any borrowings outstanding under previous letter agreement(s) are deemed to be Borrowings hereunder under the related facility referenced herein.

You may accept our offer by returning the enclosed duplicate of this letter, signed as indicated below, by 4:00 p.m. mountain standard time ("MST") on or before March 12, 2020 or our offer will automatically expire. This correspondence may be executed electronically; this correspondence may be delivered by email, facsimile or other functionally-equivalent electronic means. We reserve the right to cancel our offer at any time prior to acceptance.

Thank you for your continued business.

Yours truly,

ATB

Per:



Matthew Adair  
Relationship Manager

Encl.

Accepted this 12 day of Feb, 20

BORROWER

Custom Bulk Services Inc.

  
Per: J. Blanchard

Date Accepted: 12 Feb 20


  
Per: S. Broughton

Date Accepted: 12 Feb 20

**ATB Financial**

GUARANTOR

Heemskirk Canada Limited

  
Per: J. Blanc herod

Date Accepted: 12 Feb 20

Per: S. Broughton

Date Accepted: 12 Feb 20

**LENDER:** ATB FINANCIAL, previously Alberta Treasury Branches ("ATB")

**BORROWER:** Custom Bulk Services Inc.

**GUARANTOR:** Heemskirk Canada Limited

1. **DETAILS OF CREDIT FACILITIES (EACH REFERRED TO AS A "CREDIT FACILITY"):**

**Credit Facility #1 – Non-Revolving, Reducing Credit Facility ("Term Loan") \$631,644.17**

- was available by way of
  - Prime-based loans
    - Interest will be calculated from the date or dates funds are advanced on the daily outstanding principal at Prime plus 0.85% per annum.
- was to be used to purchase equipment.
- is non-revolving. Amounts repaid may not be reborrowed.
- is payable in full on demand by Lender but in any event no later than January 31, 2021 ("**this Credit Facility's Maturity Date**").
- Borrower shall continue to make blended payments of \$7,240.00 per month on the last day of each month, to be applied at Lender's option firstly to accrued interest and secondly to principal, with the balance of all amounts owing under this Credit Facility being due and payable in full on demand by Lender but in any event no later than this Credit Facility's Maturity Date. Payment amounts are subject to adjustment on notice to Borrower to ensure amortization period of 180 months is maintained.
- For Term Loans and for each advance drawn under an Evergreen Line of Credit Facility, the Borrower may apply, in writing, at any time to the Lender to change the applicable interest rate from a fixed rate Credit Facility to a variable rate Credit Facility. If approval is granted, the Borrower shall pay: (a) all out-of-pocket expenses incurred by the Lender; (b) a fee of 3 months' interest on the principal balance outstanding as at the date of conversion or the Interest Rate Differential, whichever is greater; and (c) all accrued interest up to the conversion date.
- Borrower may apply at any time to Lender to change the applicable interest rate from a variable rate to a fixed rate. If approval is granted, the Borrower will pay:
  - a) An administration fee of:
    - (i) \$500 for a Term Loan with an outstanding balance of \$100,000 or less;
    - (ii) \$750 for a Term Loan with an outstanding balance greater than \$100,000 up to and including \$500,000;
    - (iii) \$1,000 for a Term Loan with an outstanding balance greater than \$500,000;
  - b) All out of pocket expenses incurred by Lender; and
  - c) All accrued interest to the conversion date.

**Credit Facility #2 – Non-Revolving, Reducing Credit Facility (“Term Loan”) \$623,266.58**

- was available by way of
  - Prime-based loans
    - Interest will be calculated from the date or dates funds are advanced on the daily outstanding principal at Prime plus 0.85% per annum.
- was to be used to replace term loan 23311758800 for \$1.3MM for equipment purchases.
- is non-revolving. Amounts repaid may not be reborrowed.
- is payable in full on demand by Lender but in any event no later than January 31, 2021 (“**this Credit Facility’s Maturity Date**”).
- Borrower shall continue to make blended payments of \$7,660.00 per month on the last day of each month, to be applied at Lender’s option firstly to accrued interest and secondly to principal, with the balance of all amounts owing under this Credit Facility being due and payable in full on demand by Lender but in any event no later than this Credit Facility’s Maturity Date. Payment amounts are subject to adjustment on notice to Borrower to ensure amortization period of 129 months is maintained.
- For Term Loans and for each advance drawn under an Evergreen Line of Credit Facility, the Borrower may apply, in writing, at any time to the Lender to change the applicable interest rate from a fixed rate Credit Facility to a variable rate Credit Facility. If approval is granted, the Borrower shall pay: (a) all out-of-pocket expenses incurred by the Lender; (b) a fee of 3 months’ interest on the principal balance outstanding as at the date of conversion or the Interest Rate Differential, whichever is greater; and (c) all accrued interest up to the conversion date.
- Borrower may apply at any time to Lender to change the applicable interest rate from a variable rate to a fixed rate. If approval is granted, the Borrower will pay:
  - a) An administration fee of:
    - (i) \$500 for a Term Loan with an outstanding balance of \$100,000 or less;
    - (ii) \$750 for a Term Loan with an outstanding balance greater than \$100,000 up to and including \$500,000;
    - (iii) \$1,000 for a Term Loan with an outstanding balance greater than \$500,000;
  - b) All out of pocket expenses incurred by Lender; and
  - c) All accrued interest to the conversion date.

**Credit Facility #3 – Alberta BusinessCard Mastercard – \$50,000.00 (called the Business Credit Limit in the Agreement)**

- interest will be calculated on the total interest bearing balance at Prime plus 3.00% per annum.
- minimum monthly payment of 3.00% of the new balance at payment due date is required.
- other terms and conditions are outlined in the ATB Financial Mastercard cardholder agreement in effect from time to time.

2. **NEXT REVIEW DATE:**

All Credit Facilities are demand facilities and are subject to review by Lender at any time in its sole discretion and at least annually. The next annual review date has been set for January 31, 2021 but may be set at an earlier or later date at the sole discretion of Lender.

3. **FEES:**

- Renewal fee is payable in the amount of \$200.00.
- Renewal fee is payable annually in an amount determined by Lender.
- Any amount in excess of established Credit Facilities may be subject to a fee where Lender in its sole discretion permits excess Borrowings, if any.
- For reports or statements not received within the stipulated periods (and without limiting Lender's rights by virtue of such default), Borrower will be subject to a fee of \$250 per month (per annual report or statement) for each late reporting occurrence.

Lender is hereby authorized to debit Borrower's account for any unpaid fees.

4. **SECURITY DOCUMENTS:**

All security documents (whether held or later delivered) (collectively referred to as the "**Security Documents**") shall secure all Credit Facilities and all other obligations of Borrower to Lender (whether present or future, direct or indirect, contingent or matured). The parties acknowledge that the following security documents are currently held:

- (a) General Security Agreement from Borrower providing a security interest over all present and after acquired personal property
- (b) Land Mortgage in the principal sum of \$1,300,000.00 from Borrower constituting a first fixed charge on the lands located at Plan 9120596 Lot 7 and Plan 8020947 Lot 2
- (c) Amending Agreement to increase Principal sum to \$2,700,000.00
- (d) Continuing Guarantee from Heemskirk Canada Limited - limited to \$1,500,000.00, supported by the following:
  - Corporate Guarantee Resolution
  - General Security Agreement providing a security interest in 2<sup>nd</sup> position over all present and after acquired personal property and proceeds

The Security Documents are to be registered in the following jurisdictions: Alberta.

5. **REPRESENTATIONS AND WARRANTIES:**

Borrower represents and warrants to Lender that:

- (a) each Loan Party (other than any that are individuals) is duly incorporated or duly created, validly existing and duly registered or qualified to carry on business in the Province of Alberta and in each other jurisdiction where it carries on any material business;



- (b) the execution, delivery and performance by Borrower and each Guarantor (if any) of this agreement and each Security Document to which it is a party have been duly authorized by all necessary actions and do not violate its governing documents or any applicable laws or agreements to which it is subject or by which it is bound;
- (c) the most recent financial statements of Borrower and, if applicable, any Guarantor, provided to Lender fairly present its financial position as of the date thereof and its results of operations and cash flows for the fiscal period covered thereby and, since the date of such financial statements, there has occurred no material adverse change in its business or financial condition;
- (d) each Loan Party has good and marketable title to all of its properties and assets, free and clear of any encumbrances other than Permitted Encumbrances;
- (e) Borrower has no Subsidiaries.

All representations and warranties are deemed to be repeated by Borrower on each request for an advance hereunder.

**6. REPORTING COVENANTS:**

Borrower covenants with Lender that it will provide the following to Lender:

- (a) Within 120 days after the end of each of its fiscal years unconsolidated financial statements of Borrower on a notice to reader basis and prepared by a firm of qualified accountants. If audited financial statements are not currently required, Lender reserves the right to require audited financial statements
- (b) Within 120 days after the end of each of its fiscal years unconsolidated financial statements of Borrower on a notice to reader basis and prepared by a firm of qualified accountants and to be supported by detailed notes and cash flow schedule
- (c) Within 120 days after the end of each of its fiscal years unconsolidated financial statements of Northern Silica Corporation (entity advised to be one and the same as Heemskirk Canada Limited - interchangeable) on a notice to reader basis and prepared by a firm of qualified accountants. If audited financial statements are not currently required, Lender reserves the right to require audited financial statements
- (d) on request, any further information regarding the assets, operations and financial condition of Borrower and any Guarantor that Lender may from time to time reasonably require

**7. POSITIVE COVENANTS:**

Borrower covenants with Lender that:

- (a) it will pay to Lender when due all amounts (whether principal, interest or other sums) owing by it to Lender from time to time;
- (b) it will pay to Lender on demand, all legal (on a solicitor and his own client, full indemnity basis) and other costs incurred by Lender in respect of all Credit Facilities including the preparation, registration and any realization on the Security Documents and other related matters;
- (c) it will deliver to Lender the Security Documents, in all cases in form and substance acceptable to Lender and Lender's solicitor;

- (d) it will ensure that each Loan Party maintains appropriate types and amounts of insurance with Lender shown as first loss payee on any property insurance covering any assets on which Lender has security, with such other terms as Lender may require;
- (e) it will promptly advise Lender, in writing, of any significant loss or damage to the property of any Loan Party;
- (f) it will ensure that each Loan Party maintains its corporate or partnership status (if applicable) in good standing and maintains, repairs and keeps in good working order and condition all of its property and assets;
- (g) it will permit Lender at any reasonable time or times and on reasonable prior notice to enter the premises of each Loan Party and to inspect its property and operation and to examine and copy all of its relevant books of accounts and records;
- (h) it will ensure that each Loan Party remits when due all sums owing to tax and other governmental authorities including, without limitation, any sums in respect of employees and GST, and provides proof to Lender upon request;
- (i) it will ensure that each Loan Party complies with all applicable laws, permits and regulations including, without limitation, those relating to the environment, and obtains and maintains all necessary licenses, permits, authorizations and approvals which are required to be obtained and maintained by it in the operation of its business.

**8. NEGATIVE COVENANTS:**

Borrower covenants with Lender that, except with the prior written consent of Lender, Borrower will not and will not permit any Loan Party to:

- (a) create or permit to exist any mortgage, charge, lien, encumbrance or other security interest on any of its present or future assets, other than Permitted Encumbrances;
- (b) sell, lease or otherwise dispose of any assets except (i) inventory sold, leased or disposed of in the ordinary course of business, (ii) obsolete equipment which is being replaced with equipment of equivalent value, and (iii) assets sold, leased or disposed of during a fiscal year having an aggregate fair market value not exceeding \$25,000.00, for such fiscal year;
- (c) provide financial assistance (by means of a loan, guarantee or otherwise) to any person other than Lender;
- (d) pay to or for the benefit of shareholders or persons associated with shareholders (within the meaning of the *Alberta Business Corporations Act*) by way of salaries, bonuses, dividends, management fees, repayment of loans or otherwise, any amount which would cause the breach of a provision hereof;
- (e) amalgamate, consolidate or merge with any person other than a Loan Party or enter into any partnership with any other person unless the partnership becomes a Loan Party hereunder and provides security in favour of Lender;
- (f) consent to or facilitate a change in the ownership of its shares without the prior written consent of Lender;
- (g) acquire any assets in or move any assets to a jurisdiction where Lender has not registered the Security Documents;

- (h) operate accounts with or otherwise conduct any banking business with any financial institution other than Lender;
- (i) enter into any commodity, currency or interest rate hedging arrangement which is not used for risk management in relation to its business but is entered into for speculative purposes;
- (j) Non – Waiver

It is acknowledged by the Borrower that the Borrower is currently in breach of the following Covenant as measured against the September 30, 2019 Year End Financial Statement:

	Required	Actual
Debt Service Coverage Ratio	1.25:1	(10.96):1

Notwithstanding the foregoing, any excusing, overlooking or waiver by ATB of any default, breach or non-observance of any of the terms of this Commitment Letter, or in respect to any ATB documents, shall not constitute a waiver by ATB of its rights under this Commitment Letter, or pursuant to any or more of the Security Documents, in respect of any continuing or subsequent default, breach or non-performance, so as to defeat in any way the rights of ATB for the recovery of any indebtedness

**9. FINANCIAL COVENANTS:**

Borrower will not at any time, without the prior written consent of Lender, breach the following restrictions:

- (a) permit the ratio of Total Debt to Equity to exceed 3:00:1.00;
- (b) permit the Debt Service Coverage ratio to be less than 1.25:1.00.

Each of the above financial ratios shall be maintained at all times.

**10. CONDITIONS PRECEDENT:**

It is a condition precedent to each advance hereunder that, at the time of such advance, all representations and warranties hereunder must be true and there must be no default hereunder or under any Security Document. In addition, no Credit Facility will be available until the following conditions precedent have been satisfied, unless waived by Lender:

- (a) Lender is satisfied that no prior liens, mortgages, charges, encumbrances, writs or other security interests are registered against any Loan Party's assets other than as permitted by Lender;
- (b) Lender has received all Security Documents and all registrations and filings have been completed in Alberta, in all cases in form and substance satisfactory to Lender;
- (c) Borrower and Guarantor (if any) have provided all authorizations and all financial statements, appraisals, environmental reports and other information that Lender may require, including, but not limited to:
  - Sunlife Assurance Company of Canada Group Creditor's Life Insurance – application or waiver
  - Credit Information and Alberta Land Titles Office Name Search Consent Form;
  - Universal Lender's Report and Solicitor's Opinion; and

- Pre-Disbursement Conditions to be obtained/reviewed/verified or adhered to by ATB:
  - Evidence of Property Taxes Paid on the property held for security located at Plan 9120596 Lot 7 & Plan 8020947 Lot 2
  - Evidence fire insurance with ATB as FLP
  - Corporate structure chart to show Custom Bulk Services Inc.
  - Commercial credit bureau to be obtained for the Borrower, with any derogatory findings to be advised to Business Credit.
  - Review of LTO searches on file for subject lands pledged, continues to show ATB Mortgage registered for \$313,000. Lender to review, and take corrective action, as this was to have been discharged accordingly. Any issues are to be advised to Business Credit

(d) Lender has received payment of all fees due in respect hereof

(e) Lender is satisfied as to the value of Borrower's and any Guarantor's assets and financial condition and each Loan Party's ability to carry on business and repay any amount owed to Lender from time to time.

**11. AUTHORIZATIONS AND SUPPORTING DOCUMENTS:**

Borrower has delivered or will deliver the following authorizations and supporting documents to Lender:

(a) Corporate Borrower and Corporate Guarantors:

- Incorporation documents including Certificate of Incorporation, Articles of Incorporation (including any amendments) and last Notice of Directors
- Banking resolution in form provided by Lender or otherwise acceptable to Lender
- Certified Directors' Resolution

(b) ATB Financial Mastercard Cardholder Agreement

**12. DRAWDOWNS, PAYMENTS AND EVIDENCE OF INDEBTEDNESS:**

- (a) Borrower may cancel the availability of any unused portion of a Credit Facility on 5 Business Days' notice. Any such cancellation is irrevocable.
- (b) All interest rates specified are nominal annual rates. The effective annual rate in any case will vary with payment frequency. The annual rates of interest or fees to which the rates calculated in accordance with this agreement are equivalent are the rates so calculated multiplied by the actual number of days in the calendar year in which such calculation is made and divided by 365.
- (c) If any amount due hereunder is not paid when due, Borrower shall pay interest on such unpaid amount including, without limitation, interest on interest if and to the fullest extent permitted by applicable law at a rate per annum equal to the rate payable hereunder on such amount as if it were not in arrears.

- (d) The branch of Lender (the "**Branch of Account**") where Borrower maintains an account and through which the Borrowings will be made available is located at Red Deer North Gaetz Crossing Branch. Funds under the Credit Facilities will be advanced into and repaid from account no. 873-00124330603 at the Branch of Account or such other branch or account as Borrower and Lender may agree upon from time to time.
- (e) Lender shall open and maintain at the Branch of Account accounts and records evidencing the Borrowings made available to Borrower by Lender under this agreement. Lender shall record the principal amount of each Borrowing and the payment of principal, interest and fees and all other amounts becoming due to Lender under this agreement. Lender's accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of Borrower to Lender pursuant to this agreement.
- (f) Borrower authorizes and directs Lender to automatically debit, by mechanical, electronic or manual means, any bank account of Borrower maintained with Lender for all amounts payable by Borrower to Lender pursuant to this agreement. Any amount due on a day other than a Business Day shall be deemed to be due on the Business Day next following such day and interest shall accrue accordingly.

13. **EVENTS OF DEFAULT:**

All Credit Facilities are payable in full on demand by Lender. Without restricting the Lender's right to demand payment at any time, Lender may, by notice to Borrower, terminate any or all of the Credit Facilities and demand immediate payment and, failing such immediate payment, Lender may realize under the Security Documents as Lender thinks fit in any of the following events:

- (a) if Borrower defaults in paying when due all or any part of its indebtedness or other liability to Lender;
- (b) if Borrower or a Guarantor (if any) defaults in the observance or performance of any of its covenants or obligations hereunder or in any of the Security Documents (other than as provided under section (a) above), or in any other document under which Borrower or a Guarantor (if any) is obligated to Lender and, in any such case, the default continues after notice from Lender;
- (c) if any event or circumstance occurs which has or would reasonably be expected to have a Material Adverse Effect (as determined by Lender in its sole discretion);
- (d) if an order is made, an effective resolution passed or a petition is filed for the winding up of the affairs of Borrower or a Guarantor (if any) or if a receiver or liquidator of Borrower or a Guarantor (if any) or any part of its assets is appointed; or
- (e) if Borrower or a Guarantor (if any) becomes insolvent or makes a general assignment for the benefit of its creditors or an assignment in bankruptcy or files a proposal or notice of intention to file a proposal under the *Bankruptcy and Insolvency Act* or otherwise acknowledges its insolvency or if a bankruptcy petition is filed or receiving order is made against Borrower or a Guarantor (if any) and is not being disputed in good faith.
- (f) Notwithstanding anything else contained herein, in the case of default by Borrower, Lender may apply payments received during a period of default in whatever order it may elect, as between the Credit Facilities, to any interest owed thereunder, any fees or charges or any other obligations of the Borrower.

14. **MISCELLANEOUS:**

- (a) If applicable, the Borrower agrees to waive the two (2) day time period for delivery of the *Fair Trading Act* disclosure statement. If applicable, the Borrower may notify the Lender, in writing, of the Borrower's intention to withdraw from this commitment letter within two (2) days from signing it and if the Borrower withdraws, it has the right to be relieved from any obligations under this commitment letter and receive a refund of any payments made hereunder except any of the following fees which may have been incurred by the Lender and charged to the Borrower: (i) search or registration costs paid to a registry or agent, (ii) fees for any inspection, appraisal, survey or environmental audit report obtained by the Borrower and used by the Lender, (iii) mortgage insurance premium on a high ratio mortgage and (iv) casualty insurance premium.
- (b) Within the term of each Credit Facility hereunder, the Lender may issue a renewal offer presenting various options for the renewal of such Credit Facility. Provided the Credit Facility is not then in default and the balance of the principal, interest and other sums due and payable hereunder is not paid in full, then the Credit Facility may be renewed based upon the terms and conditions in such renewal offer as selected by the Lender (in its sole discretion) and the terms and conditions of this commitment letter (as amended by such renewal offer) will otherwise continue in full force and effect.
- (c) The Lender may send the Borrower monthly statements (if applicable), notices or demands for payment to the latest address the Lender has for the Borrower in the Lender's records. Any statement, notice or demand shall be deemed to be received by the Borrower on the date received (if delivered personally) or the fifth day after the Lender has mailed it to the Borrower (if mailed). If there are multiple Borrowers hereunder, then communication to any one of them is deemed to be communication to all.
- (d) Lender, without restriction, may waive, in writing, the satisfaction, observance or performance of any of the provisions of this Commitment Letter. The obligations of a Guarantor (if any) will not be diminished, discharged or otherwise affected by or as a result of any such waiver except to the extent that such waiver relates to an obligation of such Guarantor. Any waiver by Lender of the strict performance of any provision hereof will not be deemed to be a waiver of any subsequent default and any partial exercise of any right or remedy by Lender shall not be deemed to affect any other right or remedy to which Lender may be entitled.
- (e) Where more than one person, firm or corporation signs this agreement as Borrower, each party is jointly and severally liable for any such obligation hereunder and the Lender may require payment of all such amounts from any one of them or a portion from each.
- (f) If any portion of this agreement is held invalid or unenforceable, the remainder of this agreement will not be affected and will be valid and enforceable to the fullest extent permitted by law. In the event of a conflict between the provisions hereof and of any Security Document or loan agreement, the provisions hereof shall prevail to the extent of the conflict.
- (g) All interest payable hereunder bears interest as well after as before maturity, default and judgment with interest on overdue interest at the applicable rate payable hereunder. To the extent permitted by law, Borrower waives the provisions of the *Judgment Interest Act* (Alberta).
- (h) Borrower shall indemnify Lender against all losses, liabilities, claims, damages or expenses (including, without limitation, legal expenses on a solicitor and his own client, full indemnity basis) incurred in connection with the Credit Facilities. This indemnity will survive the repayment or cancellation of any of the Credit Facilities or any termination of this agreement.
- (i) For certainty, the permission to create a Permitted Encumbrance shall not be construed as a subordination or postponement, express or implied, of Lender's Security Documents to such Permitted Encumbrance.

- (j) Time shall be of the essence in all provisions of this agreement.
- (k) This agreement may be executed in counterpart.
- (l) This agreement shall be governed by the laws of Alberta.

**DEFINITIONS:**

**"A Locations"** means Calgary, Edmonton.

**"B Locations"** means urban areas.

**"Borrowings"** means all amounts outstanding under the Credit Facilities or; if the context so requires, all amounts outstanding under one or more of the Credit Facilities or under one or more borrowing options of one or more of the Credit Facilities.

**"Business Day"** means a day excluding Saturday and Sunday on which Lender is open for business in Alberta.

**"Cash Flow Available To Service Debt" [use this definition for business Borrowers]** means, in respect of Borrower for any period, the net income of Borrower determined on a consolidated basis in accordance with GAAP; provided that (but without duplication) there shall be (i) added thereto depreciation, amortization and other non-cash charges, extraordinary expenses, any losses on disposal of fixed assets and Interest Expense and (ii) subtracted therefrom extraordinary income, gains on disposal of fixed assets, any reduction in shareholder loans and dividends declared during the period.

**"Cash Flow Available To Service Debt" [use this definition for agricultural Borrowers]** means Net Farming Income + Optional/Mandatory Inventory Adjustment-Previous Year – Optional/Mandatory Inventory Adjustment-Current Year + Depreciation/Capital Cost Allowance + Interest and bank charges + Extraordinary Expense - Extraordinary Income – Living Expenses (applicable to Non-Incorporated Farms) + Ending Accounts Receivable + Ending Inventory + Opening Accounts Payable – Opening Accounts Receivable – Opening Inventory – Closing Accounts Payable.

**"Current Assets"** means, for a day, the amount of current assets of Borrower as determined in accordance with GAAP on a consolidated basis.

**"Current Liabilities"** means for a day, the amount of current liabilities of the Borrower as determined in accordance with GAAP on a consolidated basis including only the Current Portion of the Long Term Debt of any Funded Debt.

**"Current Portion of Long Term Debt" or "Debt"** is determined based on the annual scheduled principal payments of Funded Debt required to be made in a 12 month period notwithstanding the fact that the entire portion of a demand facility may be or may not be shown as current in accordance with GAAP.

**"Debt Service Coverage"** means, for any period, the ratio of (i) Cash Flow Available to Service Debt, to (ii) Interest Expense and scheduled principal payments in respect of Funded Debt.

**"EBITDA"** means, for any period, net income (excluding extraordinary items) from continuing operations plus, to the extent deducted in determining net income, Interest Expense and income taxes accrued during the period and depreciation, depletion and amortization deducted for the period.

**"Equity"** means, at any time and as determined in accordance with GAAP on a consolidated basis, an amount equal to the amount of shareholders' equity of Borrower, including share capital, retained earnings and postponed advances (if postponed on terms and in a manner acceptable to Lender) but excluding advances to affiliates/shareholders, goodwill and intangible assets.

**"Funded Debt"** means, in respect of Borrower, all outstanding, non-postponed, interest-bearing debt (but only excluding such postponed debt if it is postponed on terms and in a manner acceptable to Lender) including capital leases (as defined according to GAAP), debt subject to scheduled repayment terms, credit card debt and letters of credit/guarantees.

**"Generally Accepted Accounting Principles"** or **"GAAP"** means generally accepted accounting principles as may be described in the Canadian Institute of Chartered Accountants Handbook.

**"Good Accounts Receivable"** means unencumbered accounts receivable of Borrower from Canadian *[and U.S. if permitted by AFC]* debtors excluding (i) bad or doubtful accounts; (ii) all amounts due from any affiliate, (iii) the entire amount of accounts, any portion of which is outstanding more than 90 days after billing date, provided that the under 90 day portion may be included where the over 90 day portion is less than 10% of the entire account, and provided that the entire account may be included where Lender has nevertheless designated the account as good, (iv) the amount of all holdbacks or contra accounts, and (v) any accounts which Lender has previously advised to be ineligible.

**"Guarantor"** means any persons which have provided or hereafter provide a guarantee in favour of Lender with respect to the Borrowings hereunder.

**"Interest Expense"** means, for any period, the cost of advances of credit during that period including actual interest charges, potential interest payable on any non-utilized portion of any revolving facility (including credit cards), the interest component of capital leases, capitalized interest, fees payable on bankers' acceptances and guaranteed notes and fees payable in respect of letters of credit and letters of guarantee.

**"Interest Rate Differential"** or **"IRD"** means the Lender's lost potential interest earnings on the Credit Facility calculated by taking the **lost earnings rate** and multiplying it by the amount that the Borrower prepays. The lost earnings rate is the difference between: (a) the interest rate that the Borrower is being charged at the time of prepayment (the **"Borrower's Rate"**) and (b) the sum of: (i) the Lender's interest rate loan funding cost at the time of prepayment as determined by the Lender; and (ii) the **margin rate**, where the margin rate is equal to the difference between (A) the Borrower's Rate, and (B) the Lender's interest rate loan funding cost at the later of the granting of the Credit Facility and the latest renewal of the Credit Facility.

**"Inventory"** means unencumbered inventory of Borrower (including raw materials and finished goods but excluding work in progress) which is not subject to any security interest, encumbrance, right or claim which ranks or is capable of ranking in priority to Lender's security.

**"Loan Parties"** means, collectively, Borrower and all Guarantors, other than any Guarantors that are individuals.

**"Long Term Debt"** means, for a day and as determined in accordance with GAAP on a consolidated basis, all indebtedness, obligations and liabilities of Borrower which would be classified as long term debt upon a balance sheet of Borrower.

**"Material Adverse Effect"** refers to (i) a material adverse effect on the financial condition of Borrower or of any Guarantor, or (ii) a material adverse effect on the ability of Borrower or any Guarantor to repay amounts owing hereunder or under its guarantee in respect hereof.

**"Permitted Encumbrances"** means the following: (i) liens for taxes, assessments or governmental charges or by operation of law not yet due or delinquent or the validity of which is being contested in good faith, and (ii) security interests consented to in writing by Lender.

**"Pre-Sold Home"** means a home owned by and registered in the name of Borrower that has been sold to an arms length third party under an accepted and unconditional offer to purchase with a non-refundable deposit of at least 10% (at least 5% if the purchaser is obtaining an insured mortgage).



**"Prime"** means the prime-lending rate per annum established by Lender from time to time for commercial loans in Canadian dollars. Where the interest rate for a Credit Facility is based on Prime, the applicable rate on any day will depend on the Prime in effect on that day. The statement by Lender as to Prime and as to the rate of interest applicable to a Credit Facility on any day will be binding and conclusive for all purposes.

**"Residential Mortgage Loan Rate"** means the rate per annum established by Lender from time to time for residential mortgage loans in Canadian dollars.

**"Sales"** means the gross sales as reported in the Statement of Profit and Loss of Borrower's financial statement for the fiscal year.

**"Sales to Equity"** means, at any time, the ratio of Sales to Equity.

**"Show Home"** means a home owned by and registered in the name of Borrower whose primary purpose is to either house Borrower's sales office for a particular sub-division or to display the product line of Borrower. A Show Home is usually part of a show home parade and is usually not intended to be immediately sold.

**"Spec Home"** means a home owned by and registered in the name of Borrower that is intended to be immediately sold, but for which Borrower has not received and approved an accepted offer to purchase for the home. Removal of loans from this status must be supported by evidence of an unconditional offer to purchase with an arms length third party purchaser who has provided a non-refundable deposit of at least 10% (at least 5% if the purchaser is obtaining an insured mortgage).

**"Standby Letter of Credit"** means a standby letter of credit or a letter of guarantee issued by ATB or another financial institution at ATB's request.

**"Subsidiaries"** means (i) a person of which another person alone or in conjunction with its other subsidiaries owns an aggregate number of voting shares sufficient to elect a majority of the directors regardless of the manner in which other voting shares are voted; and (ii) a partnership of which at least a majority of the outstanding income interests or capital interests are directly or indirectly owned or controlled by such person and includes a person in like relation to a Subsidiary.

**"Total Debt"** means, in respect of Borrower, as of the end of any fiscal quarter and as determined in accordance with GAAP on a consolidated basis and without duplication, an amount equal to (i) the amount of Current Liabilities, plus, if not already included therein, the Current Portion of Long Term Debt, plus (ii) the aggregate of (a) the amount of Long Term Debt including the Borrowings, and (b) to the extent not included in Long Term Debt, obligations with respect to prepaid obligations and deferred revenues relating to third party obligations and the amount of all obligations outstanding under a capital lease or any sale-leaseback to the extent it constitutes a capital lease and shall exclude in any event postponed advances (if postponed on terms and in a manner acceptable to Lender).

**"Total Debt to Equity Ratio"** means, at any time, the ratio of (i) Total Debt to (ii) Equity.

**"Working Capital Ratio"** also known as the **"Current Ratio"** means, at any time, the ratio of (i) Current Assets to (ii) Current Liabilities.

This is Exhibit "L" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



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

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

# GENERAL SECURITY AGREEMENT

Non-Consumer

TO: Alberta Treasury Branches  
("ATB")

BRANCH: 6794 - 50 AVENUE, RED DEER, ALBERTA, T4N 4E1

FROM: CUSTOM BULK SERVICES INC. (the "Debtor")

## 1. DEFINITIONS

All capitalized terms used in this Agreement and in any schedules attached hereto shall, except where defined herein, be interpreted pursuant to their respective meanings when used in the *Personal Property Security Act* (the "PPSA") of the province or territory referred to in the "Governing Law" section of this Agreement (the "Province") and any regulations issued thereunder.

## 2. SECURITY INTEREST AND CHARGE

- (a) As general and continuing collateral security for the payment and performance of all debts, liabilities and obligations of the Debtor to ATB howsoever arising, both present and future, absolute and contingent, direct and indirect, matured or not, and whether the Debtor be bound alone or jointly or severally with others (the "Indebtedness"), the Debtor hereby assigns and grants a mortgage, pledge, charge and security interest (which, in the case of any real property and any other Collateral (as hereinafter defined) not subject to the PPSA, shall be a mortgage as and by way of a floating charge) to and in favour of ATB in all property, assets and undertaking of the Debtor referred to in Schedule "A" (including all such property, assets and undertaking owned or leased by or licensed to the Debtor and in which the Debtor at any time has an interest or to which the Debtor is or at any time may become entitled) and in all Proceeds and renewals thereof, Accessions thereto and substitutions therefor (herein collectively called the "Collateral").
- (b) The assignments, mortgages, pledges, charges, security interests and floating charges (if applicable) granted hereunder are hereinafter collectively called the "Security Interests". The Debtor warrants and acknowledges to and in favour of ATB that:
- (i) the Debtor has rights in all existing Collateral and the parties intend the Security Interest hereby created in any of the Debtor's existing property which is subject to the PPSA to attach upon execution and delivery hereof;
  - (ii) the parties intend the Security Interest created in any of the Debtor's after-acquired property which is subject to the PPSA to attach at the same time as it acquires rights in the after-acquired property; and
  - (iii) value has been given.
- (c) For greater certainty, where the Collateral includes all of the Debtor's present and after-acquired Personal Property, and any of such Collateral is or becomes located on lands or premises leased or subleased by the Debtor, the Collateral includes the Debtor's interest as tenant or lessee under any and all of such leases and subleases of the lands or premises.
- (d) The last day of any term reserved by any lease or agreement to lease is excepted out of the Security Interest and does not form part of the Collateral, but the Debtor shall stand possessed of such last day in trust to assign the same to any person acquiring such term.

- (e) If the grant of the Security Interest in respect of any contract, lease, agreement to lease, license, permit, approval or intellectual property right would result in the termination or breach of such contract, lease, agreement to lease, license, permit, approval or intellectual property right, then the applicable contract, lease, agreement to lease, license, permit, approval or intellectual property right will not be subject to the Security Interest but will be held in trust by the Debtor for the benefit of ATB and, on exercise by ATB of any of its rights under this Agreement following Default, assigned by the Debtor as directed by ATB.

### 3. CONTINUOUS INTEREST

The Security Interest hereby created is a continuing charge, and shall secure all Indebtedness notwithstanding that the Indebtedness may be fluctuating and even may from time to time and at any time be reduced to a nil balance, and notwithstanding that monies advanced may be repaid and future advances may be made to or to the order of the Debtor or in respect of which the Debtor is liable. The Security Interest maintains priority for all Indebtedness secured hereby whether incurred or arising before or after the creation or registration of any Encumbrance (as hereinafter defined) and notwithstanding that at any time there may not be any Indebtedness then outstanding.

### 4. AUTHORIZED DEALING WITH COLLATERAL

Until Default (as hereinafter defined), or until ATB provides written notice to the contrary to the Debtor, the Debtor may deal with the Collateral in the ordinary course of the Debtor's business in any manner not inconsistent with the provisions of this Agreement, provided that the Debtor shall not, without the prior written consent of ATB:

- (a) sell, exchange, lease, transfer or otherwise dispose of any of the Collateral other than inventory being sold, leased or disposed of for fair market value in the ordinary course of the Debtor's business as it is presently conducted and for the purpose of carrying on that business, or
- (b) create, incur or permit to exist any security interest, mortgage, lien, claim, charge or other encumbrance (herein collectively called the "Encumbrances" and individually, an "Encumbrance") upon any of the Collateral whether it would rank or purport to rank in priority to, equally with or behind the Security Interest granted under this Agreement, except operating leases incurred in the ordinary course of the Debtor's business.

Nothing in this Agreement or otherwise creates a postponement or subordination of any priority of ATB in any of the Collateral in favour of any present or future holder of an Encumbrance (including without limitation, a holder of a lease) in any of the Collateral.

If the Collateral comprises any Investment Property, Chattel Paper, Instrument, Money or Document of Title, the Debtor will, forthwith upon request, deliver the same to ATB and will allow ATB to retain possession of the same. If the Collateral comprises any Investment Property that is a Certificated Security, the Debtor will, upon request, deliver to ATB all Security Certificates relating to such Certificated Security endorsed in blank. If the Collateral comprises any Investment Property that is an Uncertificated Security or a Security Entitlement, the Debtor, on request by ATB, will, or will cause the issuer of such Investment Property to, or will cause the Securities Intermediary that holds such Investment Property to, take all steps as are necessary to give exclusive control (as that term is used in the PPSA) over such Investment Property to ATB on terms and conditions satisfactory to ATB.

### 5. REPRESENTATIONS AND WARRANTIES OF THE DEBTOR

The Debtor hereby represents and warrants to ATB that:

- (a) the Collateral is owned by the Debtor free of all Encumbrances, save for those Encumbrances agreed to in writing between ATB and the Debtor and those shown on Schedule "B" hereto;
- (b) each Account, Chattel Paper and Instrument constituting Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "Account Debtor") and the amount represented by the Debtor to ATB from time to time as owing by each Account Debtor will be the correct amount actually and unconditionally owing from such Account Debtor, except for normal cash discounts where applicable;

- (c) as at the date hereof, the description of the Collateral in Schedule "A" hereto is complete and accurate, and, if so requested by ATB, all serial numbers and vehicle identification numbers affixed to or ascribed to any of the Collateral have been provided to ATB;
- (d) the Debtor has full power and authority to conduct its business and own its properties in all jurisdictions in which the Debtor carries on business, except to the extent any failure to do so would not reasonably be expected to have a material adverse effect on its business, operations or financial condition or impair its ability to perform its obligations hereunder, and has full power and authority to grant to ATB the Security Interest created under this Agreement and to execute, deliver and perform all of its obligations under this Agreement;
- (e) this Agreement has been duly executed and delivered by the Debtor and constitutes a legal, valid and binding obligation of the Debtor, subject only that such enforcement may be limited by bankruptcy, insolvency and any other similar laws of general application affecting creditors' rights generally and by rules of equity limiting enforceability by specific performance;
- (f) there is no provision in any agreement to which the Debtor is a party, nor is there any statute, rule or regulation, or to the knowledge of the Debtor any judgment, decree or order of any court, binding on the Debtor which would be contravened by the execution and delivery of this Agreement;
- (g) there is no litigation, proceeding or dispute pending, or to the knowledge of the Debtor threatened, against or affecting the Debtor or the Collateral, the adverse determination of which might materially and adversely affect the Debtor's business, financial condition or operations or impair the Debtor's ability to perform its obligations hereunder or affect the priority of the Security Interest created hereunder or affect the rights and remedies of ATB hereunder;
- (h) the name of the Debtor is accurately and fully set out below, and the Debtor is not nor has it been known by any other name other than as set out below;
- (i) as at the date hereof, the Collateral is located in the Province and such other jurisdictions indicated on Schedule "A" hereto. With respect to Goods (including Inventory) constituting Collateral, the locations specified in Schedule "A" are accurate and complete save for Goods in transit to such locations and Inventory on lease or consignment; and all buildings, fixtures or Goods about to become fixtures and all crops and all oil, gas or other minerals to be extracted and all timber to be cut which forms part of the Collateral will be situated at one of such locations. For certainty, the Security Interests attach to all Collateral, wherever located, whether or not in jurisdictions indicated on Schedule "A" hereto;
- (j) the Collateral does not consist of Consumer Goods;
- (k) the Collateral, except as previously communicated to ATB in writing, does not consist of Goods that are of a kind that are normally used in more than one jurisdiction; and
- (l) the Debtor's place of business, or if more than one place of business, the Debtor's chief executive office, is located in the Province (unless otherwise advised to ATB in writing).

## 6. COVENANTS OF THE DEBTOR

The Debtor hereby covenants with ATB that:

- (a) the Debtor owns and will maintain the Collateral free of Encumbrances, except those agreed to in writing between ATB and the Debtor and those described in Schedule "B" hereto, or hereafter approved in writing by ATB prior to their creation or assumption, and will defend its title to the Collateral for the benefit of ATB against the claims and demands of all persons;
- (b) the Debtor will maintain the Collateral in good condition and repair and will not allow the value of the Collateral to be materially impaired and will permit ATB or such person as ATB may from time to time appoint to enter into any premises during business hours and on reasonable prior notice (or at such other time as may be reasonably requested by ATB or such person) where the Collateral may be kept to view its condition;
- (c) the Debtor will conduct its business in a proper and business-like manner and will keep proper books of account and records of its business, and upon request will furnish access to its books and records at all reasonable times, and will give to ATB any information which it may reasonably require relating to the Debtor's business;

- (d) the Debtor will punctually pay all rents, taxes, rates and assessments lawfully assessed or imposed upon any property or income of the Debtor and will punctually pay all debts and obligations to labourers, workers, employees, contractors, subcontractors, suppliers of materials and other creditors which, when unpaid, might under applicable federal, provincial, state or other laws have priority over the Security Interest granted by this Agreement;
- (e) the Debtor will punctually make all payments and perform all of its obligations under any contracts under which any material Collateral is held or to which it is subject;
- (f) the Debtor will immediately give notice to ATB of:
  - (i) any change in the location of the Collateral from that specified in Section 5(i) hereof;
  - (ii) the details of any material acquisition or disposition of Collateral (whether authorized by ATB or not), including any additions to or deletions from the listing of serial numbers and vehicle identification numbers specified in Schedule "A" hereto;
  - (iii) any material loss of or damage to Collateral;
  - (iv) the details of any claims or litigation that could adversely affect the Debtor or the Collateral in any material way;
  - (v) any change of its name or of any trade or business name used by it;
  - (vi) any change of its place of business, or if it has more than one place of business, of its chief executive office; and
  - (vii) any merger or amalgamation of the Debtor with any person;

and the Debtor agrees not to effect or permit any of the changes referred to in clauses (i), (ii), (v), (vi) or (vii) above unless all filings have been made and all other actions have been taken that are required or desirable (as determined by ATB) in order for ATB to continue to have a valid and perfected Security Interest in respect of the Collateral at all times following such change;

- (g) the Debtor will insure and keep insured the Collateral (or, in the case of any real property, the buildings located on and constituting part of the Collateral) against loss or damage by fire, lightning, explosion, smoke, impact by aircraft or land vehicle, riot, windstorm, hail and other insurable hazards to the extent of its full insurable value, and will maintain all such other insurance as ATB may reasonably require. The loss under the policies of insurance will be made payable to ATB as its interest may appear and will be written by an insurance company approved by ATB on terms reasonably satisfactory to ATB, and the Debtor will provide ATB with copies of the same. The Debtor will pay all premiums and other sums of money necessary for such purposes as they become due and will deliver to ATB proof of said payment, and will not allow anything to be done by which the policies may become vitiated. Upon the happening of any loss or damage the Debtor will furnish at its expense all necessary proofs and will do all necessary acts to enable ATB to obtain payment of the insurance monies;
- (h) the Debtor will observe the requirements of any regulatory or governmental authority with respect to the Collateral, except to the extent any failure to do so would not reasonably be expected to have a material adverse effect on its business, operations or financial condition or affect the priority of the Security Interest created hereunder or affect the rights and remedies of ATB hereunder;
- (i) the Debtor will not remove any of the Collateral from any location specified in Section 5(i) hereof without the prior written consent of ATB;
- (j) ATB may pay or satisfy any Encumbrance created in respect of any Collateral, or any sum necessary to be paid to clear title to such Collateral, and the Debtor agrees to repay the same on demand, plus interest thereon at a rate equal to the highest rate of interest payable by the Debtor on any portion of the Indebtedness;

- (k) ATB and the Debtor may from time to time agree in writing as to affirmative and negative covenants and restrictions to be performed and observed by the Debtor in respect of provision of financial information, payment of dividends, capital expenditures, incurring of additional obligations, reduction of capital, distribution of assets, amalgamation, repayment of loans, lending of money, sale and other disposition of assets and/or such other matters as ATB and the Debtor may think fit, and the Debtor agrees to perform and observe such affirmative and negative covenants and restrictions to the same extent and effect as if the same were fully set forth in this Agreement; and
- (l) the Debtor will not permit the Collateral constituting personal property to become affixed to real or other personal property (unless the Debtor owns such real or other personal property, and ATB has a Security Interest therein having the same priority as in respect of the Collateral becoming so affixed) without the prior consent of ATB in writing, and will obtain and deliver to ATB such waivers regarding the Collateral as ATB may reasonably request from any owner, landlord or mortgagee of the premises where the Collateral is or may be located.

## 7. DEFAULT

The happening of any of the following shall constitute default (a "Default") under this Agreement:

- (a) the Debtor fails to pay, when due, the Indebtedness or any part thereof;
- (b) the Debtor fails, when due, to perform any obligation (other than payment of the Indebtedness or any part thereof) to ATB, and such failure, if capable of being cured, is not cured within 5 days of the date the Debtor first knew or should have known of such failure;
- (c) the Debtor fails when due to perform any obligation to any other person, and such failure, if capable of being cured, is not cured within 7 days of the date the Debtor first knew or should have known of such failure;
- (d) any representation or warranty made in this Agreement or any other document or report furnished to ATB in respect of the Debtor or the Collateral is false or misleading in any material respect;
- (e) the Debtor ceases or demonstrates an intention to cease to carry on business or disposes or purports to dispose of all or a substantial part of its assets;
- (f) any of the licenses, permits or approvals granted by any government or any government authority and material to the business of the Debtor is withdrawn, cancelled or significantly altered;
- (g) an order is made or a resolution is passed for winding up the Debtor, or a petition is filed for the winding up, dissolution, liquidation or amalgamation of the Debtor or any arrangement or composition of its debts;
- (h) the Debtor becomes insolvent or makes an assignment or proposal or files a notice of intention to make a proposal for the benefit of its creditors, or a bankruptcy petition or receiving order is filed or made against the Debtor, or a Receiver (as hereinafter defined), trustee, custodian or other similar official of the Debtor or any part of its property is appointed, or the Debtor commits or demonstrates an intention to commit any act of bankruptcy, or the Debtor otherwise becomes subject to the provisions of the *Bankruptcy and Insolvency Act (Canada)*, the *Companies' Creditors Arrangements Act (Canada)* or any other act for the benefit of its creditors;
- (i) any execution, sequestration, extent or distress or any other like process is levied or enforced against any property of the Debtor, or a secured party takes possession of any of the Debtor's property;
- (j) any material adverse change occurs in the financial position of the Debtor; or
- (k) ATB considers that it is insecure, or that the prospect of payment or performance by the Debtor of the Indebtedness is or is about to be impaired, or that the Collateral is or is about to be placed in jeopardy.

## 8. REMEDIES

On Default:

- (a) ATB may seize or otherwise take possession of the Collateral or any part thereof and sell the same by public or private sale at such price and upon such terms as ATB in its sole discretion may determine, and the proceeds of such sale less all costs and expenses of ATB (including costs as between a solicitor and its own client on a full indemnity basis) shall be applied on the Indebtedness and the surplus, if any, shall be disposed of according to law;
- (b) ATB may apply to a court of competent jurisdiction for the sale or foreclosure of any or all of the Collateral;
- (c) ATB may enforce this Agreement by any method provided for in this Agreement, under the PPSA or under any other applicable statute or otherwise as permitted by law, and may dispose of the Collateral by any method permitted by law, including disposal by lease or deferred payment;
- (d) ATB may apply to a court for the appointment of a Receiver (as hereinafter defined), or may appoint by instrument any person or persons, to be a Receiver of any Collateral, and may remove any person so appointed and appoint another in his stead. The term "Receiver" as used in this Agreement includes a receiver, a manager and a receiver-manager;
- (e) any Receiver will have the power:
  - (i) to take possession of any or all of the Collateral and for that purpose to take any proceedings, in the name of the Debtor or otherwise;
  - (ii) to carry on or concur in carrying on the business of the Debtor and enter on, occupy and use (without charge by the Debtor) any of the premises, buildings, plant and undertaking of, or occupied or used by, the Debtor;
  - (iii) to sell or lease any Collateral;
  - (iv) to make any arrangement or compromise which he may think expedient in the interest of ATB;
  - (v) to pay all liabilities and expenses connected with the Collateral, including the cost of insurance and payment of taxes or other charges incurred in obtaining, maintaining possession of and preserving the Collateral, and the same shall be added to the Indebtedness and secured by the Collateral;
  - (vi) to hold as additional security any increase or profits resulting from the Collateral;
  - (vii) to exercise all rights that ATB has under this Agreement or otherwise at law;
  - (viii) with the consent of ATB in writing, to borrow money for the purpose of carrying on the business of the Debtor or for the maintenance of the Collateral or any part thereof or for other purposes approved by ATB, and any amount so borrowed together with interest thereon shall form a charge upon the Collateral in priority to the Security Interest created by this Agreement;
  - (ix) to enter into and to occupy any premises in which the Debtor has any interest; and
  - (x) to exercise any of the powers and rights of an Entitlement Holder in respect of any Security Entitlement of the Debtor;
- (f) the Debtor hereby appoints each Receiver appointed by ATB to be its attorney to effect the sale or lease of any Collateral and any deed, lease, agreement or other document signed by a Receiver under his seal pursuant hereto will have the same effect as if it were under the seal of the Debtor;
- (g) any Receiver will be deemed (for purposes relating to responsibility for the Receiver's acts or omissions) to be the agent of the Debtor and not of ATB, and the Debtor will be solely responsible for his acts or defaults and for his remuneration and expenses, and ATB will not be in any way responsible for any misconduct or negligence on the part of any Receiver;
- (h) neither ATB nor any civil enforcement agent, sheriff, Receiver or person having similar responsibilities will be required to take any steps to preserve any rights against other parties pursuant to any Collateral, including without



limitation, any Investment Property, Chattel Paper or Instrument constituting the Collateral or any part of it. Furthermore, ATB shall have no obligation to take any steps to preserve prior encumbrances on any Collateral whether or not in ATB's possession and shall not be liable or accountable for failure to do so;

- (i) neither ATB nor any civil enforcement agent, sheriff, Receiver or person having similar responsibilities is required to keep Collateral identifiable; and
- (j) ATB may use the Collateral in any manner as it in its sole discretion deems advisable.

ATB may exercise any or all of the foregoing rights and remedies (or any other rights and remedies available to ATB) without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except as required by applicable law) to or on the Debtor or any other person, and the Debtor by this Agreement waives each such demand, presentment, protest, advertisement and notice to the extent permitted by applicable law. None of the rights and remedies contained herein or otherwise available to ATB will be exclusive of or dependent on or merge in any other right or remedy, and one or more of such rights and remedies may be exercised independently or in combination from time to time.

## 9. COLLECTION OF DEBTS

Before or after Default, ATB may notify all or any Account Debtors of the Security Interest and may also direct such Account Debtors to make all payments on any Collateral to ATB. The Debtor acknowledges that any payments on or other proceeds of Collateral received by the Debtor from Account Debtors after Default under this Agreement and whether before or after notification of this Security Interest to Account Debtors shall be received and held by the Debtor in trust for ATB and shall be turned over to ATB on request. The Debtor shall furnish ATB with all information which may assist in the collection of all Accounts and any other monies or debts due to the Debtor.

## 10. INVESTMENT PROPERTY

If the Collateral at any time includes Investment Property, the Debtor irrevocably authorizes and appoints ATB as its attorney and agent to transfer the same or any part thereof into its own name or that of its nominee(s) so that ATB or its nominee(s) may appear on record as the sole owner thereof; provided that, until Default, ATB shall deliver promptly to the Debtor all notices or other communications received by it or its nominee(s) as such registered owner and, upon demand and receipt of payment of any necessary expenses thereof, shall issue to the Debtor or its order a proxy to vote and take all action with respect to such Investment Property. After Default, the Debtor waives all rights to receive any notices or communications received by ATB or its nominee(s) as such registered owner and agrees that no proxy issued by ATB to the Debtor or to its order as aforesaid shall thereafter be effective. These powers are coupled with an interest and are irrevocable until this Agreement is terminated and the Security Interests created by this Agreement are released.

## 11. COLLATERAL IN POSSESSION OF ATB

The Debtor agrees with ATB that, with respect to any Collateral held in the possession of ATB pursuant to this Agreement ("Retained Collateral"):

- (a) ATB's responsibility with regard to the Retained Collateral shall be limited to exercising the same degree of care which it gives to similar property held by ATB at the branch where the Retained Collateral is held. ATB shall not in any event be obligated to protect the Retained Collateral from depreciating or becoming worthless, or to present, protest, collect, enforce or realize on any of the Retained Collateral;
- (b) ATB shall not be obliged to collect or see to the payment of revenue, income, interest or dividends upon any of the Retained Collateral, but all such revenue, income, interest or dividends, if any, when received by the Debtor, shall immediately be paid to ATB. ATB, in its sole discretion, may hold such monies as Collateral or appropriate it to any portion of the Indebtedness;
- (c) the Debtor irrevocably appoints ATB as its attorney and agent, with full powers of substitution, to sell, transfer, surrender, redeem, endorse or otherwise deal with any of the Retained Collateral as ATB, in its sole discretion, may see fit. These powers are coupled with an interest and are irrevocable until this Agreement is terminated and the Security Interests created by this Agreement are released; and
- (d) ATB shall have all rights and powers, but shall not be required to exercise any right or benefit which the holder or owner of the Retained Collateral may at any time have in connection with the Retained Collateral.

**12. ACCELERATION**

In the event of Default, ATB, in its sole discretion, may without demand or notice of any kind, declare all or any of the Indebtedness which is not by its terms payable on demand, to be immediately due and payable. The provisions of this section are not intended in any way to affect any rights of ATB with respect to any Indebtedness which may now or hereafter be payable on demand.

**13. NOTICE**

Any notice or demand required or permitted to be made or given by ATB to the Debtor may be validly served by delivering the same or by mailing the same prepaid registered mail, addressed to the Debtor at the last known address of the Debtor or of any officer or director thereof, as shown on the records of ATB, and in the case of mailing, such notice or demand shall be deemed to have been received by the Debtor on the third business day following the date of mailing.

**14. COSTS AND EXPENSES**

The Debtor agrees to pay all reasonable costs, charges and expenses incurred by ATB or any Receiver appointed by it (including without restricting the generality of the foregoing, legal costs as between a solicitor and his own client on a full indemnity basis and also an allowance for the time, work and expenses of ATB or any agent, solicitor, or servant of ATB for any purpose herein provided at such rates as ATB may establish in its sole discretion from time to time) in preparing, registering or enforcing this Agreement, taking custody of, preserving, maintaining, repairing, processing, preparing for disposing of the Collateral and in enforcing or collecting the Indebtedness, and all such costs, charges and expenses shall be a first charge on the proceeds of realization, collection or disposition of the Collateral and shall be secured hereby.

**15. REAL PROPERTY (ONLY APPLICABLE IF OPTION (b) IN SCHEDULE A HAS BEEN SELECTED OR DEEMED TO HAVE BEEN SELECTED)**

- (a) For all purposes, including for the purposes of any application to register a crystallized floating charge under the *Land Title Act* (British Columbia) against any real property, the floating charge created by this Agreement shall be crystallized and become a fixed charge against all of the property which is then subject to the floating charge upon the earliest of:
- (i) any one of the events described in Section 7 hereof occurring;
  - (ii) a declaration by ATB pursuant to Section 12 or a demand for payment otherwise being made by ATB;
  - (iii) ATB taking any action to appoint a Receiver or to enforce its Security Interest or to realize upon all or any part of the Collateral; or
  - (iv) ATB taking any action to register the floating charge granted hereunder or any caveat, security notice or other instrument in respect thereof against all or any part of the property which was subject to the floating charge at any real property registry or other similar office.
- (b) In accordance with the *Property Law Act* (British Columbia), the doctrine of consolidation applies to this Agreement.

**16. REGISTRATION**

The Debtor will ensure that this Agreement and all such supplementary and corrective instruments and any additional mortgage and security documents, and all documents, caveats, cautions, security notices and financing statements in respect thereof, are promptly filed and refiled, registered and re-registered and deposited and re-deposited, in such manner, in such offices and places, and at such times and as often as may be required by applicable law or as may be necessary or desirable to perfect and preserve the Security Interests as a first priority mortgage, charge and security interest and the rights conferred or intended to be conferred upon ATB by the Security Interests and will cause to be furnished promptly to ATB evidence satisfactory to ATB of such filing, registering and depositing.

17. MISCELLANEOUS

- (a) Without limiting any other right of ATB, whenever the debts and liabilities of the Debtor to ATB are immediately due and payable, or ATB has the right to declare the debts and liabilities to be immediately due and payable, whether or not it has so declared, ATB may, in its sole discretion, set-off against the debts and liabilities any and all monies then owed to the Debtor by ATB in any capacity, whether due or not due, and ATB shall be deemed to have exercised such right of set-off immediately at the time of making its decision to do so even though any charge therefor is made or entered on ATB's records subsequent thereto.
- (b) ATB may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges and otherwise deal with the Debtor, sureties and others and with Collateral and other security as ATB may see fit without prejudice to the liability of the Debtor or to ATB's right to hold and realize the Security Interest. ATB may demand, collect and sue on the Collateral in either the Debtor's or ATB's name, at ATB's option, and may endorse the Debtor's name on any and all cheques, commercial paper and any other instruments pertaining to or constituting Collateral and for this purpose, the Debtor irrevocably authorizes and appoints ATB as its attorney and agent, with full power of substitution. These powers are coupled with an interest and are irrevocable until this Agreement is terminated and the Security Interests created by this Agreement are released.
- (c) Upon the Debtor's failure to perform any of its obligations under this Agreement, ATB may, but shall not be required to, perform any such obligations, and the Debtor will pay to ATB, upon demand, an amount equal to the expense incurred by ATB in so doing with interest thereon from the date such expense is incurred at a rate equal to the highest rate of interest payable by the Debtor on any portion of the Indebtedness.
- (d) This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns. The Debtor may not assign this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of ATB. In any action brought by an assignee of this Agreement or the Security Interest created hereunder or any part thereof, the Debtor shall not assert against the assignee any claim or defense which the Debtor now has or hereafter may have against ATB.
- (e) If more than one person executes this Agreement as the Debtor:
  - (i) the obligations of such persons hereunder shall be joint and several;
  - (ii) the Security Interests shall secure the Indebtedness of each Debtor, whether or not any other Debtor or any other person is also liable therefor; and
  - (iii) the Collateral shall include the interest of any Debtor in the property, assets and undertaking constituting Collateral owned or otherwise held by such Debtor, whether or not any other Debtor also has an interest therein.
- (f) The Debtor acknowledges and agrees that in the event it amalgamates with any other corporation or corporations it is the intention of the parties hereto that the term "Debtor" when used herein shall apply to each of the amalgamating corporations and to the amalgamated corporation, such that the Security Interests granted hereby:
  - (i) shall extend and attach to "Collateral" (as that term is herein defined) owned by each of the amalgamating corporations and the amalgamated corporation at the time of amalgamation and to any "Collateral" thereafter owned or acquired by the amalgamated corporation; and
  - (ii) shall secure the "Indebtedness" (as that term is herein defined) of each of the amalgamating corporations and the amalgamated corporation to ATB at the time of amalgamation and any "Indebtedness" of the amalgamated corporation to ATB thereafter arising.
- (g) This Agreement is in addition to and not in substitution for any other security or securities now or hereafter held by ATB and all such other securities shall remain in full force and effect. ATB will not be obliged to exhaust its recourse against the Debtor or any other person or against any other security it may hold in respect of the Indebtedness before realizing upon or otherwise dealing with the Collateral in such manner as ATB may consider desirable.

- (h) The Debtor further agrees to execute and deliver to ATB such further assurances and conveyances and supplemental deeds and instruments as may be necessary to properly carry out the intention of this Agreement, as determined by ATB, or as may be required by ATB from time to time, in each case acting reasonably.
- (i) After Default, ATB may from time to time apply and re-apply, notwithstanding any previous application, in any such manner as it, in its sole discretion, sees fit, any monies received by it from the Debtor or as a result of any enforcement or recovery proceedings, in or toward payment of any portion of the Indebtedness. The Debtor will remain liable for any Indebtedness that is outstanding following realization of all or any part of the Collateral and the application of the proceeds thereof.
- (j) In the event that the Debtor is a body corporate, it is hereby agreed that *The Limitation of Civil Rights Act* (Saskatchewan), or any provision thereof, shall have no application to this Agreement or any agreement or instrument renewing or extending or collateral to this Agreement. In the event that the Debtor is an agricultural corporation within the meaning of *The Saskatchewan Farm Security Act* (Saskatchewan), the Debtor agrees with ATB that all of Part IV (other than Section 46) of that Act shall not apply to the Debtor.
- (k) In the event that the Debtor is a body corporate, the Debtor further agrees that *The Land Contracts (Actions) Act* (Saskatchewan) shall have no application to an action, as defined in that Act, with respect to this Agreement.
- (l) For the purpose of assisting ATB in assessing the creditworthiness of the Debtor or the ownership or description of any of the Collateral, and for the purpose of collecting all or any portion of the Indebtedness owing by the Debtor to ATB, the Debtor consents to the disclosure and release to ATB of personal information, including without limitation, motor vehicle information from Alberta Registries (or any other provincial government department having jurisdiction in that area). This consent is effective from the effective date of this Agreement and shall remain in effect until all Indebtedness is fully satisfied.

## 18. INTERPRETATION

- (a) If a portion of this Agreement is wholly or partially invalid, then this Agreement will be interpreted as if the invalid portion had not been a part of it.
- (b) Where the context so requires, the singular number shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary depending upon the person referred to being male, female or body corporate.

## 19. GOVERNING LAW

This Agreement will be interpreted in accordance with the laws of the Province of Alberta, and the Debtor irrevocably agrees that any suit or proceeding with respect to any matters arising out of or in connection with this Agreement may be brought in the courts of such Province or in any court of competent jurisdiction, as ATB may elect, and the Debtor agrees to attorn to the same.

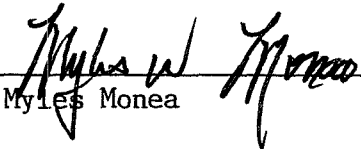
20. COPY OF AGREEMENT

The Debtor hereby acknowledges receipt of a copy of this Agreement, and waives any right it may have to receive a Financing Statement, Financing Change Statement or Verification Statement relating to it.

IN WITNESS WHEREOF the Debtor has executed this Agreement this 14 day of AUGUST, 2012.

\_\_\_\_\_  
Witness:

CUSTOM BULK SERVICES INC.

Per:   
\_\_\_\_\_  
Per: Myles Monea

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
And per:

Full Address of Debtor:  
#33, 38311 RANGE RD. 270  
\_\_\_\_\_  
RED DEER, ALBERTA  
\_\_\_\_\_  
T4E 1B5  
\_\_\_\_\_

Full List of all prior names by which Debtor has been known (whether by way of name change, amalgamation or otherwise):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SCHEDULE A**

Description of Collateral:

Select appropriate box or boxes. If no box is selected, the Debtor shall be deemed to have selected box (b).

- (a) All of the Debtor's present and after-acquired Personal Property.
- (b) All of the Debtor's present and after-acquired property, assets and undertaking, including without limitation all present and after-acquired Personal Property, and all present and after-acquired real, immoveable and leasehold property.
- (c) All of the Debtor's present and after-acquired Personal Property except \_\_\_\_\_ :
- (d) All of the Debtor's \_\_\_\_\_ equipment of whatever kind and wherever situated including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatever nature.
- (e) All Accounts, Instruments, debts and Chattel Paper which are now due, owing or accruing due, or which may hereafter become due, owing or accruing due, to the Debtor, together with all records (whether in writing or not) and other documents of any kind which in any way evidence or relate to any or all of the Accounts, Instruments, debts or Chattel Paper.
- (f) All of the Debtor's present and after-acquired Inventory, wherever located.
- (g) The following described Personal Property of the Debtor:
  
- (h) All harvested and unharvested crops whether growing or matured, and whether grain, roots, seeds, leaves or otherwise howsoever, and any interest of the Debtor therein, wherever located.
- (i) All of the Debtor's \_\_\_\_\_, male or female, born or unborn, branded or unbranded, of whatever age or stage of growth, wherever located.

Listing of Serial Numbers:

The registration mark (for aircraft only) and the serial numbers or vehicle identification numbers of any motor vehicles, trailers, mobile homes, manufactured homes, boats, outboard motors for boats, or aircraft (other than those held as Inventory for sale or lease by the Debtor) constituting Collateral are as follows:

<u>Make</u>	<u>Model</u>	<u>Year of Manufacture</u>	<u>Serial Number (and Registration Mark for aircraft only)</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

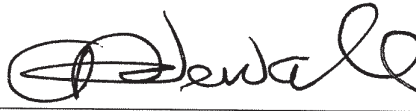
Locations of Collateral:

The Collateral is located at the following location(s):

---

**SCHEDULE B  
PERMITTED ENCUMBRANCES**

This is Exhibit "M" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



---

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

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





LAND TITLE CERTIFICATE

S  
LINC                      SHORT LEGAL                      TITLE NUMBER  
0012 319 117            8020947;;2                      972 302 793

LEGAL DESCRIPTION  
PLAN 8020947  
LOT 2  
EXCEPTING THEREOUT ALL MINES AND MINERALS

ESTATE: FEE SIMPLE  
ATS REFERENCE: 4;28;36;36;SW

MUNICIPALITY: TOWN OF PENHOLD

REFERENCE NUMBER: 972 294 623

---

REGISTERED OWNER(S)				
REGISTRATION	DATE (DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
972 302 793	02/10/1997	TRANSFER OF LAND	\$14,000	\$14,000

---

OWNERS

CUSTOM BULK SERVICES INC.  
OF #33, 38311 RANGE RD. 270  
RED DEER  
ALBERTA T4E 1B5  
(DATA UPDATED BY: CHANGE OF ADDRESS 072129318)

---

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION	DATE (D/M/Y)	PARTICULARS
NUMBER		
062 384 277	29/08/2006	MORTGAGE MORTGAGEE - ALBERTA TREASURY BRANCHES. 100, 4911-51 ST RED DEER ALBERTA T4N6V4 ORIGINAL PRINCIPAL AMOUNT: \$313,000
122 268 071	16/08/2012	MORTGAGE MORTGAGEE - ALBERTA TREASURY BRANCHES. 6794-50 AVE

-----  
ENCUMBRANCES, LIENS & INTERESTS

PAGE 2  
# 972 302 793

REGISTRATION

NUMBER      DATE (D/M/Y)      PARTICULARS

-----

RED DEER  
ALBERTA T4N4E1  
ORIGINAL PRINCIPAL AMOUNT: \$1,300,000

132 194 298      27/06/2013 AMENDING AGREEMENT  
AMOUNT: \$2,700,000  
AFFECTS INSTRUMENT:      122268071

TOTAL INSTRUMENTS: 003

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN  
ACCURATE REPRODUCTION OF THE CERTIFICATE OF  
TITLE REPRESENTED HEREIN THIS 12 DAY OF JUNE,  
2020 AT 08:41 A.M.

ORDER NUMBER:      39498998

CUSTOMER FILE NUMBER:      54614-1



\*END OF CERTIFICATE\*

-----  
THIS ELECTRONICALLY TRANSMITTED LAND TITLES PRODUCT IS INTENDED  
FOR THE SOLE USE OF THE ORIGINAL PURCHASER, AND NONE OTHER,  
SUBJECT TO WHAT IS SET OUT IN THE PARAGRAPH BELOW.

THE ABOVE PROVISIONS DO NOT PROHIBIT THE ORIGINAL PURCHASER FROM  
INCLUDING THIS UNMODIFIED PRODUCT IN ANY REPORT, OPINION,  
APPRAISAL OR OTHER ADVICE PREPARED BY THE ORIGINAL PURCHASER AS  
PART OF THE ORIGINAL PURCHASER APPLYING PROFESSIONAL, CONSULTING  
OR TECHNICAL EXPERTISE FOR THE BENEFIT OF CLIENT(S).



LAND TITLE CERTIFICATE

S  
LINC                      SHORT LEGAL                      TITLE NUMBER  
0017 153 602            9120596;;7                      972 302 794

LEGAL DESCRIPTION  
PLAN 9120596  
LOT 7  
EXCEPTING THEREOUT ALL MINES AND MINERALS

ESTATE: FEE SIMPLE  
ATS REFERENCE: 4;28;36;36;SW

MUNICIPALITY: TOWN OF PENHOLD

REFERENCE NUMBER: 972 294 624

---

REGISTERED OWNER(S)				
REGISTRATION	DATE (DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
972 302 794	02/10/1997	TRANSFER OF LAND	\$16,000	\$16,000

---

OWNERS

CUSTOM BULK SERVICES INC.  
OF #33, 38311 RANGE RD. 270  
RED DEER  
ALBERTA T4E 1B5  
(DATA UPDATED BY: CHANGE OF ADDRESS 072129318)

---

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
062 384 277	29/08/2006	MORTGAGE MORTGAGEE - ALBERTA TREASURY BRANCHES. 100, 4911-51 ST RED DEER ALBERTA T4N6V4 ORIGINAL PRINCIPAL AMOUNT: \$313,000
122 268 071	16/08/2012	MORTGAGE MORTGAGEE - ALBERTA TREASURY BRANCHES. 6794-50 AVE

-----  
ENCUMBRANCES, LIENS & INTERESTS

PAGE 2  
# 972 302 794

REGISTRATION

NUMBER      DATE (D/M/Y)      PARTICULARS

-----

RED DEER  
ALBERTA T4N4E1  
ORIGINAL PRINCIPAL AMOUNT: \$1,300,000

132 194 298      27/06/2013 AMENDING AGREEMENT  
AMOUNT: \$2,700,000  
AFFECTS INSTRUMENT:      122268071

TOTAL INSTRUMENTS: 003

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN  
ACCURATE REPRODUCTION OF THE CERTIFICATE OF  
TITLE REPRESENTED HEREIN THIS 4 DAY OF JUNE,  
2020 AT 01:46 P.M.

ORDER NUMBER:      39437958

CUSTOMER FILE NUMBER:      273913

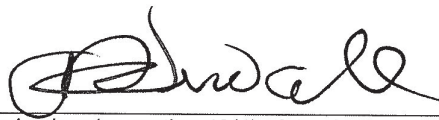


\*END OF CERTIFICATE\*

-----  
THIS ELECTRONICALLY TRANSMITTED LAND TITLES PRODUCT IS INTENDED  
FOR THE SOLE USE OF THE ORIGINAL PURCHASER, AND NONE OTHER,  
SUBJECT TO WHAT IS SET OUT IN THE PARAGRAPH BELOW.

THE ABOVE PROVISIONS DO NOT PROHIBIT THE ORIGINAL PURCHASER FROM  
INCLUDING THIS UNMODIFIED PRODUCT IN ANY REPORT, OPINION,  
APPRAISAL OR OTHER ADVICE PREPARED BY THE ORIGINAL PURCHASER AS  
PART OF THE ORIGINAL PURCHASER APPLYING PROFESSIONAL, CONSULTING  
OR TECHNICAL EXPERTISE FOR THE BENEFIT OF CLIENT(S).

This is Exhibit "N" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



---

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

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

Search ID #: Z12729055

**Transmitting Party**

WEST-END REGISTRATIONS LICENSING & SEARCHES  
LTD. (P158)

10011 170 STREET  
EDMONTON, AB T5P 4R5

Party Code: 50076967

Phone #: 780 483 8211

Reference #: 02945081-EDD3 5  
1025

Search ID #: Z12729055

Date of Search: 2020-Jun-08

Time of Search: 09:56:56

**Business Debtor Search For:**

NORTHERN SILICA CORPORATION

Exact Result(s) Only Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.  
Be sure to read the reports carefully.



Search ID #: Z12729055

**Business Debtor Search For:**

NORTHERN SILICA CORPORATION

Search ID #: Z12729055

Date of Search: 2020-Jun-08

Time of Search: 09:56:56

---

Registration Number: 20042821873

Registration Type: SECURITY AGREEMENT

Registration Date: 2020-Apr-28

Registration Status: Current

Expiry Date: 2022-Apr-28 23:59:59

---

Exact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 NORTHERN SILICA CORPORATION  
204-1212 1 STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 JACK CARTER CHEVROLET BUICK GMC LTD  
11555-29 STREET SE  
CALGARY, AB T2Z 0N4  
Phone #: 403 258 6300 Fax #: 403 255 8284  
Email: lease@jackcarterchev.com

Current

**Collateral: Serial Number Goods**

<b><u>Block</u></b>	<b><u>Serial Number</u></b>	<b><u>Year</u></b>	<b><u>Make and Model</u></b>	<b><u>Category</u></b>	<b><u>Status</u></b>
1	3GTU2PEC3GG232069	2016	GMC SIERRA 1500	MV - Motor Vehicle	Current

Result Complete

Search ID #: Z12729210

**Transmitting Party**

WEST-END REGISTRATIONS LICENSING & SEARCHES  
LTD. (P158)

10011 170 STREET  
EDMONTON, AB T5P 4R5

Party Code: 50076967

Phone #: 780 483 8211

Reference #: 02945202-EDD3 5  
1025

Search ID #: Z12729210

Date of Search: 2020-Jun-08

Time of Search: 10:14:51

**Business Debtor Search For:**

HEEMSKIRK MINING PTY LTD.

No Result(s) Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.  
Be sure to read the reports carefully.

Result Complete





Search ID #: Z12729045

**Transmitting Party**

WEST-END REGISTRATIONS LICENSING & SEARCHES  
LTD. (P158)

10011 170 STREET  
EDMONTON, AB T5P 4R5

Party Code: 50076967

Phone #: 780 483 8211

Reference #: 02945074-EDD3 5  
1025

Search ID #: Z12729045

Date of Search: 2020-Jun-08

Time of Search: 09:55:27

**Business Debtor Search For:**

HEEMSKIRK CANADA HOLDINGS LIMITED

Both Exact and Inexact Result(s) Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.  
Be sure to read the reports carefully.



Search ID #: Z12729045

**Business Debtor Search For:**

HEEMSKIRK CANADA HOLDINGS LIMITED

Search ID #: Z12729045

Date of Search: 2020-Jun-08

Time of Search: 09:55:27

---

Registration Number: 11082612805

Registration Type: SECURITY AGREEMENT

Registration Date: 2011-Aug-26

Registration Status: Current

Expiry Date: 2021-Aug-26 23:59:59

---

Inexact Match on: Debtor No: 2

---

**Amendments to Registration**

14040911883	Amendment And Renewal	2014-Apr-09
15070638641	Amendment	2015-Jul-06
15071029726	Amendment	2015-Jul-10
15071435786	Amendment	2015-Jul-14
16051217637	Amendment	2016-May-12
16051224947	Amendment	2016-May-12

---

**Debtor(s)**

**Block**

1 HEEMSKIRK CANADA LIMITED  
1212 - 1ST STREET SE  
CALGARY, AB T2G 2H8

**Status**

Deleted by  
16051224947

**Block**

2 HEEMSKIRK CANADA LIMITED  
#204, 1212 - 1ST STREET SE  
CALGARY, AB T2G 2H8

**Status**

Current by  
16051224947

---

**Secured Party / Parties**

**Block**

1 CANADIAN IMPERIAL BANK OF COMMERCE  
595 BAY STREET, SUITE 500  
TORONTO, ON M5G 2C2

**Status**

Deleted by  
15070638641

Search ID #: Z12729045

**Block**

2 CANADIAN IMPERIAL BANK OF COMMERCE  
595 BAY STREET, 5TH FLOOR  
TORONTO, ON M5G 2C2

**Status**

Current by  
15070638641

**Collateral: General**

**Block**

**Description**

**Status**

- |    |   |                           |
|----|---|---------------------------|
| 1  | All present and after-acquired personal property of the Debtor  | Deleted By<br>15070638641 |
| 2  | All accounts, instruments and debts which are now due, owing or accruing due, or which may hereafter become due, owing or accruing due, to the Debtor, together with all records (whether in writing or not), and other documents of any kind which in any way evidence or relate to any or all of the accounts, instruments and debts, including without limitation, deposit account no. 00009/8004218 in the amount of CAD \$100,000 and deposit account no. 00009/0465313 in the amount of US \$1,719,585 and all certificates of deposit and other investments in which such funds may be invested from time to time.<br><br>Proceeds: all goods, documents of title, chattel paper, instruments, money, securities and intangibles and any other present and after-acquired personal property. | Deleted By<br>15071029726 |
| 3  | All deposit accounts of the debtor held at Canadian Imperial Bank   | Deleted By<br>15071435786 |
| 4  | of Commerce, including all cash and other financial assets  | Deleted By<br>15071435786 |
| 5  | credited to deposit account no.8004218 at transit 00009 in the  | Deleted By<br>15071435786 |
| 6  | amount of CAD 100,000.00 Proceeds: goods, securities,   | Deleted By<br>15071435786 |
| 7  | instruments, documents of title, chattel paper, intangibles, all  | Deleted By<br>15071435786 |
| 8  | as defined in the Personal Property Security Act of Alberta and   | Deleted By<br>15071435786 |
| 9  | regulations thereunder, derived directly or indirectly from any   | Deleted By<br>15071435786 |
| 10 | dealings with the original collateral.  | Deleted By<br>15071435786 |
| 11 | Deposit account no.8004218 of the debtor at transit 00009 in the amount of CAD 100,000.00 held at Canadian Imperial Bank of Commerce, including all cash and other financial assets credited to such deposit account and all certificates of deposit and other investments in which such funds may be invested from time to time. Proceeds: goods, securities, instruments, documents of title, chattel paper, intangibles, all as defined in the Personal Property Security Act of Alberta and regulations thereunder, derived directly or indirectly from any dealings with the original collateral.  | Deleted By<br>16051217637 |
| 12 | Deposit account no.8004218 of the debtor at transit 00009   | Deleted By<br>16051224947 |

Search ID #: Z12729045

13	in the amount of CAD 100,000.00 held at Canadian Imperial	Deleted By 16051224947
14	Bank of Commerce, including all cash and other financial	Deleted By 16051224947
15	assets credited to such deposit account and all certificates	Deleted By 16051224947
16	of deposit and other investments in which such funds may be	Deleted By 16051224947
17	invested from time to time. Proceeds: goods, securities,	Deleted By 16051224947
18	instruments, documents of title, chattel paper, intangibles,	Deleted By 16051224947
19	all as defined in the Personal Property Security Act of	Deleted By 16051224947
20	Alberta and regulations thereunder, derived directly or	Deleted By 16051224947
21	indirectly from any dealings with the original collateral.	Deleted By 16051224947
22	All deposit accounts of the debtor held at Canadian Imperial Bank	Current By 16051224947
23	of Commerce, including all cash and other financial assets	Current By 16051224947
24	credited thereto. Proceeds: goods, securities, instruments,	Current By 16051224947
25	documents of title, chattel paper, intangibles, all as defined in	Current By 16051224947
26	the Personal Property Security Act of Alberta and regulations	Current By 16051224947
27	thereunder, derived directly or indirectly from any dealings with	Current By 16051224947
28	the original collateral.	Current By 16051224947

**Particulars**

<b><u>Block</u></b>	<b><u>Additional Information</u></b>	<b><u>Status</u></b>
1	The complete address of the Secured Party is:  Canadian Imperial Bank of Commerce Commercial Sales and Service Centre 595 Bay Street, Suite 500 Toronto, ON M5G 2C2	Current

Search ID #: Z12729045

**Business Debtor Search For:**

HEEMSKIRK CANADA HOLDINGS LIMITED

Search ID #: Z12729045

Date of Search: 2020-Jun-08

Time of Search: 09:55:27

---

Registration Number: 16020932593

Registration Type: SECURITY AGREEMENT

Registration Date: 2016-Feb-09

Registration Status: Current

Expiry Date: 2023-Feb-09 23:59:59

---

Exact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA HOLDINGS LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 TAURUS RESOURCES NO. 2 B.V.  
JACHTHAVENWEG 109H, 1081 KM  
AMSTERDAM, THE NETHERLANDS, XX

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 All present and after-acquired personal property of the debtor.

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 The complete address of debtor block 1 is as follows:  
c/o HCA Mountain Minerals (Moberly) Limited  
Suite 204, 1212-1st Street SE  
Calgary, AB  
T2G 2H8

Current

Search ID #: Z12729045

**Business Debtor Search For:**

HEEMSKIRK CANADA HOLDINGS LIMITED

Search ID #: Z12729045

Date of Search: 2020-Jun-08

Time of Search: 09:55:27

---

Registration Number: 16020932768

Registration Type: LAND CHARGE

Registration Date: 2016-Feb-09

Registration Status: Current

Registration Term: Infinity

---

Exact Match on:

Debtor

No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA HOLDINGS LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 TAURUS RESOURCES NO. 2 B.V.  
JACHTHAVENWEG 109H, 1081 KM  
AMSTERDAM, THE NETHERLANDS, XX

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 The complete address of debtor block 1 is as follows:  
c/o HCA Mountain Minerals (Moberly) Limited  
Suite 204, 1212-1st Street SE  
Calgary, AB  
T2G 2H8

Current

Search ID #: Z12729045

**Business Debtor Search For:**

HEEMSKIRK CANADA HOLDINGS LIMITED

Search ID #: Z12729045

Date of Search: 2020-Jun-08

Time of Search: 09:55:27

---

Registration Number: 16020932885

Registration Type: SECURITY AGREEMENT

Registration Date: 2016-Feb-09

Registration Status: Current

Expiry Date: 2023-Feb-09 23:59:59

---

Inexact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 TAURUS RESOURCES NO. 2 B.V.  
JACHTHAVENWEG 109H, 1081 KM  
AMSTERDAM, THE NETHERLANDS, XX

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 All present and after-acquired personal property of the debtor.

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 The complete address of debtor block 1 is as follows:  
c/o HCA Mountain Minerals (Moberly) Limited  
Suite 204, 1212-1st Street SE  
Calgary, AB  
T2G 2H8

Current

Search ID #: Z12729045

**Business Debtor Search For:**

HEEMSKIRK CANADA HOLDINGS LIMITED

Search ID #: Z12729045

Date of Search: 2020-Jun-08

Time of Search: 09:55:27

---

Registration Number: 16020932911

Registration Type: LAND CHARGE

Registration Date: 2016-Feb-09

Registration Status: Current

Registration Term: Infinity

---

Inexact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 TAURUS RESOURCES NO. 2 B.V.  
JACHTHAVENWEG 109H, 1081 KM  
AMSTERDAM, THE NETHERLANDS, XX

Current

**Particulars**

**Block** **Additional Information**

**Status**

1 The complete address of debtor block 1 is as follows:  
c/o HCA Mountain Minerals (Moberly) Limited  
Suite 204, 1212-1st Street SE  
Calgary, AB  
T2G 2H8

Current



Search ID #: Z12729045

**Business Debtor Search For:**

HEEMSKIRK CANADA HOLDINGS LIMITED

Search ID #: Z12729045

Date of Search: 2020-Jun-08

Time of Search: 09:55:27

---

Registration Number: 16020932986

Registration Type: SECURITY AGREEMENT

Registration Date: 2016-Feb-09

Registration Status: Current

Expiry Date: 2023-Feb-09 23:59:59

---

Inexact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 TAURUS RESOURCES NO. 2 B.V.  
JACHTHAVENWEG 109H, 1081 KM  
AMSTERDAM, THE NETHERLANDS, XX

Current

Search ID #: Z12729045

**Collateral: General**

<b><u>Block</u></b>	<b><u>Description</u></b>	<b><u>Status</u></b>
1	<p>(i) all Securities (as defined in the Personal Property Security Act (British Columbia)), Security Entitlements (as defined in the Personal Property Security Act (British Columbia)) and other equity interests issued by or with respect to HCA Mountain Minerals (Moberly) Limited in which the Debtor now or in the future has any right, title or interest, including all assets, property and undertaking related to such Securities, Security Entitlements and other equity interests (the "Pledged Property");</p> <p>(ii) all certificates and instruments evidencing or representing the Pledged Property;</p> <p>(iii) all interest, dividends and distributions (whether in cash, kind or stock) received or receivable upon or with respect to any of the Pledged Property and all moneys or other property payable or paid on account of any return or repayment of capital with respect to any of the Pledged Property or otherwise distributed with respect thereto or which will in any way be charged to, or payable or paid out of, the capital of HCA Mountain Minerals (Moberly) Limited on account of any such Pledged Property;</p> <p>(iv) all other property that may at any time be received or receivable by or otherwise distributed to the Debtor with respect to, or in substitution for, or in exchange or replacement for, any of the foregoing; and</p> <p>(v) all proceeds of any of the foregoing.</p> <p>Proceeds: Goods, chattel paper, investment property, documents of title, instruments, money and intangibles.</p>	Current

**Particulars**

<b><u>Block</u></b>	<b><u>Additional Information</u></b>	<b><u>Status</u></b>
1	<p>The complete address of debtor block 1 is as follows: c/o HCA Mountain Minerals (Moberly) Limited Suite 204, 1212-1st Street SE Calgary, AB T2G 2H8</p>	Current

Search ID #: Z12729045

**Business Debtor Search For:**

HEEMSKIRK CANADA HOLDINGS LIMITED

Search ID #: Z12729045

Date of Search: 2020-Jun-08

Time of Search: 09:55:27

---

Registration Number: 17091428352

Registration Type: SECURITY AGREEMENT

Registration Date: 2017-Sep-14

Registration Status: Current

Expiry Date: 2021-Sep-14 23:59:59

---

Inexact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LTD.  
204 1212 1 ST SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 JACK CARTER CHEVROLET CADILLAC BUICK GMC  
11555 29 STREET SE  
CALGARY, AB T2Z 0N4  
Phone #: 403 258 6300 Fax #: 403 252 1239

Current

**Collateral: Serial Number Goods**

<b><u>Block</u></b>	<b><u>Serial Number</u></b>	<b><u>Year</u></b>	<b><u>Make and Model</u></b>	<b><u>Category</u></b>	<b><u>Status</u></b>
1	3GTU2NEC1HG503507	2017	GMC Sierra	MV - Motor Vehicle	Current

Search ID #: Z12729045

**Business Debtor Search For:**

HEEMSKIRK CANADA HOLDINGS LIMITED

Search ID #: Z12729045

Date of Search: 2020-Jun-08

Time of Search: 09:55:27

---

Registration Number: 18020635821

Registration Type: SECURITY AGREEMENT

Registration Date: 2018-Feb-06

Registration Status: Current

Expiry Date: 2028-Feb-06 23:59:59

---

Inexact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LIMITED  
1900, 520 - 3RD AVENUE SW  
CALGARY, AB T2P 0R3

Current

**Secured Party / Parties**

**Block**

**Status**

1 ATB FINANCIAL  
3699 - 63 AVENUE NE  
CALGARY, AB T3J 0G7

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY  
AND PROCEEDS.

Current

Search ID #: Z12729045

**Business Debtor Search For:**

HEEMSKIRK CANADA HOLDINGS LIMITED

Search ID #: Z12729045

Date of Search: 2020-Jun-08

Time of Search: 09:55:27

---

Registration Number: 19112807199

Registration Type: SECURITY AGREEMENT

Registration Date: 2019-Nov-28

Registration Status: Current

Expiry Date: 2026-Nov-28 23:59:59

---

Exact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA HOLDINGS LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 QMETCO LIMITED  
LEVEL 12, 300 QUEEN STREET  
BRISBANE, QLD, 4000 AUSTRALIA, XX AUS  
Email: john.fisher-stamp@qmetco.com.au

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 THE SECURITY INTEREST IS SUBJECT TO THE TERMS OF A PRIORITY DEED DATED ON OR ABOUT NOVEMBER 30, 2019 BETWEEN THE SECURED PARTY, AS SENIOR LENDER, THE DEBTOR, AND TAURUS RESOURCES NO. 2 B.V., AS SUBORDINATED LENDER.

Current

**Block**

**Additional Information**

**Status**

2 THE COMPLETE ADDRESS OF DEBTOR BLOCK 1 IS: C/O HCA MOUNTAIN MINERALS (MOBERLY) LIMITED, SUITE 204, 1212-1ST STREET SE, CALGARY, AB T2G 2H8

Current

Search ID #: Z12729045

**Business Debtor Search For:**

HEEMSKIRK CANADA HOLDINGS LIMITED

Search ID #: Z12729045

Date of Search: 2020-Jun-08

Time of Search: 09:55:27

---

Registration Number: 19112807207

Registration Type: SECURITY AGREEMENT

Registration Date: 2019-Nov-28

Registration Status: Current

Expiry Date: 2026-Nov-28 23:59:59

---

Inexact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 QMETCO LIMITED  
LEVEL 12, 300 QUEEN STREET  
BRISBANE, QLD, 4000 AUSTRALIA, XX AUS  
Email: john.fisher-stamp@qmetco.com.au

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 THE SECURITY INTEREST IS SUBJECT TO THE TERMS OF A PRIORITY DEED DATED ON OR ABOUT NOVEMBER 30, 2019 BETWEEN THE SECURED PARTY, AS SENIOR LENDER, THE DEBTOR, AND TAURUS RESOURCES NO. 2 B.V., AS SUBORDINATED LENDER.

Current

**Block**

**Additional Information**

**Status**

2 THE COMPLETE ADDRESS OF DEBTOR BLOCK 1 IS: C/O HCA MOUNTAIN MINERALS (MOBERLY) LIMITED, SUITE 204, 1212-1ST STREET SE, CALGARY, AB T2G 2H8

Current

Search ID #: Z12729045

**Business Debtor Search For:**

HEEMSKIRK CANADA HOLDINGS LIMITED

Search ID #: Z12729045

Date of Search: 2020-Jun-08

Time of Search: 09:55:27

---

Registration Number: 19112807214

Registration Type: SECURITY AGREEMENT

Registration Date: 2019-Nov-28

Registration Status: Current

Expiry Date: 2026-Nov-28 23:59:59

---

Inexact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 QMETCO LIMITED  
LEVEL 12, 300 QUEEN STREET  
BRISBANE, QLD, 4000 AUSTRALIA, XX AUS  
Email: john.fisher-stamp@qmetco.com.au

Current

Search ID #: Z12729045

**Collateral: General**

<b><u>Block</u></b>	<b><u>Description</u></b>	<b><u>Status</u></b>
1	<p>(I) ALL SECURITIES (AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT (BRITISH COLUMBIA)), SECURITY ENTITLEMENTS (AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT (BRITISH COLUMBIA)) AND OTHER EQUITY INTERESTS ISSUED BY OR WITH RESPECT TO HCA MOUNTAIN MINERALS (MOBERLY) LIMITED IN WHICH THE DEBTOR NOW OR IN THE FUTURE HAS ANY RIGHT, TITLE OR INTEREST, INCLUDING ALL ASSETS, PROPERTY AND UNDERTAKING RELATED TO SUCH SECURITIES, SECURITY ENTITLEMENTS AND OTHER EQUITY INTERESTS (THE "PLEGDED PROPERTY");</p> <p>(II) ALL CERTIFICATES AND INSTRUMENTS EVIDENCING OR REPRESENTING THE PLEDGED PROPERTY;</p> <p>(III) ALL INTEREST, DIVIDENDS AND DISTRIBUTIONS (WHETHER IN CASH, KIND OR STOCK) RECEIVED OR RECEIVABLE UPON OR WITH RESPECT TO ANY OF THE PLEDGED PROPERTY AND ALL MONEYS OR OTHER PROPERTY PAYABLE OR PAID ON ACCOUNT OF ANY RETURN OR REPAYMENT OF CAPITAL WITH RESPECT TO ANY OF THE PLEDGED PROPERTY OR OTHERWISE DISTRIBUTED WITH RESPECT THERETO OR WHICH WILL IN ANY WAY BE CHARGED TO, OR PAYABLE OR PAID OUT OF, THE CAPITAL OF HCA MOUNTAIN MINERALS (MOBERLY) LIMITED ON ACCOUNT OF ANY SUCH PLEDGED PROPERTY;</p> <p>(IV) ALL OTHER PROPERTY THAT MAY AT ANY TIME BE RECEIVED OR RECEIVABLE BY OR OTHERWISE DISTRIBUTED TO THE DEBTOR WITH RESPECT TO, OR IN SUBSTITUTION FOR, OR IN EXCHANGE OR REPLACEMENT FOR, ANY OF THE FOREGOING; AND</p> <p>(V) ALL PROCEEDS OF ANY OF THE FOREGOING.</p>	Current
2	PROCEEDS: GOODS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, INSTRUMENTS.MONEY AND INTANGIBLES.	Current

**Particulars**

<b><u>Block</u></b>	<b><u>Additional Information</u></b>	<b><u>Status</u></b>
1	THE SECURITY INTEREST IS SUBJECT TO THE TERMS OF A PRIORITY DEED DATED ON OR ABOUT NOVEMBER 30, 2019 BETWEEN THE SECURED PARTY, AS SENIOR LENDER, THE DEBTOR, AND TAURUS RESOURCES NO. 2 B.V., AS SUBORDINATED LENDER.	Current
2	THE COMPLETE ADDRESS OF DEBTOR BLOCK 1 IS: C/O HCA MOUNTAIN MINERALS (MOBERLY) LIMITED, SUITE 204, 1212-1ST STREET SE, CALGARY, AB T2G 2H8	Current



Search ID #: Z12729045

**Business Debtor Search For:**

HEEMSKIRK CANADA HOLDINGS LIMITED

Search ID #: Z12729045

Date of Search: 2020-Jun-08

Time of Search: 09:55:27

---

Registration Number: 19112812603

Registration Type: LAND CHARGE

Registration Date: 2019-Nov-28

Registration Status: Current

Registration Term: Infinity

---

Inexact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 QMETCO LIMITED  
LEVEL 12, 300 QUEEN STREET  
BRISBANE, QLD, 4000 AUSTRALIA, XX AUS  
Email: JOHN.FISHER-STAMP@QMETCO.COM.AU

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 THE SECURITY INTEREST IS SUBJECT TO THE TERMS OF A PRIORITY DEED  
DATED ON OR ABOUT NOVEMBER 30, 2019 BETWEEN THE SECURED PARTY, AS  
SENIOR LENDER, THE DEBTOR, AND TAURUS RESOURCES NO. 2 B.V., AS  
SUBORDINATED LENDER.

Current

**Block**

**Additional Information**

**Status**

2 THE COMPLETE ADDRESS OF DEBTOR BLOCK 1 IS: C/O HCA MOUNTAIN  
MINERALS (MOBERLY) LIMITED, SUITE 204, 1212-1ST STREET SE, CALGARY, AB  
T2G 2H8

Current

Search ID #: Z12729045

**Business Debtor Search For:**

HEEMSKIRK CANADA HOLDINGS LIMITED

Search ID #: Z12729045

Date of Search: 2020-Jun-08

Time of Search: 09:55:27

---

Registration Number: 19112812721

Registration Type: LAND CHARGE

Registration Date: 2019-Nov-28

Registration Status: Current

Registration Term: Infinity

---

Exact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA HOLDINGS LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 QMETCO LIMITED  
LEVEL 12, 300 QUEEN STREET  
BRISBANE, QLD, 4000 AUSTRALIA, XX AUS  
Email: JOHN.FISHER-STAMP@QMETCO.COM.AU

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 THE SECURITY INTEREST IS SUBJECT TO THE TERMS OF A PRIORITY DEED  
DATED ON OR ABOUT NOVEMBER 30, 2019 BETWEEN THE SECURED PARTY, AS  
SENIOR LENDER, THE DEBTOR, AND TAURUS RESOURCES NO. 2 B.V., AS  
SUBORDINATED LENDER.

Current

**Block**

**Additional Information**

**Status**

2 THE COMPLETE ADDRESS OF DEBTOR BLOCK 1 IS: C/O HCA MOUNTAIN  
MINERALS (MOBERLY) LIMITED, SUITE 204, 1212-1ST STREET SE, CALGARY, AB  
T2G 2H8

Current

Result Complete

Search ID #: Z12729056

**Transmitting Party**

WEST-END REGISTRATIONS LICENSING & SEARCHES  
LTD. (P158)

10011 170 STREET  
EDMONTON, AB T5P 4R5

Party Code: 50076967

Phone #: 780 483 8211

Reference #: 02945082-EDD3 5  
1025

Search ID #: Z12729056

Date of Search: 2020-Jun-08

Time of Search: 09:57:02

**Business Debtor Search For:**

HEEMSKIRK CANADA LIMITED

Both Exact and Inexact Result(s) Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.  
Be sure to read the reports carefully.



Search ID #: Z12729056

**Business Debtor Search For:**

HEEMSKIRK CANADA LIMITED

Search ID #: Z12729056

Date of Search: 2020-Jun-08

Time of Search: 09:57:02

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Registration Number: 11082612805

Registration Type: SECURITY AGREEMENT

Registration Date: 2011-Aug-26

Registration Status: Current

Expiry Date: 2021-Aug-26 23:59:59

---

Exact Match on: Debtor No: 2

---

**Amendments to Registration**

14040911883	Amendment And Renewal	2014-Apr-09
15070638641	Amendment	2015-Jul-06
15071029726	Amendment	2015-Jul-10
15071435786	Amendment	2015-Jul-14
16051217637	Amendment	2016-May-12
16051224947	Amendment	2016-May-12

---

**Debtor(s)**

**Block**

1 HEEMSKIRK CANADA LIMITED  
1212 - 1ST STREET SE  
CALGARY, AB T2G 2H8

**Status**

Deleted by  
16051224947

**Block**

2 HEEMSKIRK CANADA LIMITED  
#204, 1212 - 1ST STREET SE  
CALGARY, AB T2G 2H8

**Status**

Current by  
16051224947

---

**Secured Party / Parties**

**Block**

1 CANADIAN IMPERIAL BANK OF COMMERCE  
595 BAY STREET, SUITE 500  
TORONTO, ON M5G 2C2

**Status**

Deleted by  
15070638641

Search ID #: Z12729056

**Block**

2 CANADIAN IMPERIAL BANK OF COMMERCE  
595 BAY STREET, 5TH FLOOR  
TORONTO, ON M5G 2C2

**Status**

Current by  
15070638641

**Collateral: General**

**Block**

**Description**

**Status**

- |    |   |                           |
|----|---|---------------------------|
| 1  | All present and after-acquired personal property of the Debtor  | Deleted By<br>15070638641 |
| 2  | All accounts, instruments and debts which are now due, owing or accruing due, or which may hereafter become due, owing or accruing due, to the Debtor, together with all records (whether in writing or not), and other documents of any kind which in any way evidence or relate to any or all of the accounts, instruments and debts, including without limitation, deposit account no. 00009/8004218 in the amount of CAD \$100,000 and deposit account no. 00009/0465313 in the amount of US \$1,719,585 and all certificates of deposit and other investments in which such funds may be invested from time to time.<br><br>Proceeds: all goods, documents of title, chattel paper, instruments, money, securities and intangibles and any other present and after-acquired personal property. | Deleted By<br>15071029726 |
| 3  | All deposit accounts of the debtor held at Canadian Imperial Bank   | Deleted By<br>15071435786 |
| 4  | of Commerce, including all cash and other financial assets  | Deleted By<br>15071435786 |
| 5  | credited to deposit account no.8004218 at transit 00009 in the  | Deleted By<br>15071435786 |
| 6  | amount of CAD 100,000.00 Proceeds: goods, securities,   | Deleted By<br>15071435786 |
| 7  | instruments, documents of title, chattel paper, intangibles, all  | Deleted By<br>15071435786 |
| 8  | as defined in the Personal Property Security Act of Alberta and   | Deleted By<br>15071435786 |
| 9  | regulations thereunder, derived directly or indirectly from any   | Deleted By<br>15071435786 |
| 10 | dealings with the original collateral.  | Deleted By<br>15071435786 |
| 11 | Deposit account no.8004218 of the debtor at transit 00009 in the amount of CAD 100,000.00 held at Canadian Imperial Bank of Commerce, including all cash and other financial assets credited to such deposit account and all certificates of deposit and other investments in which such funds may be invested from time to time. Proceeds: goods, securities, instruments, documents of title, chattel paper, intangibles, all as defined in the Personal Property Security Act of Alberta and regulations thereunder, derived directly or indirectly from any dealings with the original collateral.  | Deleted By<br>16051217637 |
| 12 | Deposit account no.8004218 of the debtor at transit 00009   | Deleted By<br>16051224947 |

Search ID #: Z12729056

13	in the amount of CAD 100,000.00 held at Canadian Imperial	Deleted By 16051224947
14	Bank of Commerce, including all cash and other financial	Deleted By 16051224947
15	assets credited to such deposit account and all certificates	Deleted By 16051224947
16	of deposit and other investments in which such funds may be	Deleted By 16051224947
17	invested from time to time. Proceeds: goods, securities,	Deleted By 16051224947
18	instruments, documents of title, chattel paper, intangibles,	Deleted By 16051224947
19	all as defined in the Personal Property Security Act of	Deleted By 16051224947
20	Alberta and regulations thereunder, derived directly or	Deleted By 16051224947
21	indirectly from any dealings with the original collateral.	Deleted By 16051224947
22	All deposit accounts of the debtor held at Canadian Imperial Bank	Current By 16051224947
23	of Commerce, including all cash and other financial assets	Current By 16051224947
24	credited thereto. Proceeds: goods, securities, instruments,	Current By 16051224947
25	documents of title, chattel paper, intangibles, all as defined in	Current By 16051224947
26	the Personal Property Security Act of Alberta and regulations	Current By 16051224947
27	thereunder, derived directly or indirectly from any dealings with	Current By 16051224947
28	the original collateral.	Current By 16051224947

**Particulars**

<b><u>Block</u></b>	<b><u>Additional Information</u></b>	<b><u>Status</u></b>
1	The complete address of the Secured Party is:  Canadian Imperial Bank of Commerce Commercial Sales and Service Centre 595 Bay Street, Suite 500 Toronto, ON M5G 2C2	Current

Search ID #: Z12729056

**Business Debtor Search For:**

HEEMSKIRK CANADA LIMITED

Search ID #: Z12729056

Date of Search: 2020-Jun-08

Time of Search: 09:57:02

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Registration Number: 16020932593

Registration Type: SECURITY AGREEMENT

Registration Date: 2016-Feb-09

Registration Status: Current

Expiry Date: 2023-Feb-09 23:59:59

---

Inexact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA HOLDINGS LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 TAURUS RESOURCES NO. 2 B.V.  
JACHTHAVENWEG 109H, 1081 KM  
AMSTERDAM, THE NETHERLANDS, XX

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 All present and after-acquired personal property of the debtor.

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 The complete address of debtor block 1 is as follows:  
c/o HCA Mountain Minerals (Moberly) Limited  
Suite 204, 1212-1st Street SE  
Calgary, AB  
T2G 2H8

Current

Search ID #: Z12729056

**Business Debtor Search For:**

HEEMSKIRK CANADA LIMITED

Search ID #: Z12729056

Date of Search: 2020-Jun-08

Time of Search: 09:57:02

---

Registration Number: 16020932768

Registration Type: LAND CHARGE

Registration Date: 2016-Feb-09

Registration Status: Current

Registration Term: Infinity

---

Inexact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA HOLDINGS LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 TAURUS RESOURCES NO. 2 B.V.  
JACHTHAVENWEG 109H, 1081 KM  
AMSTERDAM, THE NETHERLANDS, XX

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 The complete address of debtor block 1 is as follows:  
c/o HCA Mountain Minerals (Moberly) Limited  
Suite 204, 1212-1st Street SE  
Calgary, AB  
T2G 2H8

Current



Search ID #: Z12729056

**Business Debtor Search For:**

HEEMSKIRK CANADA LIMITED

Search ID #: Z12729056

Date of Search: 2020-Jun-08

Time of Search: 09:57:02

---

Registration Number: 16020932885

Registration Type: SECURITY AGREEMENT

Registration Date: 2016-Feb-09

Registration Status: Current

Expiry Date: 2023-Feb-09 23:59:59

---

Exact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 TAURUS RESOURCES NO. 2 B.V.  
JACHTHAVENWEG 109H, 1081 KM  
AMSTERDAM, THE NETHERLANDS, XX

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 All present and after-acquired personal property of the debtor.

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 The complete address of debtor block 1 is as follows:  
c/o HCA Mountain Minerals (Moberly) Limited  
Suite 204, 1212-1st Street SE  
Calgary, AB  
T2G 2H8

Current

Search ID #: Z12729056

**Business Debtor Search For:**

HEEMSKIRK CANADA LIMITED

Search ID #: Z12729056

Date of Search: 2020-Jun-08

Time of Search: 09:57:02

---

Registration Number: 16020932911

Registration Type: LAND CHARGE

Registration Date: 2016-Feb-09

Registration Status: Current

Registration Term: Infinity

---

Exact Match on: Debtor No: 1

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**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 TAURUS RESOURCES NO. 2 B.V.  
JACHTHAVENWEG 109H, 1081 KM  
AMSTERDAM, THE NETHERLANDS, XX

Current

**Particulars**

**Block** **Additional Information**

**Status**

1 The complete address of debtor block 1 is as follows:  
c/o HCA Mountain Minerals (Moberly) Limited  
Suite 204, 1212-1st Street SE  
Calgary, AB  
T2G 2H8

Current

Search ID #: Z12729056

**Business Debtor Search For:**

HEEMSKIRK CANADA LIMITED

Search ID #: Z12729056

Date of Search: 2020-Jun-08

Time of Search: 09:57:02

---

Registration Number: 16020932986

Registration Type: SECURITY AGREEMENT

Registration Date: 2016-Feb-09

Registration Status: Current

Expiry Date: 2023-Feb-09 23:59:59

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Exact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 TAURUS RESOURCES NO. 2 B.V.  
JACHTHAVENWEG 109H, 1081 KM  
AMSTERDAM, THE NETHERLANDS, XX

Current

Search ID #: Z12729056

**Collateral: General**

<b><u>Block</u></b>	<b><u>Description</u></b>	<b><u>Status</u></b>
1	<p>(i) all Securities (as defined in the Personal Property Security Act (British Columbia)), Security Entitlements (as defined in the Personal Property Security Act (British Columbia)) and other equity interests issued by or with respect to HCA Mountain Minerals (Moberly) Limited in which the Debtor now or in the future has any right, title or interest, including all assets, property and undertaking related to such Securities, Security Entitlements and other equity interests (the "Pledged Property");</p> <p>(ii) all certificates and instruments evidencing or representing the Pledged Property;</p> <p>(iii) all interest, dividends and distributions (whether in cash, kind or stock) received or receivable upon or with respect to any of the Pledged Property and all moneys or other property payable or paid on account of any return or repayment of capital with respect to any of the Pledged Property or otherwise distributed with respect thereto or which will in any way be charged to, or payable or paid out of, the capital of HCA Mountain Minerals (Moberly) Limited on account of any such Pledged Property;</p> <p>(iv) all other property that may at any time be received or receivable by or otherwise distributed to the Debtor with respect to, or in substitution for, or in exchange or replacement for, any of the foregoing; and</p> <p>(v) all proceeds of any of the foregoing.</p> <p>Proceeds: Goods, chattel paper, investment property, documents of title, instruments, money and intangibles.</p>	Current

**Particulars**

<b><u>Block</u></b>	<b><u>Additional Information</u></b>	<b><u>Status</u></b>
1	<p>The complete address of debtor block 1 is as follows: c/o HCA Mountain Minerals (Moberly) Limited Suite 204, 1212-1st Street SE Calgary, AB T2G 2H8</p>	Current

Search ID #: Z12729056

**Business Debtor Search For:**

HEEMSKIRK CANADA LIMITED

Search ID #: Z12729056

Date of Search: 2020-Jun-08

Time of Search: 09:57:02

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Registration Number: 17091428352

Registration Type: SECURITY AGREEMENT

Registration Date: 2017-Sep-14

Registration Status: Current

Expiry Date: 2021-Sep-14 23:59:59

---

Exact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LTD.  
204 1212 1 ST SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 JACK CARTER CHEVROLET CADILLAC BUICK GMC  
11555 29 STREET SE  
CALGARY, AB T2Z 0N4  
Phone #: 403 258 6300 Fax #: 403 252 1239

Current

**Collateral: Serial Number Goods**

<b><u>Block</u></b>	<b><u>Serial Number</u></b>	<b><u>Year</u></b>	<b><u>Make and Model</u></b>	<b><u>Category</u></b>	<b><u>Status</u></b>
1	3GTU2NEC1HG503507	2017	GMC Sierra	MV - Motor Vehicle	Current

Search ID #: Z12729056

**Business Debtor Search For:**

HEEMSKIRK CANADA LIMITED

Search ID #: Z12729056

Date of Search: 2020-Jun-08

Time of Search: 09:57:02

---

Registration Number: 18020635821

Registration Type: SECURITY AGREEMENT

Registration Date: 2018-Feb-06

Registration Status: Current

Expiry Date: 2028-Feb-06 23:59:59

---

Exact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LIMITED  
1900, 520 - 3RD AVENUE SW  
CALGARY, AB T2P 0R3

Current

**Secured Party / Parties**

**Block**

**Status**

1 ATB FINANCIAL  
3699 - 63 AVENUE NE  
CALGARY, AB T3J 0G7

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY  
AND PROCEEDS.

Current

Search ID #: Z12729056

**Business Debtor Search For:**

HEEMSKIRK CANADA LIMITED

Search ID #: Z12729056

Date of Search: 2020-Jun-08

Time of Search: 09:57:02

---

Registration Number: 19112807199

Registration Type: SECURITY AGREEMENT

Registration Date: 2019-Nov-28

Registration Status: Current

Expiry Date: 2026-Nov-28 23:59:59

---

Inexact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA HOLDINGS LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 QMETCO LIMITED  
LEVEL 12, 300 QUEEN STREET  
BRISBANE, QLD, 4000 AUSTRALIA, XX AUS  
Email: john.fisher-stamp@qmetco.com.au

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 THE SECURITY INTEREST IS SUBJECT TO THE TERMS OF A PRIORITY DEED DATED ON OR ABOUT NOVEMBER 30, 2019 BETWEEN THE SECURED PARTY, AS SENIOR LENDER, THE DEBTOR, AND TAURUS RESOURCES NO. 2 B.V., AS SUBORDINATED LENDER.

Current

**Block**

**Additional Information**

**Status**

2 THE COMPLETE ADDRESS OF DEBTOR BLOCK 1 IS: C/O HCA MOUNTAIN MINERALS (MOBERLY) LIMITED, SUITE 204, 1212-1ST STREET SE, CALGARY, AB T2G 2H8

Current

Search ID #: Z12729056

**Business Debtor Search For:**

HEEMSKIRK CANADA LIMITED

Search ID #: Z12729056

Date of Search: 2020-Jun-08

Time of Search: 09:57:02

---

Registration Number: 19112807207

Registration Type: SECURITY AGREEMENT

Registration Date: 2019-Nov-28

Registration Status: Current

Expiry Date: 2026-Nov-28 23:59:59

---

Exact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 QMETCO LIMITED  
LEVEL 12, 300 QUEEN STREET  
BRISBANE, QLD, 4000 AUSTRALIA, XX AUS  
Email: john.fisher-stamp@qmetco.com.au

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 THE SECURITY INTEREST IS SUBJECT TO THE TERMS OF A PRIORITY DEED DATED ON OR ABOUT NOVEMBER 30, 2019 BETWEEN THE SECURED PARTY, AS SENIOR LENDER, THE DEBTOR, AND TAURUS RESOURCES NO. 2 B.V., AS SUBORDINATED LENDER.

Current

**Block**

**Additional Information**

**Status**

2 THE COMPLETE ADDRESS OF DEBTOR BLOCK 1 IS: C/O HCA MOUNTAIN MINERALS (MOBERLY) LIMITED, SUITE 204, 1212-1ST STREET SE, CALGARY, AB T2G 2H8

Current



Search ID #: Z12729056

**Business Debtor Search For:**

HEEMSKIRK CANADA LIMITED

Search ID #: Z12729056

Date of Search: 2020-Jun-08

Time of Search: 09:57:02

---

Registration Number: 19112807214

Registration Type: SECURITY AGREEMENT

Registration Date: 2019-Nov-28

Registration Status: Current

Expiry Date: 2026-Nov-28 23:59:59

---

Exact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 QMETCO LIMITED  
LEVEL 12, 300 QUEEN STREET  
BRISBANE, QLD, 4000 AUSTRALIA, XX AUS  
Email: john.fisher-stamp@qmetco.com.au

Current

Search ID #: Z12729056

**Collateral: General**

<b><u>Block</u></b>	<b><u>Description</u></b>	<b><u>Status</u></b>
1	<p>(I) ALL SECURITIES (AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT (BRITISH COLUMBIA)), SECURITY ENTITLEMENTS (AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT (BRITISH COLUMBIA)) AND OTHER EQUITY INTERESTS ISSUED BY OR WITH RESPECT TO HCA MOUNTAIN MINERALS (MOBERLY) LIMITED IN WHICH THE DEBTOR NOW OR IN THE FUTURE HAS ANY RIGHT, TITLE OR INTEREST, INCLUDING ALL ASSETS, PROPERTY AND UNDERTAKING RELATED TO SUCH SECURITIES, SECURITY ENTITLEMENTS AND OTHER EQUITY INTERESTS (THE "PLEGGED PROPERTY");</p> <p>(II) ALL CERTIFICATES AND INSTRUMENTS EVIDENCING OR REPRESENTING THE PLEGGED PROPERTY;</p> <p>(III) ALL INTEREST, DIVIDENDS AND DISTRIBUTIONS (WHETHER IN CASH, KIND OR STOCK) RECEIVED OR RECEIVABLE UPON OR WITH RESPECT TO ANY OF THE PLEGGED PROPERTY AND ALL MONEYS OR OTHER PROPERTY PAYABLE OR PAID ON ACCOUNT OF ANY RETURN OR REPAYMENT OF CAPITAL WITH RESPECT TO ANY OF THE PLEGGED PROPERTY OR OTHERWISE DISTRIBUTED WITH RESPECT THERETO OR WHICH WILL IN ANY WAY BE CHARGED TO, OR PAYABLE OR PAID OUT OF, THE CAPITAL OF HCA MOUNTAIN MINERALS (MOBERLY) LIMITED ON ACCOUNT OF ANY SUCH PLEGGED PROPERTY;</p> <p>(IV) ALL OTHER PROPERTY THAT MAY AT ANY TIME BE RECEIVED OR RECEIVABLE BY OR OTHERWISE DISTRIBUTED TO THE DEBTOR WITH RESPECT TO, OR IN SUBSTITUTION FOR, OR IN EXCHANGE OR REPLACEMENT FOR, ANY OF THE FOREGOING; AND</p> <p>(V) ALL PROCEEDS OF ANY OF THE FOREGOING.</p>	Current
2	PROCEEDS: GOODS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, INSTRUMENTS.MONEY AND INTANGIBLES.	Current

**Particulars**

<b><u>Block</u></b>	<b><u>Additional Information</u></b>	<b><u>Status</u></b>
1	THE SECURITY INTEREST IS SUBJECT TO THE TERMS OF A PRIORITY DEED DATED ON OR ABOUT NOVEMBER 30, 2019 BETWEEN THE SECURED PARTY, AS SENIOR LENDER, THE DEBTOR, AND TAURUS RESOURCES NO. 2 B.V., AS SUBORDINATED LENDER.	Current
2	THE COMPLETE ADDRESS OF DEBTOR BLOCK 1 IS: C/O HCA MOUNTAIN MINERALS (MOBERLY) LIMITED, SUITE 204, 1212-1ST STREET SE, CALGARY, AB T2G 2H8	Current

Search ID #: Z12729056

**Business Debtor Search For:**

HEEMSKIRK CANADA LIMITED

Search ID #: Z12729056

Date of Search: 2020-Jun-08

Time of Search: 09:57:02

---

Registration Number: 19112812603

Registration Type: LAND CHARGE

Registration Date: 2019-Nov-28

Registration Status: Current

Registration Term: Infinity

---

Exact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 QMETCO LIMITED  
LEVEL 12, 300 QUEEN STREET  
BRISBANE, QLD, 4000 AUSTRALIA, XX AUS  
Email: JOHN.FISHER-STAMP@QMETCO.COM.AU

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 THE SECURITY INTEREST IS SUBJECT TO THE TERMS OF A PRIORITY DEED  
DATED ON OR ABOUT NOVEMBER 30, 2019 BETWEEN THE SECURED PARTY, AS  
SENIOR LENDER, THE DEBTOR, AND TAURUS RESOURCES NO. 2 B.V., AS  
SUBORDINATED LENDER.

Current

**Block**

**Additional Information**

**Status**

2 THE COMPLETE ADDRESS OF DEBTOR BLOCK 1 IS: C/O HCA MOUNTAIN  
MINERALS (MOBERLY) LIMITED, SUITE 204, 1212-1ST STREET SE, CALGARY, AB  
T2G 2H8

Current

Search ID #: Z12729056

**Business Debtor Search For:**

HEEMSKIRK CANADA LIMITED

Search ID #: Z12729056

Date of Search: 2020-Jun-08

Time of Search: 09:57:02

---

Registration Number: 19112812721

Registration Type: LAND CHARGE

Registration Date: 2019-Nov-28

Registration Status: Current

Registration Term: Infinity

---

Inexact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HEEMSKIRK CANADA HOLDINGS LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 QMETCO LIMITED  
LEVEL 12, 300 QUEEN STREET  
BRISBANE, QLD, 4000 AUSTRALIA, XX AUS  
Email: JOHN.FISHER-STAMP@QMETCO.COM.AU

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 THE SECURITY INTEREST IS SUBJECT TO THE TERMS OF A PRIORITY DEED  
DATED ON OR ABOUT NOVEMBER 30, 2019 BETWEEN THE SECURED PARTY, AS  
SENIOR LENDER, THE DEBTOR, AND TAURUS RESOURCES NO. 2 B.V., AS  
SUBORDINATED LENDER.

Current

**Block**

**Additional Information**

**Status**

2 THE COMPLETE ADDRESS OF DEBTOR BLOCK 1 IS: C/O HCA MOUNTAIN  
MINERALS (MOBERLY) LIMITED, SUITE 204, 1212-1ST STREET SE, CALGARY, AB  
T2G 2H8

Current

Result Complete

Search ID #: Z12729047

**Transmitting Party**

WEST-END REGISTRATIONS LICENSING & SEARCHES  
LTD. (P158)

10011 170 STREET  
EDMONTON, AB T5P 4R5

Party Code: 50076967

Phone #: 780 483 8211

Reference #: 02945075-EDD3 5  
1025

Search ID #: Z12729047

Date of Search: 2020-Jun-08

Time of Search: 09:55:33

**Business Debtor Search For:**

HCA MOUNTAIN MINERALS (MOBERLY) LIMITED

Exact Result(s) Only Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.  
Be sure to read the reports carefully.



Search ID #: Z12729047

**Business Debtor Search For:**

HCA MOUNTAIN MINERALS (MOBERLY) LIMITED

Search ID #: Z12729047

Date of Search: 2020-Jun-08

Time of Search: 09:55:33

---

Registration Number: 16020933009

Registration Type: SECURITY AGREEMENT

Registration Date: 2016-Feb-09

Registration Status: Current

Expiry Date: 2023-Feb-09 23:59:59

---

Exact Match on:

Debtor

No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HCA MOUNTAIN MINERALS (MOBERLY) LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 TAURUS RESOURCES NO. 2 B.V.  
JACHTHAVENWEG 109H, 1081 KM  
AMSTERDAM, THE NETHERLANDS, XX

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 All present and after-acquired personal property of the debtor.

Current

Search ID #: Z12729047

**Business Debtor Search For:**

HCA MOUNTAIN MINERALS (MOBERLY) LIMITED

Search ID #: Z12729047

Date of Search: 2020-Jun-08

Time of Search: 09:55:33

---

Registration Number: 16020933058

Registration Type: LAND CHARGE

Registration Date: 2016-Feb-09

Registration Status: Current

Registration Term: Infinity

---

Exact Match on:

Debtor

No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HCA MOUNTAIN MINERALS (MOBERLY) LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 TAURUS RESOURCES NO. 2 B.V.  
JACHTHAVENWEG 109H, 1081 KM  
AMSTERDAM, THE NETHERLANDS, XX

Current

Search ID #: Z12729047

**Business Debtor Search For:**

HCA MOUNTAIN MINERALS (MOBERLY) LIMITED

Search ID #: Z12729047

Date of Search: 2020-Jun-08

Time of Search: 09:55:33

---

Registration Number: 19042602245

Registration Type: SECURITY AGREEMENT

Registration Date: 2019-Apr-26

Registration Status: Current

Expiry Date: 2021-Apr-26 23:59:59

---

Exact Match on:

Debtor

No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HCA MOUNTAIN MINERALS (MOBERLY) LIMITED  
8888-665 8 ST SW  
CALGARY, AB T2P 3K7

Current

**Secured Party / Parties**

**Block**

**Status**

1 RCAP LEASING INC.  
5575 NORTH SERVICE RD, STE 300  
BURLINGTON, ON L7L 6M1

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 ALL WIRELESS COMMUNICATION EQUIPMENT FROM TIME TO TIME LEASED BY THE SECURED PARTY TO THE DEBTOR AS DESCRIBED ON LEASES, CONDITIONAL SALES AGREEMENTS AND ANY OTHER FINANCING AGREEMENTS ENTERED INTO BETWEEN THE SECURED PARTY AND THE DEBTOR FROM TIME TO TIME AND ANY PROCEEDS THEREOF, TOGETHER WITH ALL REPLACEMENT PARTS, ACCESSORIES AND ATTACHMENTS.

Current



Search ID #: Z12729047

**Business Debtor Search For:**

HCA MOUNTAIN MINERALS (MOBERLY) LIMITED

Search ID #: Z12729047

Date of Search: 2020-Jun-08

Time of Search: 09:55:33

---

Registration Number: 19112807173

Registration Type: SECURITY AGREEMENT

Registration Date: 2019-Nov-28

Registration Status: Current

Expiry Date: 2026-Nov-28 23:59:59

---

Exact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HCA MOUNTAIN MINERALS (MOBERLY) LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 QMETCO LIMITED  
LEVEL 12, 300 QUEEN STREET  
BRISBANE, QLD, 4000 AUSTRALIA, XX AUS  
Email: john.fisher-stamp@qmetco.com.au

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 THE SECURITY INTEREST IS SUBJECT TO THE TERMS OF A PRIORITY DEED DATED ON OR ABOUT NOVEMBER 30, 2019 BETWEEN THE SECURED PARTY, AS SENIOR LENDER, THE DEBTOR, AND TAURUS RESOURCES NO. 2 B.V., AS SUBORDINATED LENDER.

Current

Search ID #: Z12729047

**Business Debtor Search For:**

HCA MOUNTAIN MINERALS (MOBERLY) LIMITED

Search ID #: Z12729047

Date of Search: 2020-Jun-08

Time of Search: 09:55:33

---

Registration Number: 19112812622

Registration Type: LAND CHARGE

Registration Date: 2019-Nov-28

Registration Status: Current

Registration Term: Infinity

---

Exact Match on:

Debtor

No: 1

---

**Debtor(s)**

**Block**

**Status**

1 HCA MOUNTAIN MINERALS (MOBERLY) LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 QMETCO LIMITED  
LEVEL 12, 300 QUEEN STREET  
BRISBANE, QLD, 4000 AUSTRALIA, XX AUS  
Email: JOHN.FISHER-STAMP@QMETCO.COM.AU

Current

**Particulars**

**Block**

**Additional Information**

**Status**

1 THE SECURITY INTEREST IS SUBJECT TO THE TERMS OF A PRIORITY DEED  
DATED ON OR ABOUT NOVEMBER 30, 2019 BETWEEN THE SECURED PARTY, AS  
SENIOR LENDER, THE DEBTOR, AND TAURUS RESOURCES NO. 2 B.V., AS  
SUBORDINATED LENDER.

Current

Result Complete

**Search ID #:** Z12733602

**Transmitting Party**

WEST-END REGISTRATIONS LICENSING & SEARCHES  
LTD. (P158)

10011 170 STREET  
EDMONTON, AB T5P 4R5

Party Code: 50076967

Phone #: 780 483 8211

Reference #: 02946914-EDD3 5  
1026

**Search ID #:** Z12733602

**Date of Search:** 2020-Jun-09

**Time of Search:** 10:09:06

**Business Debtor Search For:**

CUSTOM BULK SERVICES INC.

Exact Result(s) Only Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.  
Be sure to read the reports carefully.



Search ID #: Z12733602

**Business Debtor Search For:**

CUSTOM BULK SERVICES INC.

Search ID #: Z12733602

Date of Search: 2020-Jun-09

Time of Search: 10:09:06

---

Registration Number: 12080315794

Registration Type: SECURITY AGREEMENT

Registration Date: 2012-Aug-03

Registration Status: Current

Expiry Date: 2022-Aug-03 23:59:59

---

Exact Match on:

Debtor

No: 1

---

**Amendments to Registration**

17011927186

Renewal

2017-Jan-19

---

**Debtor(s)**

**Block**

**Status**

1 CUSTOM BULK SERVICES INC.  
#33, 38311 RANGE RD 270  
RED DEER, AB T4E 1B5

Current

**Secured Party / Parties**

**Block**

**Status**

1 ALBERTA TREASURY BRANCHES  
6794 - 50 AVENUE  
RED DEER, AB T4N 4E1

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.

Current

Search ID #: Z12733602

**Business Debtor Search For:**

CUSTOM BULK SERVICES INC.

Search ID #: Z12733602

Date of Search: 2020-Jun-09

Time of Search: 10:09:06

---

Registration Number: 18072708966

Registration Type: SECURITY AGREEMENT

Registration Date: 2018-Jul-27

Registration Status: Current

Expiry Date: 2029-Jul-27 23:59:59

---

Exact Match on: Debtor No: 1

---

**Amendments to Registration**

19012906677	Amendment	2019-Jan-29
19073104832	Renewal	2019-Jul-31

---

**Debtor(s)**

**Block**

**Status**

1 CUSTOM BULK SERVICES INC.  
1212 1ST STREET SE SUITE 204  
CALGARY, AB T2G2H8

Current

---

**Secured Party / Parties**

**Block**

**Status**

1 TRINITYRAIL CANADA INC.  
SUITE 2400-745 THURLOW STREET  
VANCOUVER, BC V6E0C5

Current

Search ID #: Z12733602

**Collateral: General**

<b><u>Block</u></b>	<b><u>Description</u></b>	<b><u>Status</u></b>
1	<p>1. ALL RAILROAD ROLLING STOCK AND RAILWAY CARS NOW OR HEREAFTER SUPPLIED BY THE SECURED PARTY TO THE DEBTOR PURSUANT TO CERTAIN RAILCAR LEASES TOGETHER WITH ANY SCHEDULES, RIDERS, MEMORANDA AND OTHER SUPPLEMENTAL AGREEMENTS THERETO NOW OR HEREAFTER ENTERED INTO BETWEEN THE SECURED PARTY AND THE DEBTOR, AS THE SAME MAY BE AMENDED, EXTENDED, RENEWED OR REPLACED AND IN EFFECT FROM TIME TO TIME, INCLUDING WITHOUT LIMITATION, SUCH RAILROAD ROLLING STOCK AND RAILWAY CARS WHICH BEAR ANY OF THE FOLLOWING UMLER MARKS OR OTHER REPORTING MARKS, 3,281 CUBIC FOOT CAPACITY, COVERED HOPPER CARS MARKED AND NUMBERED TILX TBD , TOGETHER WITH MANUFACTURING WARRANTIES RELATING TO THE ABOVE DESCRIBED COLLATERAL AND ALL PARTS, ATTACHMENTS, ACCESSIONS, APPURTENANCES, ACCESSORIES, SUBSTITUTIONS AND REPLACEMENTS THERETO AND THEREFROM (COLLECTIVELY, "RAILCARS");</p> <p>2. ALL AMOUNTS NOW OR HEREAFTER PAID TO OR DEPOSITED WITH OR REQUIRED TO BE PAID TO OR DEPOSITED WITH THE SECURED PARTY BY THE DEBTOR IN RESPECT OF THE RAILCARS,</p> <p>3. ALL INSURANCE POLICIES IN RESPECT OF THE RAILCARS IN WHICH THE DEBTOR NOW OR HEREAFTER HAS RIGHTS, AND ALL RIGHTS OF THE DEBTOR IN AND TO ALL MONEY OR OTHER VALUE WHICH IS NOW PAYAYBLE OR WHICH MAY BECOME HEREAFTER PAYABLE UNDER SUCH INSURANCE POLICIES AS INDEMNITY OR COMPENSATION FOR LOSS OF OR DAMAGE TO THE RAILCARS,</p> <p>4. ANY LEASES, CHARTERS OR OTHER AGREEMENTS NOW OR HEREAFTER ENTERED INTO BETWEEN THE DEBTOR AND ANY THIRD PARTY IN RESPECT OF THE RAILCARS AND ALL RIGHTS, INTEREST, BENEFITS, RENTS, PROFITS AND MONEY RELATING THERETO, AND</p> <p>ALL PROCEEDS THAT ARE GOODS, INTANGIBLES, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, CHATTEL PAPER, INSTRUMENTS OR MONEY (AND TERMS USED HEREIN THAT ARE DEFINED IN THE PERSONAL PROPERTY SECURITY ACT OF ALBERTA OR ITS REGULATIONS HAVE THOSE DEFINED MEANINGS).</p>	Deleted By 19012906677

Search ID #: Z12733602

2 1. ALL RAILROAD ROLLING STOCK AND RAILWAY CARS NOW OR HEREAFTER SUPPLIED BY THE SECURED PARTY TO THE DEBTOR PURSUANT TO CERTAIN RAILCAR LEASES TOGETHER WITH ANY SCHEDULES, RIDERS, MEMORANDA AND OTHER SUPPLEMENTAL AGREEMENTS THERETO NOW OR HEREAFTER ENTERED INTO BETWEEN THE SECURED PARTY AND THE DEBTOR, AS THE SAME MAY BE AMENDED, EXTENDED, RENEWED OR REPLACED AND IN EFFECT FROM TIME TO TIME, INCLUDING WITHOUT LIMITATION, SUCH RAILROAD ROLLING STOCK AND RAILWAY CARS WHICH BEAR ANY OF THE FOLLOWING UMLER MARKS OR OTHER REPORTING MARKS, 3,281 CUBIC FOOT CAPACITY, COVERED HOPPER CARS MARKED AND NUMBERED TILX TBD , TOGETHER WITH MANUFACTURING WARRANTIES RELATING TO THE ABOVE DESCRIBED COLLATERAL AND ALL PARTS, ATTACHMENTS, ACCESSIONS, APPURTENANCES, ACCESSORIES, SUBSTITUTIONS AND REPLACEMENTS THERETO AND THEREFROM (COLLECTIVELY, "RAILCARS"); TILX 32215, 32221, 32262, 32305, 32313, 32316, 32325, 32327, 32331, 32336, 32343, 33356, 33384, 33391, 33429, 33814, 33833, 33844, 328575, 328589, 328593, 328594, 328608, 328609, 328613, 328619, 328621, 328626, 328630, 328642, 328651, 328652, 330438, 330439, 330440, 330441, 330446, 330452, 330454, 330455, 330457, 330459, 330461, 330462, 330468, 330470, 330474, 330478, 330479, 330482, 330484, 330487, 330489, 330492, 330494, 330496, 330499, 330504, 330507, 330510, 330517, 330520, 330537, 330538, 330541, 330543, 330544, 330545, 330546, 330551, 330552, 330553, 330556, 330558, 330559, 330560, 330561, 330566, 330569, 330570, 330572, 330573, 330575, 330577, 330581, 330582, 330584, 330585, 331311, 331312, 331313, 331316, 331317, 331318, 331319, 331320, 331321, 331322, 331323, 331326, 331327, 331328, 331329, 331331, 331332, 331333, 331334, 331335, 333049, 333051, 333055, 333058, 333059, 333061 AND 333143

Current By  
19012906677

2. ALL AMOUNTS NOW OR HEREAFTER PAID TO OR DEPOSITED WITH OR REQUIRED TO BE PAID TO OR DEPOSITED WITH THE SECURED PARTY BY THE DEBTOR IN RESPECT OF THE RAILCARS,

3. ALL INSURANCE POLICIES IN RESPECT OF THE RAILCARS IN WHICH THE DEBTOR NOW OR HEREAFTER HAS RIGHTS, AND ALL RIGHTS OF THE DEBTOR IN AND TO ALL MONEY OR OTHER VALUE WHICH IS NOW PAYAYBLE OR WHICH MAY BECOME HEREAFTER PAYABLE UNDER SUCH INSURANCE POLICIES AS INDEMNITY OR COMPENSATION FOR LOSS OF OR DAMAGE TO THE RAILCARS,

4. ANY LEASES, CHARTERS OR OTHER AGREEMENTS NOW OR HEREAFTER ENTERED INTO BETWEEN THE DEBTOR AND ANY THIRD PARTY IN RESPECT OF THE RAILCARS AND ALL RIGHTS, INTEREST, BENEFITS, RENTS, PROFITS AND MONEY RELATING THERETO, AND

ALL PROCEEDS THAT ARE GOODS, INTANGIBLES, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, CHATTEL PAPER, INSTRUMENTS OR MONEY (AND TERMS USED HEREIN THAT ARE DEFINED IN THE PERSONAL PROPERTY SECURITY ACT OF ALBERTA OR ITS REGULATIONS HAVE THOSE DEFINED MEANINGS).

Search ID #: Z12733602

**Business Debtor Search For:**

CUSTOM BULK SERVICES INC.

Search ID #: Z12733602

Date of Search: 2020-Jun-09

Time of Search: 10:09:06

---

Registration Number: 20020531099

Registration Type: SECURITY AGREEMENT

Registration Date: 2020-Feb-05

Registration Status: Current

Expiry Date: 2040-Feb-05 23:59:59

---

This Registration covers a Trust Indenture

---

Exact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

1 CUSTOM BULK SERVICES INC.  
1212 1ST ST. S.E., SUITE 204  
CALGARY, AB T2G 2H8

Current

**Secured Party / Parties**

**Block**

**Status**

1 NP SPE X LP  
3RD FLOOR, 280 PARK AVENUE  
NEW YORK, NY 10017  
Email: Robert.Sobieski@napierparkglobal.com

Current

**Block**

**Status**

2 WILMINGTON TRUST COMPANY, AS INDENTURE TRUSTEE  
1100 NORTH MARKET STREET  
WILMINGTON, DE 19890  
Email: JParedes@WilmingtonTrust.com

Current



Search ID #: Z12733602

**Collateral: General**

<b><u>Block</u></b>	<b><u>Description</u></b>	<b><u>Status</u></b>
1	ALL RAILCARS, LOCOMOTIVES AND OTHER RAILROAD ROLLING STOCK NOW OR HEREAFTER SUPPLIED BY THE SECURED PARTY TO THE DEBTOR PURSUANT TO THAT MASTER RAILCAR LEASE DATED JUNE 14, 2018, TOGETHER WITH ANY SCHEDULES, RIDERS, MEMORANDA AND OTHER SUPPLEMENTAL AGREEMENTS THERETO NOW OR HEREAFTER ENTERED INTO BETWEEN THE SECURED PARTY AND THE DEBTOR, AS THE SAME MAY BE AMENDED, EXTENDED, RENEWED OR REPLACED AND IN EFFECT FROM TIME TO TIME, INCLUDING WITHOUT LIMITATION, SUCH RAILCAR WHICH BEAR ANY OF THE FOLLOWING MARK OR OTHER REPORTING MARKS, TOGETHER WITH MANUFACTURING WARRANTIES RELATING TO THE ABOVE DESCRIBE COLLATERAL AND ALL PARTS, ATTACHMENTS, ACCESSIONS, APPURTENANCES, ACCESSORIES, SUBSTITUTIONS AND REPLACEMENTS THERETO AND THEREFROM (COLLECTIVELY, THE "RAILCARS");	Current
2	RAILCARS INCLUDE, WITHOUT LIMITATION, SUCH RAILCARS MARKED AND NUMBERED TILX 330438-330441, 330446, 330452, 330454, 330455, 330457, 330459, 330461, 330462, 330468, 330470, 330474, 330478, 330479, 330482,330484, 330487, 330489, 330492, 330494, 330496, 330499, 330504, 330507, 330510, 330517, 330520, 333049, 333051, 333055, 333058, 333059, 333061, 333143, INCLUSIVE;	Current
3	ALL INSURANCE POLICIES IN RESPECT OF THE RAIL EQUIPMENT IN WHICH THE DEBTOR NOW OR HEREAFTER HAS RIGHTS, AND ALL RIGHTS OF THE DEBTOR IN AND TO ALL MONEY OR OTHER VALUE WHICH IS NOW PAYABLE OR WHICH MAY BECOME HEREAFTER PAYABLE UNDER SUCH INSURANCE POLICIES AS INDEMNITY OR COMPENSATION FOR LOSS OF OR DAMAGE TO THE RAILCARS;	Current
4	ANY SUBLEASES OR OTHER AGREEMENTS NOW OR HEREAFTER ENTERED INTO BETWEEN THE DEBTOR AND ANY THIRD PARTY IN RESPECT OF THE RAILCARS AND ALL RIGHTS, INTEREST, BENEFITS, RENTS, PROFITS AND MONEY RELATING THERETO;	Current
5	ALL PROCEEDS THAT ARE GOODS, INTANGIBLES, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, CHATTEL PAPER, INSTRUMENTS OR MONEY (AND TERMS USED HEREIN THAT ARE DEFINED IN THE PERSONAL PROPERTY SECURITY ACT OF ALBERTA OR ITS REGULATIONS HAVE THOSE DEFINED MEANINGS).	Current

Result Complete





Index: BUSINESS DEBTOR

List of matches:

Exact: HEEMSKIRK CANADA HOLDINGS LIMITED  
Exact: HEEMSKIRK CANADA HOLDINGS LIMITED

Page: 1

Index: BUSINESS DEBTOR

Search Criteria: HEEMSKIRK CANADA HOLDINGS LIMITED

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*

Reg. Date: FEB 09, 2016 Reg. Length: 7 YEARS  
Reg. Time: 15:49:03 Expiry Date: FEB 09, 2023  
Base Reg. #: 104165J Control #: D3592670

Block#

S0001 Secured Party: TAURUS RESOURCES NO. 2 B.V.  
JACHTHAVENWEG 109H, 1081 KM  
AMSTERDAM NETH

=D0001 Base Debtor: HEEMSKIRK CANADA HOLDINGS LIMITED  
(Business) STE 204, 1212-1ST STREET SE  
CALGARY AB T2G 2H8

General Collateral:

ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY,  
AND AN UNCRYSTALLIZED FLOATING CHARGE ON LAND.  
THE FULL ADDRESS FOR THE DEBTOR IS:  
HEEMSKIRK CANADA HOLDINGS LIMITED  
C/O HCA MOUNTAIN MINERALS (MOBERLY) LIMITED  
SUITE 204, 1212-1ST STREET SE  
CALGARY, AB T2G 2H8

Registering

Party: STIKEMAN ELLIOTT LLP  
1700-666 BURRARD STREET  
VANCOUVER BC V6C 2X8

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*

Reg. Date: NOV 28, 2019 Reg. Length: 7 YEARS  
Reg. Time: 07:27:23 Expiry Date: NOV 28, 2026  
Base Reg. #: 919767L Control #: D6465579

Block#

S0001 Secured Party: QMETCO LIMITED  
LEVEL 12, 300 QUEEN STREET  
BRISBANE, QLD XX AUS

=D0001 Base Debtor: HEEMSKIRK CANADA HOLDINGS LIMITED  
(Business) SUITE 204, 1212-1ST STREET SE  
CALGARY AB T2G 2H8

General Collateral:

ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY, AND  
AN UNCRYSTALLIZED FLOATING CHARGE ON LAND.  
THE SECURITY INTEREST IS SUBJECT TO THE TERMS OF A PRIORITY DEED DATED  
ON OR ABOUT NOVEMBER 30, 2019 BETWEEN THE SECURED PARTY, AS SENIOR

Continued on Page 2

Search Criteria: HEEMSKIRK CANADA HOLDINGS LIMITED

Page: 2

LENDER, THE DEBTOR, AND TAURUS RESOURCES NO. 2 B.V., AS SUBORDINATED  
LENDER.

THE COMPLETE ADDRESS OF DEBTOR IS: HEEMSKIRK CANADA HOLDINGS LIMITED  
C/O HCA MOUNTAIN MINERALS (MOBERLY) LIMITED, SUITE 204, 1212-1ST  
STREET SE, CALGARY, AB T2G 2H8

Registering

Party: OSLER, HOSKIN & HARCOURT LLP (D.  
SARIC/L. GIDARI/1205881)  
1 FIRST CANADIAN PL, STE 6200  
TORONTO ON M5X 1B8



Iterm: XPSP0050

For: PH43818 DYE AND DURHAM CORPORATION

09:44:18

Index: BUSINESS DEBTOR

List of matches:

Exact: HEEMSKIRK CANADA LIMITED
Exact: HEEMSKIRK CANADA LIMITED
Exact: HEEMSKIRK CANADA LIMITED
Exact: HEEMSKIRK CANADA LIMITED
Exact: HEEMSKIRK CANADA LIMITED

Similar: HEEMSKIRK CANADA HOLDINGS LIMITED
Similar: HEEMSKIRK CANADA HOLDINGS LIMITED

Page: 1

Iterm: XPSP0050

For: PH43818 DYE AND DURHAM CORPORATION

09:44:18

Index: BUSINESS DEBTOR

Search Criteria: HEEMSKIRK CANADA LIMITED

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*

Reg. Date: FEB 09, 2016 Reg. Length: 7 YEARS
Reg. Time: 15:49:03 Expiry Date: FEB 09, 2023
Base Reg. #: 104165J Control #: D3592670

This registration was selected and included for your protection
because of close proximity to your search criteria.

Block#

S0001 Secured Party: TAURUS RESOURCES NO. 2 B.V.
JACHTHAVENWEG 109H, 1081 KM
AMSTERDAM NETH

=D0001 Base Debtor: HEEMSKIRK CANADA HOLDINGS LIMITED
(Business) STE 204, 1212-1ST STREET SE
CALGARY AB T2G 2H8

General Collateral:
ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY,
AND AN UNCRYSTALLIZED FLOATING CHARGE ON LAND.
THE FULL ADDRESS FOR THE DEBTOR IS:
HEEMSKIRK CANADA HOLDINGS LIMITED
C/O HCA MOUNTAIN MINERALS (MOBERLY) LIMITED
SUITE 204, 1212-1ST STREET SE
CALGARY, AB T2G 2H8

Registering
Party: STIKEMAN ELLIOTT LLP
1700-666 BURNARD STREET
VANCOUVER BC V6C 2X8

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*

Reg. Date: FEB 09, 2016 Reg. Length: 7 YEARS
Reg. Time: 15:51:08 Expiry Date: FEB 09, 2023
Base Reg. #: 104172J Control #: D3592684

Block#

S0001 Secured Party: TAURUS RESOURCES NO. 2 B.V.
JACHTHAVENWEG 109H, 1081 KM
AMSTERDAM NETH

=D0001 Base Debtor: HEEMSKIRK CANADA LIMITED
(Business) STE 204, 1212-1ST STREET SE
CALGARY AB T2G 2H8

General Collateral:
ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY,
AND AN UNCRYSTALLIZED FLOATING CHARGE ON LAND.
THE FULL ADDRESS FOR THE DEBTOR IS:
HEEMSKIRK CANADA LIMITED
C/O HCA MOUNTAIN MINERALS (MOBERLY) LIMITED

Continued on Page 2

Search Criteria: HEEMSKIRK CANADA LIMITED

Page: 2

SUITE 204, 1212-1ST STREET SE
CALGARY, AB T2G 2H8

Registering
Party: STIKEMAN ELLIOTT LLP
1700-666 BURNARD STREET

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*

Reg. Date: FEB 09, 2016 Reg. Length: 7 YEARS  
 Reg. Time: 15:56:42 Expiry Date: FEB 09, 2023  
 Base Reg. #: 104183J Control #: D3593315

Block#

S0001 Secured Party: TAURUS RESOURCES NO. 2 B.V.  
 JACHTHAVENWEG 109H, 1081 KM  
 AMSTERDAM NETH

=D0001 Base Debtor: HEEMSKIRK CANADA LIMITED  
 (Business) STE 204, 1212-1ST STREET SE  
 CALGARY AB T2G 2H8

## General Collateral:

(I) ALL SECURITIES (AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT (BRITISH COLUMBIA)), SECURITY ENTITLEMENTS (AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT (BRITISH COLUMBIA)) AND OTHER EQUITY INTERESTS ISSUED BY OR WITH RESPECT TO HCA MOUNTAIN MINERALS (MOBERLY) LIMITED IN WHICH THE DEBTOR NOW OR IN THE FUTURE HAS ANY RIGHT, TITLE OR INTEREST, INCLUDING ALL ASSETS, PROPERTY AND UNDERTAKING RELATED TO SUCH SECURITIES, SECURITY ENTITLEMENTS AND OTHER EQUITY INTERESTS (THE "PLEDGED PROPERTY");  
 (II) ALL CERTIFICATES AND INSTRUMENTS EVIDENCING OR REPRESENTING THE PLEDGED PROPERTY;  
 (III) ALL INTEREST, DIVIDENDS AND DISTRIBUTIONS (WHETHER IN CASH, KIND OR STOCK) RECEIVED OR RECEIVABLE UPON OR WITH RESPECT TO ANY OF THE PLEDGED PROPERTY AND ALL MONEYS OR OTHER PROPERTY PAYABLE OR PAID ON ACCOUNT OF ANY RETURN OR REPAYMENT OF CAPITAL WITH RESPECT TO ANY OF THE PLEDGED PROPERTY OR OTHERWISE DISTRIBUTED WITH RESPECT THERETO OR WHICH WILL IN ANY WAY BE CHARGED TO, OR PAYABLE OR PAID OUT OF, THE CAPITAL OF HCA MOUNTAIN MINERALS (MOBERLY) LIMITED ON ACCOUNT OF ANY SUCH PLEDGED PROPERTY;  
 (IV) ALL OTHER PROPERTY THAT MAY AT ANY TIME BE RECEIVED OR RECEIVABLE BY OR OTHERWISE DISTRIBUTED TO THE DEBTOR WITH RESPECT TO, OR IN SUBSTITUTION FOR, OR IN EXCHANGE OR REPLACEMENT FOR, ANY OF THE FOREGOING; AND  
 (V) ALL PROCEEDS OF ANY OF THE FOREGOING.  
 PROCEEDS: GOODS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY AND INTANGIBLES.  
 THE FULL ADDRESS FOR THE DEBTOR IS:  
 HEEMSKIRK CANADA LIMITED  
 C/O HCA MOUNTAIN MINERALS (MOBERLY) LIMITED  
 SUITE 204, 1212-1ST STREET SE  
 CALGARY, AB T2G 2H8

## Registering

Party: STIKEMAN ELLIOTT LLP  
 1700-666 BURRARD STREET  
 VANCOUVER BC V6C 2X8

Continued on Page 3

Search Criteria: HEEMSKIRK CANADA LIMITED

Page: 3

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*

Reg. Date: JUL 23, 2018 Reg. Length: 3 YEARS  
 Reg. Time: 12:04:55 Expiry Date: JUL 23, 2021  
 Base Reg. #: 912094K Control #: D5438925

Block#

S0001 Secured Party: JACK CARTER CHEVROLET CADILLAC  
 11555 29 STREET SE  
 CALGARY AB T2Z0N4

=D0001 Base Debtor: HEEMSKIRK CANADA LIMITED  
 (Business) 204, 1212 1 STREET SE  
 CALGARY AB T2G2H8

## Vehicle Collateral:

Type	Serial #	Year	Make/Model	MH Reg.#
V0001	MV	3GCUKSECHHG272749	2017 CHEVROLET SILVERADO	1500

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*

Reg. Date: NOV 28, 2019 Reg. Length: 7 YEARS  
 Reg. Time: 06:41:40 Expiry Date: NOV 28, 2026  
 Base Reg. #: 919664L Control #: D6465472

Block#

S0001 Secured Party: QMETCO LIMITED  
 LEVEL 12, 300 QUEEN STREET

=D0001 Base Debtor: HEEMSKIRK CANADA LIMITED  
(Business) SUITE 204, 1212-1ST STREET SE  
CALGARY AB T2G 2H8

General Collateral:

ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY, AND AN UNCRYSTALLIZED FLOATING CHARGE ON LAND.

.  
THE SECURITY INTEREST IS SUBJECT TO THE TERMS OF A PRIORITY DEED DATED ON OR ABOUT NOVEMBER 30, 2019 BETWEEN THE SECURED PARTY, AS SENIOR LENDER, THE DEBTOR, AND TAURUS RESOURCES NO. 2 B.V., AS SUBORDINATED LENDER.

.  
THE COMPLETE ADDRESS OF DEBTOR IS: HEEMSKIRK CANADA LIMITED C/O HCA MOUNTAIN MINERALS (MOBERLY) LIMITED, SUITE 204, 1212-1ST STREET SE, CALGARY, AB T2G 2H8

Registering

Party: OSLER, HOSKIN & HARCOURT LLP (D.  
SARIC/L. GIDARI/1205881)  
1 FIRST CANADIAN PL, STE 6200  
TORONTO ON M5X 1B8

Continued on Page 4

Search Criteria: HEEMSKIRK CANADA LIMITED

Page: 4

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*

Reg. Date: NOV 28, 2019 Reg. Length: 7 YEARS  
Reg. Time: 07:25:32 Expiry Date: NOV 28, 2026  
Base Reg. #: 919764L Control #: D6465574

Block#

S0001 Secured Party: QMETCO LIMITED  
LEVEL 12, 300 QUEEN STREET  
BRISBANE, QLD XX AUS

=D0001 Base Debtor: HEEMSKIRK CANADA LIMITED  
(Business) SUITE 204, 1212-1ST STREET SE  
CALGARY AB T2G 2H8

General Collateral:

(I) ALL SECURITIES (AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT (BRITISH COLUMBIA)), SECURITY ENTITLEMENTS (AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT (BRITISH COLUMBIA)) AND OTHER EQUITY INTERESTS ISSUED BY OR WITH RESPECT TO HCA MOUNTAIN MINERALS (MOBERLY) LIMITED IN WHICH THE DEBTOR NOW OR IN THE FUTURE HAS ANY RIGHT, TITLE OR INTEREST, INCLUDING ALL ASSETS, PROPERTY AND UNDERTAKING RELATED TO SUCH SECURITIES, SECURITY ENTITLEMENTS AND OTHER EQUITY INTERESTS (THE "PLEDGED PROPERTY");

(II) ALL CERTIFICATES AND INSTRUMENTS EVIDENCING OR REPRESENTING THE PLEDGED PROPERTY;

(III) ALL INTEREST, DIVIDENDS AND DISTRIBUTIONS (WHETHER IN CASH, KIND OR STOCK) RECEIVED OR RECEIVABLE UPON OR WITH RESPECT TO ANY OF THE PLEDGED PROPERTY AND ALL MONEYS OR OTHER PROPERTY PAYABLE OR PAID ON ACCOUNT OF ANY RETURN OR REPAYMENT OF CAPITAL WITH RESPECT TO ANY OF THE PLEDGED PROPERTY OR OTHERWISE DISTRIBUTED WITH RESPECT THERETO OR WHICH WILL IN ANY WAY BE CHARGED TO, OR PAYABLE OR PAID OUT OF, THE CAPITAL OF HCA MOUNTAIN MINERALS (MOBERLY) LIMITED ON ACCOUNT OF ANY SUCH PLEDGED PROPERTY;

(IV) ALL OTHER PROPERTY THAT MAY AT ANY TIME BE RECEIVED OR RECEIVABLE BY OR OTHERWISE DISTRIBUTED TO THE DEBTOR WITH RESPECT TO, OR IN SUBSTITUTION FOR, OR IN EXCHANGE OR REPLACEMENT FOR, ANY OF THE FOREGOING; AND

(V) ALL PROCEEDS OF ANY OF THE FOREGOING.

.  
PROCEEDS: GOODS, CHATTEL PAPER, INVESTMENT PROPERTY, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY AND INTANGIBLES.

.  
THE SECURITY INTEREST IS SUBJECT TO THE TERMS OF A PRIORITY DEED DATED ON OR ABOUT NOVEMBER 30, 2019 BETWEEN THE SECURED PARTY, AS SENIOR LENDER, THE DEBTOR, AND TAURUS RESOURCES NO. 2 B.V., AS SUBORDINATED LENDER.

.  
THE COMPLETE ADDRESS OF DEBTOR IS: HEEMSKIRK CANADA LIMITED C/O HCA MOUNTAIN MINERALS (MOBERLY) LIMITED, SUITE 204, 1212-1ST STREET SE, CALGARY, AB T2G 2H8

Registering





Iterm: XPSP0050

For: PH43818 DYE AND DURHAM CORPORATION

09:11:58

Index: BUSINESS DEBTOR

List of matches:

Exact: HCA MOUNTAIN MINERALS (MOBERLY) LIMITED
Exact: HCA MOUNTAIN MINERALS (MOBERLY) LIMITED
Exact: HCA MOUNTAIN MINERALS (MOBERLY) LIMITED
Exact: HCA MOUNTAIN MINERALS (MOBERLY) LIMITED

Page: 1

Iterm: XPSP0050

For: PH43818 DYE AND DURHAM CORPORATION

09:11:58

Index: BUSINESS DEBTOR

Search Criteria: HCA MOUNTAIN MINERALS (MOBERLY) LIMITED

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*

Reg. Date: FEB 09, 2016 Reg. Length: 7 YEARS
Reg. Time: 15:52:44 Expiry Date: FEB 09, 2023
Base Reg. #: 104174J Control #: D3592697

Block#

S0001 Secured Party: TAURUS RESOURCES NO. 2 B.V.
JACHTHAVENWEG 109H, 1081 KM
AMSTERDAM NETH

=D0001 Base Debtor: HCA MOUNTAIN MINERALS (MOBERLY)
(Business) LIMITED
STE 204, 1212-1ST STREET SE
CALGARY AB T2G 2H8

General Collateral:
ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY,
AND AN UNCRYSTALLIZED FLOATING CHARGE ON LAND.

Registering
Party: STIKEMAN ELLIOTT LLP
1700-666 BURNARD STREET
VANCOUVER BC V6C 2X8

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*

Reg. Date: APR 26, 2019 Reg. Length: 2 YEARS
Reg. Time: 06:05:39 Expiry Date: APR 26, 2021
Base Reg. #: 458680L Control #: D5995995

Block#

S0001 Secured Party: RCAP LEASING INC.
5575 NORTH SERVICE RD, STE 300
BURLINGTON ON L7L 6M1

=D0001 Base Debtor: HCA MOUNTAIN MINERALS (MOBERLY)
(Business) LIMITED
8888-665 8 ST SW
CALGARY AB T2P 3K7

D0002 Bus. Debtor: HCA MOUNTAIN MINERALS (MOBERLY)
LIMITED
1725 BLAEBERRY RIVER ROAD EAST
GOLDEN BC V0A 1H1

General Collateral:
ALL WIRELESS COMMUNICATION EQUIPMENT FROM TIME TO TIME LEASED BY THE
SECURED PARTY TO THE DEBTOR AS DESCRIBED ON LEASES, CONDITIONAL SALES
AGREEMENTS AND ANY OTHER FINANCING AGREEMENTS ENTERED INTO BETWEEN
THESECURED PARTY AND THE DEBTOR FROM TIME TO TIME AND ANY PROCEEDS
THEREOF, TOGETHER WITH ALL REPLACEMENT PARTS, ACCESSORIES AND
ATTACHMENTS.

Continued on Page 2

Search Criteria: HCA MOUNTAIN MINERALS (MOBERLY) LIMITED

Page: 2

Registering
Party: (REGISTRY=RECOVERY) TM INC.
1551 THE QUEENSWAY
TORONTO ON M8Z 1T8

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*

Reg. Date: NOV 28, 2019 Reg. Length: 7 YEARS
Reg. Time: 06:37:08 Expiry Date: NOV 28, 2026





This is Exhibit "O" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



---

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

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



## Mineral Titles Online Viewer

### Search criteria:

Criteria	Owner name
	HCA Mountain Minerals (Moberly) Limited

Click [here](#) to go back to the titles search page.

Please select from the list of owners matching the criteria to continue the search.

Owner Number	Owner Name	View Titles	View Client Details
201153	HCA MOUNTAIN MINERALS (MOBERLY) LIMITED	<a href="#">Titles</a>	<a href="#">Client Details</a>



## Mineral Titles Online Viewer

### Search criteria:

<b>Criteria</b>	<b>Owner</b>
	201153

Click [here](#) to go back to the previous page  
 Click [here](#) to go back to the titles search page.

Search results: [Download to Excel \(all results\)](#)

Total 8 titles are found.

<a href="#">Title Number</a>	<a href="#">Claim Name</a>	<a href="#">Owner</a>	<a href="#">Title Type</a>	<a href="#">Title Sub Type</a>	<a href="#">Map Number</a>	<a href="#">Issue Date</a>	<a href="#">Good To Date</a>	<a href="#">Status</a>	<a href="#">Area (ha)</a>
<a href="#">213089</a>	CONTACT	<a href="#">201153</a> 100%	Mineral	Claim	<a href="#">082N036</a>	1976/NOV/01	2022/JUL/01	GOOD	150.0
<a href="#">213090</a>	SANDY	<a href="#">201153</a> 100%	Mineral	Claim	<a href="#">082N036</a>	1976/NOV/01	2022/JUL/01	GOOD	375.0
<a href="#">213099</a>	PAX	<a href="#">201153</a> 100%	Mineral	Claim	<a href="#">082N036</a>	1978/APR/05	2022/JUL/01	GOOD	200.0
<a href="#">213195</a>	ACCESS 1	<a href="#">201153</a> 100%	Mineral	Claim	<a href="#">082N036</a>	1980/OCT/21	2022/JUL/01	GOOD	450.0
<a href="#">338588</a>	RALF #1	<a href="#">201153</a> 100%	Mineral	Claim	<a href="#">082N036</a>	1995/AUG/10	2022/JUL/01	GOOD	500.0
<a href="#">344488</a>		<a href="#">201153</a> 100%	Mineral	Lease	<a href="#">082N036</a>	1996/OCT/08	2020/OCT/08	PROTECTED	70.7
<a href="#">576995</a>	SOLAR	<a href="#">201153</a> 100%	Mineral	Claim	<a href="#">082N</a>	2008/FEB/23	2022/JUL/01	GOOD	40.3
<a href="#">1070999</a>	NORTHERN SILICA	<a href="#">201153</a> 100%	Mineral	Claim	<a href="#">082N</a>	2019/SEP/12	2022/JUL/01	GOOD	988.9

Total 8 titles are four

Click [here](#) to go back to the previous page  
 Click [here](#) to go back to the titles search page.

This is Exhibit "P" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



---

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

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



# **Northern Silica Corporation**

Consolidated Financial Statements

As at and for the years ended September 30, 2019 and 2018

(Expressed in Canadian dollars)



## *Independent auditor's report*

To the Shareholders of Northern Silica Corporation

---

### *Our opinion*

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the financial position of Northern Silica Corporation and its subsidiaries (together, the Company) as at September 30, 2019 and its financial performance and its cash flows for the year then ended in accordance with International Financial Reporting Standards (IFRS).

#### **What we have audited**

The Company's consolidated financial statements comprise:

- the consolidated statement of financial position as at September 30, 2019;
- the consolidated statement of loss and other comprehensive loss for the year then ended;
- the consolidated statement of changes in equity for the year then ended;
- the consolidated statement of cash flows for the year then ended; and
- the notes to the consolidated financial statements, which include a summary of significant accounting policies.

---

### *Basis for opinion*

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the consolidated financial statements* section of our report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

#### **Independence**

We are independent of the Company in accordance with the ethical requirements that are relevant to our audit of the consolidated financial statements in Canada. We have fulfilled our other ethical responsibilities in accordance with these requirements.

---

### *Material uncertainty related to going concern*

We draw attention to Note 1 in the consolidated financial statements, which describes events or conditions that indicate the existence of a material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern. Our opinion is not modified in respect of this matter.

---

*PricewaterhouseCoopers LLP*  
111-5th Avenue SW, Suite 3100, Calgary, Alberta, Canada T2P 5L3  
T: +1 403 509 7500, F: +1 403 781 1825

"PwC" refers to PricewaterhouseCoopers LLP, an Ontario limited liability partnership.



---

## *Responsibilities of management and those charged with governance for the consolidated financial statements*

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with IFRS, and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Company or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Company's financial reporting process.

---

## *Auditor's responsibilities for the audit of the consolidated financial statements*

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern.



If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Company to cease to continue as a going concern.

- Evaluate the overall presentation, structure and content of the consolidated financial statements, including the disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information of the entities or business activities within the Company to express an opinion on the consolidated financial statements. We are responsible for the direction, supervision and performance of the group audit. We remain solely responsible for our audit opinion.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

*PricewaterhouseCoopers LLP*

Chartered Professional Accountants

Calgary, Alberta  
January 28, 2020

# Northern Silica Corporation

## Consolidated statements of financial position

(Stated in thousands of Canadian dollars)

	Note	2019 September 30	2018 September 30
<b>Assets</b>			
<b>Current assets</b>			
Cash and cash equivalents	5	\$ 1,438	\$ 11,397
Accounts receivable & prepaid expenses	6, 16	1,919	832
Inventory	7	4,924	6,684
<b>Total Current Assets</b>		<b>8,281</b>	<b>18,913</b>
<b>Non-current assets</b>			
Property, plant and equipment	8	52,225	105,040
Intangible assets	9	1,763	1,825
<b>Total non-current assets</b>		<b>53,988</b>	<b>106,865</b>
<b>Total Assets</b>		<b>\$ 62,269</b>	<b>\$ 125,778</b>
<b>Equity and liabilities</b>			
<b>Current Liabilities</b>			
Trade and other payables	10	\$ 5,020	\$ 9,095
Provisions	10	40	136
Current portion of long-term debt	11	64,178	46,003
<b>Total Current Liabilities</b>		<b>69,238</b>	<b>55,234</b>
<b>Non-current liabilities</b>			
Deferred tax liabilities	13	-	276
Long-term debt	11	-	190
Provisions	12	261	265
<b>Total non-current Liabilities</b>		<b>261</b>	<b>731</b>
<b>Total Liabilities</b>		<b>\$ 69,499</b>	<b>\$ 55,965</b>
<b>Equity</b>			
Issued Capital	14	88,110	77,585
Deficit		(95,704)	(8,136)
Non-controlling interest		364	364
<b>Total Equity</b>		<b>\$ (7,230)</b>	<b>\$ 69,813</b>
<b>Total Equity and Liabilities</b>		<b>\$ 62,269</b>	<b>\$ 125,778</b>

Going concern (Note1)  
 Commitments (Note18)  
 Subsequent Events (Note 21)

The accompanying notes are an integral part of these consolidated financial statements.

Approved on behalf of the Board of Directors:

“Signed”  
 Martin Boland  
 Director, Chairman of the Audit Committee

“Signed”  
 Scott Broughton  
 Director, President & Chief Executive Officer

# Northern Silica Corporation

## Consolidated statements of loss and other comprehensive loss

(Stated in thousands of Canadian dollars)

	Note	For the twelve months ended	
		2019 September 30	2018 September 30
Silica sales revenue	20	\$ 2,546	\$ 20
Transloading services revenue	20	485	221
		<b>3,031</b>	241
Cost of sales			
Direct operating		14,753	1,303
Storage and logistics		1,725	19
		<b>16,478</b>	1,322
<b>Gross loss</b>		<b>(13,447)</b>	(1,081)
General and administrative costs		3,751	2,818
Depreciation and amortization	8,9	2,985	705
Other income		(16)	(5)
		<b>6,720</b>	3,518
<b>Operating loss</b>		<b>(20,167)</b>	(4,599)
Finance costs		5,534	1,968
Loss on foreign exchange		466	1,195
Asset impairment	8	41,397	-
Mine development impairment	8	20,280	-
Loss on sale of assets		-	3
Transaction costs and other non-recurring items		-	258
Realized loss on portfolio investments		-	305
		<b>67,677</b>	3,729
<b>Loss before income tax</b>		<b>(87,844)</b>	(8,328)
Income tax (recovery) expense	13	(276)	31
<b>Loss and comprehensive loss</b>		<b>(87,568)</b>	(8,359)
Other comprehensive income (loss)		-	-
<b>Total comprehensive loss</b>		<b>\$ (87,568)</b>	<b>\$ (8,359)</b>

The accompanying notes are an integral part of these consolidated financial statements.

## Northern Silica Corporation

### Consolidated statements of changes in equity

(Stated in thousands of Canadian dollars)

	Issued capital	Retained earnings	Non-controlling interest	Total Equity
<b>Balance at September 30, 2017</b>	<b>\$ 42,367</b>	<b>\$ 223</b>	<b>\$ 364</b>	<b>\$ 42,954</b>
Additions during the period	35,218	-	-	35,218
Loss for the twelve months ended September 30, 2018	-	(8,359)	-	(8,359)
<b>Balance at September 30, 2018</b>	<b>\$ 77,585</b>	<b>\$ (8,136)</b>	<b>\$ 364</b>	<b>\$ 69,813</b>
Additions during the period	10,525	-	-	10,525
Loss for the twelve months ended September 30, 2019	-	(87,568)	-	(87,568)
<b>Balance at September 30, 2019</b>	<b>\$ 88,110</b>	<b>\$ (95,704)</b>	<b>\$ 364</b>	<b>\$ (7,230)</b>

The accompanying notes are an integral part of these consolidated financial statements.

# Northern Silica Corporation

## Consolidated statements of cash flows

(Stated in thousands of Canadian dollars)

	Note	For the twelve months ended	
		2019	2018
		September 30	September 30
<b>Cash flows provided by (used in) operating activities</b>			
Loss before income taxes		\$ (87,844)	\$ (8,328)
Adjustments to reconcile profit before tax to net cash flows:			
Depreciation and amortization		2,985	705
Gain on sale of assets		-	3
Asset impairment		41,397	-
Mine development impairment		20,280	-
Unrealised loss on sale of portfolio investments		-	305
Unrealised loss on foreign exchange		466	1,196
Sparte parts usage		1,056	-
Reclamation liability adjustment		(9)	-
Add: finance costs		5,534	1,968
Changes in non-cash working capital	15	(237)	(933)
<b>Net cash flows provided by (used) in operating activities</b>		<b>(16,372)</b>	<b>(5,084)</b>
<b>Cash flows provided by (used in) investing activities</b>			
Assets acquired on corporate acquisition		-	(2,575)
Disposal of portfolio investments		-	1,085
Disposal of property, plant and equipment		-	49
Purchase of property, plant and equipment		(10,942)	(21,055)
Changes in non-cash working capital	15	(3,263)	2,935
<b>Net cash flows from investing activities</b>		<b>(14,205)</b>	<b>(19,561)</b>
<b>Cash flows provided by (used in) financing activities</b>			
Private placement		10,525	34,719
Proceeds from working capital facilities		10,530	11,000
Proceeds from loan note subscription		-	4,400
Payments of working capital facilities		-	(18,016)
Payments of term loans		(179)	(80)
Proceeds from finance leases		-	49
Payments of finance leases		(258)	(305)
<b>Net cash flows from financing activities</b>		<b>20,618</b>	<b>31,767</b>
Decrease in cash and cash equivalents		(9,959)	7,122
<b>Cash and cash equivalents - beginning</b>		<b>11,397</b>	<b>4,276</b>
<b>Effects of exchange rate on cash and cash equivalents</b>		<b>-</b>	<b>(1)</b>
<b>Cash and cash equivalents - ending</b>	5	<b>\$ 1,438</b>	<b>\$ 11,397</b>

The accompanying notes are an integral part of these consolidated financial statements.



# Northern Silica Corporation

## Notes to the Consolidated Financial Statements

for the period ended September 30, 2019 and September 30, 2018

(All amounts are in thousands of Canadian dollars, unless otherwise noted)

### Corporate Information

Northern Silica Corporation (the "Company") is a privately held Canadian resource company incorporated in Alberta, Canada. The address of the registered office is 1212 - 1st Street SE, Suite 204, Calgary, Alberta. The Company was incorporated on December 1, 2016. These consolidated financial statements as at September 30, 2019 and September 30, 2018, and for the three months ended September 30, 2019 and September 30, 2018 (the "Financial Statements") are comprised of Northern Silica Corporation and its wholly-owned subsidiaries (together referred to as the "Company"). The Company manages two operating segments (Note 20). The Moberly Silica Mine division's ("Moberly Mine") principal activity is the operations of the Moberly mine and processing plant located near Golden, British Columbia. The Transload segment provides transloading and storage services and is strategically located in Penhold, Alberta.

The following entities have been consolidated within Northern Silica Corporation's consolidated financial statements for the periods ended September 30, 2019 and September 30, 2018:

Subsidiaries	Country	Functional Currency	Segment	% interest at September 30, 2019 (September 30, 2018)
Northern Silica Corporation	Canada	CDN	Corporate	
Heemskirk Mining Pty Ltd	Canada	CDN	Corporate	100% (100%)
Heemskirk Canada Limited	Canada	CDN	Corporate	100% (100%)
Heemskirk Canada Holdings Limited	Canada	CDN	Moberly Mine	100% (100%)
HCA Mountain Minerals (Moberly) Limited	Canada	CDN	Moberly Mine	100% (100%)
Custom Bulk Services Inc.	Canada	CDN	Transload	100% (100%)

### 1. Going Concern

The financial statements of the Company are prepared using International Financial Reporting Standards ("IFRS") as they apply to a going concern, which contemplates the realization of assets and discharge of liabilities in the normal course of business as they become due.

The Company incurred a net loss for the twelve months ending September 30, 2019 of \$87.6 million and had a working capital deficiency of \$61.0 million as at September 30, 2019. The Company relies upon funding from its largest shareholder (Taurus Resources No.2 B.V. or "Taurus") and other shareholders. As at September 30, 2019, the Company did not meet certain covenants on its Taurus Senior Secured Loan Facility (see Note 11) and accordingly, it was classified as a current liability. The Company is dependent on its shareholders not calling loan to continue as a going concern.

The Company recorded a \$59.4 million impairment on September 30, 2019 as a result of project delays and cost overruns on its Moberly Facility as well as weakened market conditions for frac sand, its major source of revenue. The Company also recorded an impairment of \$3.4 million on its inventory for the year ended September 30, 2019, and \$2.3 million of assets were also impaired during the quarter ended March 31, 2019. Refer to notes 7 and 8 for more details.

These circumstances cause significant doubt as to the ability of the Company to meet its obligations as they come due and, accordingly, the appropriateness of the use of accounting principles applicable to a going concern.

**Northern Silica Corporation**  
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**1. Going Concern (continued)**

These financial statements do not reflect the adjustments to the carrying values of the assets and liabilities, the reported amounts of revenues and expenses and the classification of the statement of financial position items if the going concern assumption was inappropriate. These adjustments could be material

The ability of the Company to carry out its planned business objectives is dependent on its ability to raise adequate financing from lenders, shareholders and other investors and/or achieving operating profitability and generating positive cash flows.

Management has taken proactive steps to reduce cash outflows in the face of the current low market pricing for frac sand. This includes a temporary shutdown of the Company's Moberly processing facility from December 4, 2019 to January 8, 2020 and sourcing new industrial customers for its products. The Company will continue to evaluate the expected stabilizing of frac sand market conditions during the first quarter of calendar 2020 to inform its operating strategy for the next 12 months.

There is no assurance that the steps Management have taken will be successful in increasing cash flows. Continued soft pricing for frac sand could have a material effect on the Company to continue as a going concern.

The Company executed an amended Deed to its Taurus Senior Loan Facility. The Deed deferred the project completion test to January 21, 2019 and amended principal repayments in fiscal 2019 to one \$0.15 million payment on June 20, 2018 and \$0.15 million on September 30, 2019; and updates certain definitions relating to the calculation of operating income for the purpose of the base case financial model supporting its covenant calculations. Subsequent to the amendment of the Deed, the Group received a waiver deferring the June and September principal payments to June 30, 2020 and the deferral of the project completion test to June 30, 2020 as well as relief against its financial covenant violations.

In order to ensure sufficient working capital to fund the production of silica inventories and capital project in 2019, the Company announced in December 2018 a private placement of up to 46,666,667 common shares for proceeds of \$3.5 million. In relation to this placement, 17,892,000 shares for proceeds of \$1.4 million were issued (see Note 14). In February of 2019, a subsequent private placement was announced for up to 160,000,000 common shares for proceeds of \$12.0 million. The Company collected \$9.1 million in proceeds and issued 121,484,855 shares in May 2019.

On December 6, 2019, Management amended the QMetco loan facility to increase it to a maximum available amount of \$18.0 million (see note 21). Management will rely on issuing private placements to support operations in fiscal 2020, however there is no assurance that these future private placements will be successful.

**2. Basis of presentation and significant accounting policies**

*Statement of compliance and basis of presentation*

These Financial Statements have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB") and interpretations of the International Financial Reporting Interpretations Committee ("IFRIC").

The financial report is presented in Canadian dollars, which is the Company's functional currency, and all values are rounded to the nearest thousand dollars unless otherwise stated. These consolidated financial statements include the accounts of Northern Silica Corporation, and its wholly owned subsidiaries (See Note 1). All inter-company transactions have been eliminated.

# Northern Silica Corporation

## Notes to the Consolidated Financial Statements

for the period ended September 30, 2019 and September 30, 2018  
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### 2. Basis of presentation (continued)

Non-controlling interest represents stock options issued by Heemskirk Mining Pty Ltd (“HSK”) to Taurus Funds Management Pty Ltd, a shareholder of Northern Silica Corporation. The stock options were recorded at fair **2.1**

value at the time of the business acquisition in 2017 and are shown separately in the consolidated statement of financial position within equity. The Company’s income or losses are not allocated to non-controlling interest given that potential voting rights from stock options require exercise or conversion.

The presentation and classification of certain items in the financial statements have been revised for enhanced explanation to the users.

The policies applied in these consolidated financial statements are based on IFRS issued and outstanding as at January 28, 2020, the date of the final approval of the financial statements by the Board of Directors.

#### *Basis of measurement*

The Financial Statements have been prepared on a historical cost basis, except for portfolio investments and business combination accounting. The financial statements of the Company’s subsidiaries are prepared for the same reporting periods as the parent in accordance with the Company’s accounting policies.

### 2.2 Significant accounting policies

#### (a) Foreign currency translation

##### *Functional and presentation currency*

The Company’s Financial Statements are presented in Canadian dollars, which is also the parent entity’s functional currency and the Company’s presentation currency. All other entities in the Company share the functional currency of Canadian dollars.

##### *Foreign currency transactions*

Transactions denominated in foreign currencies are initially recorded in the functional currency rate ruling at the date of the underlying transaction. Monetary assets and liabilities denominated in foreign currencies are retranslated at the functional currency rate of exchange ruling at the balance sheet date. All exchange differences are recognized in the statement of profit or loss. Non-monetary items that are measured in terms of historical cost in a foreign currency are translated using the exchange rates as at the dates of the initial transactions. Non-monetary items measured at fair value in a foreign currency are translated using the exchange rates at the date when the fair value was determined.

#### (b) Inventories

Inventories represent finished goods, unprocessed but mined sand, work in process and sand available for shipment, as well as spare parts and supplies. The Company values inventory at the lower of cost or net realizable value. Cost is determined using the weighted average cost method.

Cost includes the cost of mining the sand as well as the direct labor costs, utility costs, transportation costs, and other processing costs, as well as depreciation directly attributable to production equipment and depreciation of capitalized stripping activities.

## **2.2 Significant accounting policies (continued)**

Materials and supplies are valued at the lower of cost and net realizable value. Any provision for obsolescence is determined by reference to specific stock items identified. A regular and ongoing review is undertaken to establish the extent of surplus items and a provision is made for any potential loss on their disposal.

Net realizable value is the estimated selling price less applicable selling expenses. When the weighted average cost of inventories exceeds the net realizable value, inventory is written down to the net realizable value. All write downs are charged to cost of goods sold. The amount of the write down may be reversed (up to original amount of the write down) when there is a change in the economic circumstances.

### **(c) Property, Plant & Equipment**

All costs directly associated with the purchase and development of property, plant and equipment are capitalized and reflected at cost less accumulated depreciation and net impairment losses. Costs of replacing parts of property, plant and equipment are capitalized only when they increase the future economic benefits embodied in the specific assets to which they relate. All other expenditures are recognized into income as incurred. The carrying amount of any replaced or sold component is derecognized. The costs of the day-to-day servicing of property and equipment are recognized in the Financial Statements as incurred.

Exchanges or swaps of property, plant and equipment are measured at fair value unless the transaction lacks commercial substance or neither the fair value of the asset received nor the asset given up can be reliably estimated. When fair value is not used, the cost of the acquired asset is measured at the carrying amount of the asset given up. Any gains or losses from the divestiture of property and equipment are recognized in the Financial Statements.

#### *Mine development*

Mine development represents the expenditure incurred in preparing mines for production, and includes stripping and waste removal costs net of revenue recognized before commissioning date. Such expenditure comprises net direct costs and an appropriate allocation of directly related overhead costs.

All expenditures incurred prior to commencement of production from the development property is carried forward to the extent to which it is probable associated future economic benefits will flow to the Company.

When further development expenditure is incurred in respect of the mine property after commencement of production, such expenditure is carried forward as part of the cost of mine property only when future economic benefits are probable, otherwise the expenditure is classified as part of the cost of production and expensed as incurred. Such capitalized development expenditure is added to the total carrying value of mine development being amortized.

The net carrying values of mine development expenditure carried forward are reviewed yearly by directors to determine whether there is any indication of impairment. The carrying value of mine development will be amortized in full on a unit of production basis over the life of the mine.

#### *Finance leases*

Leased assets and assets under hire purchase contracts are pledged as security for the related finance lease and hire purchase liabilities.

#### *Freehold land*

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Freehold land is recognized and valued at its initial cost.

## **2.2 Significant accounting policies (continued)**

### *Property, plant and equipment, buildings and other*

Each class of property, plant and equipment, buildings and other is measured at cost less, where applicable, any accumulated depreciation and impairment losses.

The carrying values are reviewed for impairment indicators annually with recoverable amounts being estimated when events or changes in circumstances indicate that the carrying value may be impaired. The recoverable amount is assessed on the basis of the expected net cash flows that will be received from the assets employed and subsequent disposal. The expected net cash flows have been discounted to their present values in determining recoverable amounts.

An asset's carrying amount is immediately written down to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount.

Gains and losses on disposals are determined by comparing proceeds with the carrying amount. These gains and losses are included in the Financial Statements.

### *Depreciation*

Items of plant and equipment and other, including buildings but excluding freehold land, are depreciated over their estimated useful lives.

Depreciation of property, plant and equipment is provided using the straight-line method approximating their estimated useful lives in years as follows:

Mine development	30 to 40 years
Buildings	20 to 30 years
Plant and equipment	5 to 20 years
Computer and motor vehicles	1 to 10 years

Land is not being depreciated.

Depreciation of an asset or an asset under construction begins when it is available for use. Depreciation of an asset ceases at the earlier of the date that the asset is classified as held for sale and the date that the asset is derecognized. Depreciation does not cease when the asset becomes idle or is retired from active use unless the asset is fully depreciated.

Drilling and related costs are capitalized for deposits where proven and probable reserves exist and the activities are directed at obtaining additional information on the deposit or converting non-reserve minerals to proven and probable reserves and the benefit is to be realized over a period that exceeds one year.

### **Exploration, evaluation and feasibility expenditures**

Exploration and evaluation expenditures related to areas of interest is capitalized and carried forward to the extent that:

- rights to the tenure of the area of interest are current; and

## Northern Silica Corporation

### Notes to the Consolidated Financial Statements

for the period ended September 30, 2019 and September 30, 2018

(All amounts are in thousands of Canadian dollars, unless otherwise noted)

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#### 2.2 Significant accounting policies (continued)

- costs are expected to be recouped through successful development and exploitation of the area of interest or alternatively by sale; or
- where activities in the area of interest have not yet reached a stage which permits a reasonable assessment of the existence or otherwise of economically recoverable reserves, active and significant operations in, or in relation to, the area are continuing.

Such expenditures consists of an accumulation of acquisition costs and direct net exploration and evaluation costs incurred by or on behalf of the Company, together with an appropriate portion of directly related overhead expenditure.

Feasibility expenditures represent costs related to the preparation and completion of a feasibility study to enable a development decision to be made in relation to an area of interest.

At the commencement of production, all past exploration, evaluation and feasibility expenditures in respect of an area of interest is transferred to mine development where it is amortized over the life of the area of interest to which they relate.

When an area of interest is abandoned or the directors decide it is not commercial, any accumulated costs in respect of that area are written off in the year the decision is made. Each area of interest is reviewed at the end of each reporting period and accumulated costs written off to the extent they are not expected to be recoverable in the future.

#### (d) Intangible assets

Intangible assets acquired from a business combination are initially recorded at fair value (Note 9). Fair value is estimated by management taking into account the best use associated with the intangible asset.

Intangible assets with a finite life are amortized over the estimated useful life.

##### *Amortization*

Amortization of intangible assets are recorded on a straight line basis over the estimate useful life of the intangible assets which is estimated to be a 30 year life with (29 years currently remaining).

#### (e) Impairment of non-financial assets

The carrying amounts of all assets are reviewed for impairment whenever events or changes in circumstances indicate the carrying amount may not be recoverable.

An impairment loss is recognized for the amount by which the asset's carrying amount exceeds its recoverable amount. Recoverable amount is the higher of an asset's fair value less costs of disposal and value in use. For the purposes of assessing impairment, assets are grouped at the lowest levels for which there are separately identifiable cash inflows that are largely independent of the cash inflows from other assets or groups of assets (cash-generating units - CGUs).

The determination of a CGU is based on management's judgment regarding geographical proximity, shared equipment and mobility of equipment.

## **2.2 Significant accounting policies (continued)**

Management periodically evaluates whether current events or circumstances indicate that the carrying value of the property, plant and equipment assets may not be recoverable. Recoverability of investments in property, plant and equipment, and mineral rights are evaluated annually. Estimated future undiscounted net cash flows are calculated using estimates of proven and probable sand reserves, estimated future sales prices and operating costs and anticipated capital expenditures. Reductions in the carrying value of our investment are only recorded if the undiscounted cash flows are less than our book basis in the applicable assets.

Management's estimates of prices, recoverable proven and probable reserves and operating and capital costs are subject to certain risks and uncertainties which may affect the recoverability of our investments in property, plant and equipment. Although management has made its best estimate of these factors based on certain conditions, it is reasonably possible that changes could occur in the near term, which could adversely affect management's estimate of net cash flows expected to be generated from its operating property.

### **(f) Revenue recognition**

Revenue, consists of silica sales, transload service revenue and other services.

Obligations arising from silica sales are fulfilled when control of goods has passed to the purchaser, which is either when goods are picked up at the mine gate or Transload facility by the purchaser, or when goods have been physically delivered to a location specified by the purchaser. At that point, the purchaser has full control over the goods and there is no unfulfilled obligation which could affect the purchaser's acceptance of the products.

Transload services include monthly rentals of storage space for the Company's customers' products.

### **(g) Finance revenue and costs**

Finance revenue, consisting of interest income, is recognized as it accrues in the Financial Statements, using the effective interest method. Finance costs comprises interest expense on borrowings and impairment losses recognized on financial assets.

Amounts paid to financial institutions for the purpose of borrowing funds are capitalized upon recognition and are offset against the outstanding obligation to the financial institution. These costs are amortized over the remaining term of the facility placed.

Borrowing costs, unrelated to PP&E and mine development, are recognized in the Financial Statements in the period in which they are incurred using the effective interest method.

### **(h) Borrowing costs**

Borrowing costs directly attributable to the acquisition, construction or production of assets that necessarily take a substantial period of time to prepare for their intended use or sale, are added to the cost of those assets, until such time as the assets are substantially ready for their intended use or sale.

All other borrowing costs are recognized as an expense in the period in which they are incurred.

### **(i) Income taxes**

#### *Current tax*

Current tax assets and liabilities for the current and prior periods are measured at the amount expected to be recovered from or paid to the taxation authorities based on the current period's taxable income. The tax rates

## **2.2 Significant accounting policies (continued)**

and tax laws used to compute the amount are those that are enacted or substantively enacted by the balance sheet date.

### *Deferred tax*

Deferred income tax is provided on all temporary differences at the balance sheet date between the tax bases of assets and liabilities and their carrying amounts for financial reporting purposes.

Deferred income tax liabilities are recognized for all taxable temporary differences.

Deferred income tax assets are recognized for all deductible temporary differences, carry-forward of unused tax credits and unused tax losses, to the extent that it is probable that taxable profit will be available against which the deductible temporary differences and the carry-forward of unused tax credits and unused tax losses can be utilized.

The carrying amount of deferred income tax assets is reviewed at each balance sheet date and reduced to the extent that it is no longer probable that sufficient taxable profit will be available to allow all or part of the deferred income tax asset to be utilized.

Unrecognized deferred income tax assets are reassessed at each balance sheet date and are recognized to the extent that it has become probable that future taxable profit will allow the deferred tax asset to be recovered.

Deferred income tax assets and liabilities are measured at the tax rates that are expected to apply to the year when the asset is realized or the liability is settled, based on tax rates (and tax laws) that have been enacted or substantively enacted at the balance sheet date.

Income taxes relating to items recognized directly in equity are recognized in equity and not in profit or loss.

## **(j) Financial Instruments**

### *Recognition*

Financial assets and liabilities are generally initially recognized at fair value when the Company becomes a party to the contractual provisions of the instrument. However, where the fair value differs on initial recognition from the transaction price and the fair value is not measured using entirely observable inputs the instrument is recognized at the transaction price. In the case of instruments not measured at fair value through profit and loss, incremental, directly attributable transaction costs are accounted for as an adjustment to the carrying amount and in all other cases such transaction costs are expensed as incurred.

The Company evaluates financial and non-financial contracts not measured at fair value through profit and loss to determine whether they contain embedded derivatives. An embedded derivative is a component of a hybrid (consolidated) instrument that also includes a non-derivative host contract with the effect that some of the cash flows of the consolidated instrument vary in a way similar to a stand-alone derivative. For such instruments, an embedded derivative is separated where the economic characteristics and risks of the embedded derivative are not closely related to the economic characteristics and risks of the host contract and a separate instrument with the same terms as the embedded derivative would meet the definition of a derivative.

Financial assets and liabilities are not offset unless they are with a counterparty for which the Company has a legally enforceable right to settle the financial instruments on a net basis and the Company intends to settle on a net basis.

The fair value of a financial instrument is the price that would be received to sell an asset or paid to transfer a



## Northern Silica Corporation

### Notes to the Consolidated Financial Statements

for the period ended September 30, 2019 and September 30, 2018

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#### 2.2 Significant accounting policies (continued)

liability in an orderly transaction between market participants at the measurement date. The Company discloses more details about Financial Instruments in Notes 4 and 16.

##### *Derecognition*

Financial assets are derecognized when the rights to receive cash flows from the assets have expired or it transfers the financial instrument in a manner that qualifies for derecognition through transfer of substantially all risks and rewards or transfer of control.

Financial liabilities are derecognized upon extinguishment. A modification of a financial liability with an existing lender is evaluated to determine whether the amendment results in substantially different terms in which case it is accounted for as an extinguishment.

##### *Classification*

The financial instruments of the Company are classified in the following categories: fair value through profit or loss (which includes financial assets and financial liabilities), loans and receivables, available-for-sale and other financial liabilities.

Financial assets and financial liabilities acquired principally for the purpose of selling or repurchasing in the short-term are classified as “fair value through profit or loss” and are recognized initially at fair value with changes in fair value recognized in the Consolidated Statements of Income (Loss) and Other Comprehensive Income (Loss).

Financial assets classified as “available-for-sale” are measured at fair value, with changes in fair value recognized in other comprehensive income (loss). Available-for-sale financial assets are non-derivatives that are either designated in this category or not classified in any of the other categories. The Company has no available-for-sale financial assets.

Other financial liabilities include accounts payable and accruals and interest-bearing liabilities. Financial instruments in this category are initially recorded at fair value, net of any transaction costs incurred, and subsequently carried at amortized cost using the effective interest method.

##### *Equity Instruments*

The Company’s common units are classified as equity. Incremental costs directly attributable to the issue of common units are recognized as a reduction from equity.

##### *Impairment*

At each balance sheet date, the Company assesses whether there is objective evidence that financial assets, other than those designated as “fair value through the statement of income” are impaired. When impairment has occurred, the cumulative loss is recognized in the Consolidated Statements of Income (Loss) and Other Comprehensive Income (Loss). For financial assets carried at amortized cost, the amount of the impairment loss recognized is the difference between the asset’s carrying amount and the present value of estimated future cash flows, discounted at the financial asset’s original effective interest rate. When an available-for-sale financial asset is considered to be impaired, cumulative gains or losses previously recognized in other comprehensive income are reclassified to the Consolidated Statements of Income (Loss) and Other Comprehensive Income (Loss) in the period. Impairment losses may be reversed in subsequent periods.

## **2.2 Significant accounting policies (continued)**

### **(k) Provisions**

The Company is required to decommission and rehabilitate mines at the end of their producing lives to a condition acceptable to the relevant authorities.

The expected cost of any approved decommissioning or rehabilitation program, discounted to its net present value, is provided when the environmental disturbance occurs. The cost is capitalized when it gives rise to future benefits, whether the rehabilitation activity is expected to occur over the life of the operation or at the time of closure. The capitalized cost is amortized over the life of the operation and the increase in the net present value of the provision for the expected cost is included in financing expenses. Expected decommissioning and rehabilitation costs are based on the discounted value, using a risk-free rate, of the estimated future cost of detailed plans prepared for each site. Where there is a change in the expected decommissioning and restoration costs, the value of the provision and any related asset are adjusted and the effect is recognized in the Financial Statements on a prospective basis over the remaining life of the operation.

### **(l) Leases**

Leases that transfer substantially all of the benefits and risks of ownership to the Company are accounted for at the commencement of the lease term as finance leases and are recorded as property, plant and equipment at the fair value of the leased asset, or, if lower, at the present value of the minimum lease payments, together with an offsetting liability. Finance charges are allocated to each period so as to achieve a constant rate of interest on the remaining balance of the liability and are charged directly against income. Capitalized leased assets are amortized over the shorter of the estimated useful life of the asset or the lease term. All other leases are accounted for as operating leases and the lease costs are expensed as incurred.

### **(n) Loans and borrowings**

All loans and borrowings are initially recognized at cost, being the fair value of the consideration received less directly attributable transaction costs. Fees paid on the establishment of loan facilities that are yield related are included as part of the carrying amount of the loans and borrowings.

Borrowings are classified as current liabilities unless the Company has an unconditional right to defer settlement of the liability for at least 12 months after the balance sheet date.

Borrowing costs are recognized as an expense when incurred, except when they are included in the costs of qualifying assets.

### **(o) Segment reporting**

An operating segment is a component of the Company that engages in business activities from which it may earn revenue and incur expenses. Operating results for each operating segment are reviewed regularly by the Company's Chief Executive Officer in order to make decisions regarding the allocation of resources to the segment. Segment results include items directly attributable to a segment as well as those that can be allocated on a reasonable basis.

### **3. Significant accounting judgements, estimates and assumptions**

In applying the Company's accounting policies management continually evaluates judgements, estimates and assumptions based on experience and other factors, including expectations of future events that may have an impact on the Company. All judgements, estimates and assumptions made are believed to be reasonable based on the most current set of circumstances available to management. Actual results may differ from the judgements, estimates and assumptions. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected. The following discussion sets forth management's most critical estimates and assumptions in determining the value of assets, liabilities and equity.

#### **3. Significant accounting judgements, estimates and assumptions (continued)**

The following discussion sets forth management's most critical estimates and assumptions in determining the value of assets, liabilities and equity

##### **(a) Business combination**

The Company uses judgement in applying the acquisition method of accounting for business combinations and estimates to value identifiable assets and liabilities at the acquisition date. Independent third parties may be engaged to determine fair value of property, plant and equipment and intangible assets. Estimates are used to determine cash flow projections, including the period of future benefit and future growth and discount rates, among other factors. The values placed on the acquired assets and liabilities affect the amount of goodwill recorded on acquisition.

##### **(b) Asset retirement obligations ("ARO")**

ARO represents present value estimates of the Company's cost to remediate sites. The Company applies judgement in assessing the existence, extent and expected method of remediation and decommissioning required at the end of each reporting period. Provisions are based on estimated costs, which take into consideration the anticipated method and extent of remediation, regulatory, environmental and safety considerations. Actual costs are uncertain and estimates can vary as a result of changes to relevant laws and regulations, operating experience and closure plans. The estimated timing of future decommissioning and remediation may change due to factors such as closure plans and regulatory consideration. Changes to estimates relating to future expected costs, discount rates and timing may have a material impact on the amounts presented.

##### **(c) Determination of mineral resources and ore reserves**

The determination of reserves impacts the accounting for asset carrying values, depreciation and amortization rates, deferred stripping costs and provisions for restoration. There are numerous uncertainties inherent in estimating mineral resources and ore reserves and assumptions that are valid at the time of estimation may change significantly when new information becomes available. Changes in the forecasted prices of commodities, exchange rates, production costs or recovery rates may change the economic status of reserves and may, ultimately, result in the reserves being restated.

##### **(d) Recovery of deferred tax assets**

Deferred tax assets are recognized for deductible temporary differences and losses when management considers that it is probable that future taxable profits will be available to utilize those temporary differences.

## Northern Silica Corporation

### Notes to the Consolidated Financial Statements

for the period ended September 30, 2019 and September 30, 2018

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#### 3. Significant accounting judgements, estimates and assumptions (continued)

Tax regulations and legislation are subject to change and there are differing interpretations requiring Management judgment. Income tax filings are subject to audits and re-assessments and changes in facts, circumstances and interpretations of the standards may result in a material increase or decrease in the Company's provision for income taxes.

##### (e) Impairment

In accordance with the Company's accounting policies and processes, the Company assesses at each reporting date whether there is an indication of the impairment for the assets. Cash generating units ("CGUs") are reviewed at each reporting period to determine whether there is an indication of impairment. Where an indicator of impairment exists, a formal estimate of the recoverable amount is made. There were impairment indicators at September 30, 2019 and testing was performed for each Cash Generating Unit (CGU).

##### (f) Inventories

The Company evaluates its inventory to ensure it is carried at the lower of average cost and net realizable value. Allowances are made against obsolete or damaged inventories and charged to the cost of sales. The reversal of any write-down of inventory arising from an increase in net realizable value would be recognized as a reduction in cost of sales in the period in which the reversal occurred. A write-down was recorded for the period ended September 30, 2019. Refer to Note 7 for more details.

##### (g) Depreciation and amortization

Depreciation and amortization of property, plant and equipment and intangible assets are based on estimated useful lives and residual values. These estimates are based on past experience and industry norms, and may change as more experience is obtained or as market conditions change.

#### 4. Accounting pronouncements

##### 4.1 Adoption of new accounting pronouncements

###### (a) IFRS 9 – Financial Instruments

On October 1, 2018 the Company adopted IFRS 9 Financial Instruments which replaced IAS 39 - Financial Instruments: Recognition and Measurement. The new standard introduces requirements for the classification and measurement of financial assets and financial liabilities, impairment, hedge accounting and the fair value of an entity's own debt. The Company's trade receivables are subject to the expected credit loss model under IFRS 9. The Company uses the simplified approach of providing for expected credit losses, which requires the use of the lifetime expected loss provision for trade receivables. The adoption of IFRS 9 did not have a material impact on the Company's consolidated financial statements.

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**4.1 Adoption of new accounting pronouncements (continued)**

**(b) IFRS 15 – Revenue from Contracts with Customers**

On October 1, 2018 the Company adopted IFRS 15 Revenue from Contracts with Customers which replaced IAS 11 - Construction Contracts, IAS 18 - Revenue, and IFRIC 13 – Customer Loyalty Programs, as well as various other interpretations regarding revenue. IFRS 15 outlines a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers, except for contracts within the scope of the standards on leases, insurance contracts and financial instruments.

The Company's revenue, which is principally made up of sand sales is not subject to contractual arrangements. The Company recognizes revenue as per terms of the orders when they are fulfilled.

The Company used the modified forward approach to adopt this new pronouncement which did not have a material impact on the Company's consolidated financial statements.

**4.2 Future accounting pronouncements**

**(a) IFRS 16 - Leases**

In January 2016, the IASB issued IFRS 16, which replaces IAS 17 - Leases ("IAS 17") and related interpretations. IFRS 16 provides a single lessee accounting model, requiring the recognition of assets and liabilities for all leases, unless the lease term is twelve months or less, or the underlying asset has a low value. IFRS 16 substantially carries forward the lessor accounting in IAS 17 with the distinction between operating leases and finance leases being retained.

IFRS 16 will be applied for annual periods beginning on or after January 1, 2019. The Company is currently assessing the potential impact of this standard.

**5. Cash and cash equivalents**

	<b>September 30</b>	<b>September 30</b>
	<b>2019</b>	<b>2018</b>
Cash at bank and in hand <sup>(1)</sup>	\$ 979	\$ 8,595
Restricted cash <sup>(2)</sup>	150	150
Holdback cash <sup>(3)</sup>	309	2,652
	<b>\$ 1,438</b>	<b>\$ 11,397</b>

(1) Cash at bank earns interest at floating rates based on daily bank deposit rates.

(2) The Company has in place letters of credit totaling \$0.15 million with the Government of Canada in relation to the issue of the mining and agriculture permits of the Moberly mine. The letters of credit are guaranteed by cash in the Company's bank accounts.

(3) Cash held as a holdback to the Contractor used in the construction of the Moberly plant.

Cash and cash equivalents comprise cash at bank and in hand. The Company has a USD\$0.17 million letter of credit in relation to the lessor of its railcars. The letter of credit is cross guaranteed by an agency of the Canadian Government.

## Northern Silica Corporation

### Notes to the Consolidated Financial Statements

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#### 6. Trade Receivables and Prepaid Expenses

	September 30 2019	September 30 2018
Trade receivables	\$ 1,325	\$ 140
Goods and services tax	438	434
Prepaid expenses	144	251
Security deposits	12	7
	<b>\$ 1,919</b>	<b>\$ 832</b>

At September 30, 2019, all trade or other receivables were current. Refer to Note 16(c) for the Company's material credit risk exposure.

#### 7. Inventories

	September 30 2019	September 30 2018
Raw materials at plant - at net realizable value	\$ 3,422	\$ 4,831
Raw materials at mine - at net realizable value	827	1,603
Finished goods - at net realizable value	675	164
Spare parts and supplies - at cost	-	86
	<b>\$ 4,924</b>	<b>\$ 6,684</b>

During the quarter ended September 30, 2019 an analysis was completed on the net realizable value of the raw materials and finished goods inventories. As a result, of this analysis which included a review of current market conditions for frac sand, both inventories were written down by a combined value of \$3.4 million which is included in Direct Operating costs.

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**8. Property, plant and equipment**

	Mine Development <sup>(1)</sup>	Land & Building	Plant & Equipment <sup>(3)</sup>	Computer & Motor Vehicles <sup>(3)</sup>	Construction in Progress <sup>(1)(2)</sup>	Total
<b>Cost</b>						
At September 30, 2017	\$ 28,556	\$ 1,416	\$ 760	\$ 84	\$ 46,069	\$ 76,885
Acquisition	-	437	2,476	1	-	2,914
Additions	-	-	48	53	25,857	25,958
Disposals	-	-	-	(95)	-	(95)
Transfers <sup>(4)</sup>	(2,686)	-	-	12	2,674	-
<b>At September 30, 2018</b>	<b>25,870</b>	<b>1,853</b>	<b>3,284</b>	<b>55</b>	<b>74,600</b>	<b>105,662</b>
Additions	<b>3,383</b>	<b>3,306</b>	<b>3,373</b>	<b>12</b>	<b>2,878</b>	<b>12,952</b>
Reallocation of opening balances	<b>211</b>	<b>310</b>	<b>1,888</b>	<b>350</b>	<b>3</b>	<b>2,762</b>
Capital spares usage	-	-	-	-	(1,056)	(1,056)
Reclamation adjustment	(9)	-	-	-	-	(9)
Transfers <sup>(4)</sup>	<b>5,866</b>	<b>48,076</b>	<b>17,373</b>	<b>9</b>	<b>(71,426)</b>	<b>(102)</b>
<b>At September 30, 2019</b>	<b>\$ 35,321</b>	<b>\$ 53,545</b>	<b>\$ 25,918</b>	<b>\$ 426</b>	<b>\$ 4,999</b>	<b>\$ 120,209</b>
<b>Accumulated depreciation</b>						
At September 30, 2017	\$ (6)	\$ (20)	\$ (54)	\$ 42	\$ -	\$ (38)
Depreciation & Depletion	(19)	(74)	(505)	(71)	-	(669)
Disposals	-	-	-	85	-	85
<b>At September 30, 2018</b>	<b>(25)</b>	<b>(94)</b>	<b>(559)</b>	<b>56</b>	<b>-</b>	<b>(622)</b>
Reallocation of opening balances	<b>(213)</b>	<b>(310)</b>	<b>(1,888)</b>	<b>(351)</b>	<b>-</b>	<b>(2,762)</b>
Impairment	<b>(20,280)</b>	<b>(28,396)</b>	<b>(10,940)</b>	<b>(37)</b>	<b>(2,024)</b>	<b>(61,677)</b>
Depreciation & Depletion	<b>(195)</b>	<b>(1,237)</b>	<b>(1,427)</b>	<b>(64)</b>	<b>-</b>	<b>(2,923)</b>
<b>At September 30, 2019</b>	<b>\$ (20,713)</b>	<b>\$ (30,037)</b>	<b>\$ (14,814)</b>	<b>\$ (396)</b>	<b>\$ (2,024)</b>	<b>\$ (67,984)</b>
<b>Net book value at September 30,</b>						
<b>2019</b>	<b>\$ 14,608</b>	<b>\$ 23,508</b>	<b>\$ 11,104</b>	<b>\$ 30</b>	<b>\$ 2,975</b>	<b>\$ 52,225</b>
Net book value at September 30, 2018	\$ 25,845	\$ 1,759	\$ 2,725	\$ 111	\$ 74,600	\$ 105,040

- (1) Mine development includes expenditures relating to the construction of the Moberly Project plant and ancillary infrastructure.  
(2) Assets under construction include expenditures related to the construction of the Moberly Project, which includes capitalized borrowing costs.  
(3) Plant and equipment along with computer and motor vehicles with a carrying amount of \$0.7 million (September 30, 2018 - \$0.8 million) are pledged as securities for long term debt as disclosed in Note 11.  
(4) Transfers relate to costs associated with the construction of the plant. Test volume sales of \$541 thousand from 2018 were included in the costs of constructing the plant.

HSK, a wholly-owned subsidiary of the Company acquired in 2017, commenced the construction of the Moberly Project plant and ancillary infrastructure in late February 2016. Effective January 1, 2019, the Company finalized construction of its Moberly silica processing facility. The Moberly Project is financed by a related party under a secured debt facility arrangement.

## Northern Silica Corporation

### Notes to the Consolidated Financial Statements

for the period ended September 30, 2019 and September 30, 2018

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#### 8. Property, plant and equipment (continued)

The amount of borrowing costs capitalized for the twelve months ended September 30, 2019 was \$ 1.3 million (twelve months ended September 30, 2018 - \$4.9 million). The rate used to determine the amount of borrowing costs eligible for capitalization was 12.5 percent which is the effective interest rate of specific borrowing.

Included in Property, plant and equipment is \$1.4 million of critical spare parts.

During the period ended September 30, 2019, the Company carried out an assessment of the recoverable value of its Cash Generating Units (CGU's), Transload and Moberly Mine due to weakened activity levels across the drilling industry in Western Canada. A discounted cash flow analysis over its silica reserves life was completed using a discount rate of 10.0%. The discounted cash flows were based on management's cash flow forecasts, historical and projected production levels with the assumption that the plant produces at nameplate capacity and industry trends and forecasts. The model did not include any expansion opportunities. As a result of this assessment, an impairment of \$59.4 million was recognized for the Moberly Mine CGU or any residual value associated with the Moberly silica resource as at September 30, 2019.

The Company performed a sensitivity analysis on the discount rate and a 1% increase in discount rate results in a further impairment of \$6.3 million. A 1% decrease in silica pricing results in a further impairment of \$2.9 million.

During the quarter ended March 31, 2019 an impairment of assets was recognized relating to certain equipment that was procured based on original plant design and bypassed based on plant modifications and remediations. These assets, while in good working condition, are use specific without a readily determinable resale value and have no residual value as spare parts for the current plant operations. Based on these factors, the full value of this equipment (\$2.3 million) was impaired during the quarter ended March 31, 2019.

#### 9. Intangible asset

	September 30 2019	September 30 2018
Cost, opening	\$ 1,861	\$ -
Acquisition	-	1,861
Amortization	(98)	(36)
	\$ 1,763	\$ 1,825

The Company acquired access rights to the strategically located rail siding on the acquisition of Custom Bulk Services.

The Company performed an impairment test as at September 30, 2019 in accordance with IAS 36, and no impairments were noted.



## Northern Silica Corporation

### Notes to the Consolidated Financial Statements

for the period ended September 30, 2019 and September 30, 2018

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#### 10. Trade and other payables

	September 30 2019	September 30 2018
Trade payables	\$ 1,162	\$ 343
Sundry creditors and accrued expenses	566	2,197
Payables relating to the Moberly Project	3,292	6,555
	<b>5,020</b>	9,095
Provisions - annual leave	40	136
	<b>\$ 5,060</b>	\$ 9,231

#### 11. Long term debt

	September 30 2019	September 30 2018
<b>Current</b>		
Senior loan facility (secured) (i)	\$ 46,730	\$ 39,802
Working capital facility (unsecured) (ii)	10,569	-
Loan note subscription (unsecured) (iii)	5,391	4,555
Term loans (secured) (iiii)	1,295	1,414
Obligations under finance leases (secured)	193	232
<b>Total current portion of long-term debt</b>	<b>64,178</b>	46,003
<b>Non-current</b>		
Obligations under finance leases (secured)	-	190
<b>Total non-current portion of long-term debt</b>	<b>-</b>	190
<b>Total interest bearing liabilities</b>	<b>\$ 64,178</b>	\$ 46,193

##### (i) Senior Loan Facility

The Company has an USD25.0 million secured debt facility with Taurus Funds Management Pty Ltd ("Taurus"), a shareholder to the Company, to fund the construction of the Moberly Project. The facility is available in two tranches.

The debt facility bears interest at 12.5% per annum, a commitment fee of 2% per annum on undrawn amounts at each phase, and 2% Fee on Train Gross Revenue Royalty, ex Plant Price. The facility is secured over a first charge over the Company's assets. The facility maturity date is August 31, 2020. As at September 30, 2019, the Company had drawn USD25.0 million (CAD33.4 million) of the USD25.0 million facility.

##### *Covenants*

The Company needs to ensure at each quarter ending the Project Life Cover Ratio ("PLCR") is not less than 1.3:1, the Projected Debt Service Cover Ratio (DSCR) is not less than 1.1:1, the Historical DSCR is not less than 1.1:1, and there is minimum liquidity of at least US5.0 million.

PLCR ratio, the ratio of N: A, is calculated based on "N" equaling the net present value of the projected future operating cash flows over a 5 year period from each quarter ending period, discounted at 10% per annum, and "A" equaling the aggregate amount of loans outstanding. Projected DSCR ratio, the ratio of C:D, is calculated based on "C" equaling the operating cash flows from the preceding 6 months ending and projected

## Northern Silica Corporation

### Notes to the Consolidated Financial Statements

for the period ended September 30, 2019 and September 30, 2018

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#### 11. Long term debt (continued)

future operating cash flows for the next 6 month period from each quarter ending period, and “D” equaling the aggregate amount of financing costs and repayment installments projected to be due and payable.

Historic DSCR ratio, the ratio of C:D, is calculated based on “C” equaling the operating cash flows from the preceding 12 months ending from each quarter ending period, and “D” equaling the aggregate amount of financing costs and repayment installments projected to be due and payable.

The Company has breached the covenants related to PLCR and Historic DSCR ratios as at September 30, 2019. The Company obtained waivers on December 6, 2019 for the breach of the covenants (see Note 1) however, the debt was classified as short-term. Please refer to note 1 for the management's plans for the remediation.

#### (ii) Unsecured Working Capital Facility

On June 28, 2019, the Company entered into a \$6.5 million Working Capital Facility agreement with QMetco Limited to fund the working capital needs of the Company as it moves into full production. The Facility bears interest at 17.5% per annum which is capitalized to repayment. On September 24, 2019 the Facility Agreement was amended to increase the amount available to \$10.0 million. There are no covenants associated with this facility.

On December 6, 2019 the Facility Agreement was extended to January 31, 2020. Refer to note 21 for more information.

#### (iii) Loan Note Subscription (“LNSA”)

The Company entered into a LNSA on April 27, 2018 for CAD4.4 million with First Samuel Limited on behalf of its Managed Discretionary Account Clients (“First Samuel”) to fund the ongoing remediation and operational readiness program. The LNSA has a term of three years and carries an interest rate of 8% per annum, which is capitalized to repayment. The Company has an option, subject to Shareholder notice under Section 5.1 of the Company's Unanimous Shareholder Agreement, to issue equity at market price as repayment of all principal and capitalized interest. In order to exercise this option, the value of capitalized interest will be amended to yield cumulative returns of 12% on the CAD4.4 million principal.

There are no covenants associated with the LNSA and it has a final redemption date of August 30, 2021.

#### (iii) Term loans

Two secured term loans with Alberta Treasury Branch (“ATB”) amounting to CAD1.5 million were assumed on the date of acquisition of Custom Bulk Services (“CBS”) on February 1, 2018. Both loans incur interest at prime plus 0.5%, repayable in monthly installments of \$0.014 million combined, with both loans secured by land held by CBS and corporate guarantees. Both loans are treated as short term loans because they are renewed on an annual basis.

##### *Covenants*

ATB Loan 1 requires CBS to maintain Total Debt to Equity in excess of 3.00:1, and a Debt Service Coverage ratio (DSCR) less than 1.20:1, and ATB Loan 2 requires CBS to maintain Total Debt to Equity in excess of 5.00:1, and a Debt Service Coverage ratio (DSCR) less than 1.25:1.

The Company, based on its intercompany reporting has breached the covenant related to DSCR ratio as at September 30, 2019. Please refer to Note 1 for the management's plans for the remediation.

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### Notes to the Consolidated Financial Statements

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#### 12. Site restoration provision

	September 30 2019	September 30 2018
Opening balance	\$ 265	\$ 261
Movement in restoration provision	(9)	-
Accretion expense	5	4
<b>Closing balance</b>	<b>\$ 261</b>	<b>\$ 265</b>

As at September 30, 2019, the estimated undiscounted restoration provision was \$0.4 million (2018 \$0.6 million) which has been discounted using a risk-free rate of 1.6% (2018 – 2.4%) and an inflation rate of 1.5% (2018 – 2.4%). The liability is expected to be settled over 33 years (2018 - 34 years).

The decrease in the restoration provision is driven by the decreases in the risk-free and inflation rates used in the calculation.

Custom Bulk Services does not require a restoration provision since its operations are industrial in nature, and as such, an asset retirement obligation is not required.

#### 13. Income Tax

##### (a) Income tax expense comprises of the following:

	September 30 2019	September 30 2018
Current income tax expense	\$ -	\$ -
Deferred income tax		
Relating to origination and reversal of temporary differences	-	(22)
Relating to an increase in unrecognized tax benefits	(276)	(9)
Income tax expense reported in the statement of comprehensive income	<b>\$ (276)</b>	<b>\$ (31)</b>

## Northern Silica Corporation

### Notes to the Consolidated Financial Statements

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#### 13. Income Tax (continued)

##### (j) Reconciliation between (loss) and income before tax and tax expense:

	September 30 2019	September 30 2018
Loss before income tax	\$ (87,845)	\$ (8,328)
Effective Canadian statutory income tax rate	26.75%	27.00%
Expected income tax expense	\$ (23,499)	\$ (2,248)
Decrease (increase) in income tax benefit due to:		
Impact of different tax rates	(208)	(13)
True-up	166	-
Non-deductible expenses	7	238
Unrecognized tax benefits	23,258	2,054
	\$ 23,223	\$ 2,279
Income tax (recovery) expense	\$ (276)	\$ 31

##### (c) Deferred tax relates to the following:

	September 30 2019	September 30 2018
Land	\$ -	\$ (41)
Property, plant and equipment	7,841	(235)
Finance leases	(10)	-
Intangible asset	(472)	-
Non-capital losses	24,582	-
Others	120	-
Deferred tax asset not recognized	(32,061)	-
	\$ -	\$ (276)

##### (d) Tax losses:

The Company has tax losses that arose in Canada of \$87.2 million (2018 – losses of \$24.4 million) that are available to offset against future taxable profits. The company recognizes the benefit of tax losses only to the extent of anticipated future taxable income or gains in relevant jurisdictions. Deferred tax assets have not been recognized in respect of these tax losses.

## Northern Silica Corporation

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#### 14. Issued capital

<i>Ordinary shares issued and fully paid</i>	<b>Number of shares in thousands</b>	<b>\$'000</b>
<b>At September 30, 2017</b>	<b>562,680</b>	<b>42,367</b>
Issued in business acquisition	6,667	500
Issued through Private Placement	462,898	34,718
<b>At September 30, 2018</b>	<b>1,032,245</b>	<b>77,585</b>
Issued through Private Placement	140,076	10,525
<b>At September 30, 2019</b>	<b>1,172,321</b>	<b>88,110</b>

Northern Silica Corporation's authorized share capital consists of an unlimited number of common shares without par value, and an unlimited number of preferred shares issuable in series. At September 30, 2019, 1,172,321 thousand common shares were outstanding, and no preferred shares were outstanding.

On December 6, 2018, the Company commenced a private placement of common shares up to a maximum 46,666,667 common shares of the Company at \$0.075 per share for gross proceeds up to \$3.5 million. During the period, the Company closed 18,592,000 of the maximum common shares available at \$0.075 per share for gross proceeds of \$1.4 million.

In February of 2019, a subsequent private placement was announced for up to 160,000,000 common shares for proceeds of \$12.0 million. During the period, the company collected \$9.1 million in proceeds and has issued 121,484,855 shares.

The equity funding was completed to ensure the continued completion, commissioning and start-up of the Moberly Mine silica frac sand processing facility situated in Golden, British Columbia, Canada.

As at September 30, 2019, a subsidiary of the Company, HSK, has 7,881,075 options, issued to Taurus, a shareholder of the Company, as part of the debt facility (Note 11). These options are exercisable at AUD0.0878, fully vested and expiring on July 15, 2020. At September 30, 2019 all issued options were still outstanding.

## Northern Silica Corporation

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#### 15. Supplemental cash flow information

Changes in non-cash working capital comprises of:

	For the twelve months ended	
	2019	2018
	September 30	September 30
Accounts receivable	\$ (1,087)	\$ (353)
Inventories	1,759	(632)
Trade and other payables	(4,076)	3,012
Provisions	(96)	(25)
<b>Total</b>	<b>(3,500)</b>	<b>2,002</b>
<b>Related to:</b>		
Operating activities	(237)	(933)
Investing activities	(3,263)	2,935
<b>Total</b>	<b>\$ (3,500)</b>	<b>\$ 2,002</b>

#### 16. Financial risk management objectives and policies

##### *Fair value of financial instruments*

The fair values of cash, accounts receivable, accrued receivables, accounts payable, accrued liabilities, the Senior Loan facility, Working Capital Facility, Loan Note Subscription and Term Loans approximate their carrying values due to the short-term maturity of those instruments.

The Company analyses financial instruments carried at fair value, by valuation method. The different levels have been defined as:

- Level 1:** Values based on unadjusted quoted prices in active markets for identical assets or liabilities, accessible at the measurement date.
- Level 2:** Values based on quoted prices in markets that are not active or model inputs that are observable either directly or indirectly for substantially the full-term of the asset or liability.
- Level 3:** Values based on prices or valuation techniques that require inputs for the asset or liability that are not based on observable market data (unobservable inputs).

## Northern Silica Corporation

### Notes to the Consolidated Financial Statements

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#### 16. Financial risk management objectives and policies (continued)

September 30, 2019	Carrying amount	Fair Value		
		Level 1	Level 2	Level 3
<b>Financial assets at amortized cost:</b>				
Cash and cash equivalents	\$ 1,438	\$ 1,438	\$ -	\$ -
Accounts receivable	1,325	1,325	-	-
<b>Financial liabilities at amortized cost:</b>				
Senior loan facility	\$ 46,730	\$ -	\$ -	\$ 46,730
Working capital facility	10,569	-	-	10,569
Accounts payable and accrued liabilities	5,020	5,020	-	-
Loan note subscription	5,391	-	-	5,391
Term loans	1,295	-	1,295	-
Finance leases - short-term	193	-	193	-

September 30, 2018	Carrying amount	Fair Value		
		Level 1	Level 2	Level 3
<b>Financial assets at amortized cost:</b>				
Cash and cash equivalents	\$ 11,397	\$ 11,397	\$ -	\$ -
Accounts receivable	140	140	-	-
<b>Financial liabilities at amortized cost:</b>				
Senior loan facility	\$ 39,802	\$ -	\$ -	\$ 39,802
Accounts payable and accrued liabilities	9,095	9,095	-	-
Loan note subscription	4,555	-	-	4,555
Term loans	1,414	-	1,414	-
Finance leases - short-term	232	-	232	-
Finance leases - long-term	190	-	190	-

#### Risk Exposures and Responses

##### (a) Interest rate risk

The Company's policy is to manage its finance costs using a mix of fixed and variable rate debt.

The Company exposure to the risk of changes in market interest rates relates primarily to the cash at bank and in hand with a floating interest rate. Interest bearing liabilities issued at fixed rates does not expose the Company to fair value interest rate risk because it is recorded at amortized costs. At September 30, 2019, all interest bearing liabilities except term loans were at fixed rates.

At September 30, 2019 the impact if rates had increased/ (decreased) by 100 basis points would have been approximately \$13 thousand (September 30, 2018: \$14 thousand).

## Northern Silica Corporation

### Notes to the Consolidated Financial Statements

for the period ended September 30, 2019 and September 30, 2018

(All amounts are in thousands of Canadian dollars, unless otherwise noted)

#### 16. Financial risk management objectives and policies (continued)

##### (b) Foreign currency risk

The Company undertakes transactions denominated in foreign currencies, hence exposures to exchange rate fluctuations arise.

The Company's balance sheet can be affected by movements in the CAD/USD exchange rates.

At September 30, 2019, the costs denominated in currencies other than the functional currency of the Company were not material (September 30, 2018 – not material).

Measuring the exposure to foreign exchange risk is achieved by regularly monitoring and performing sensitivity analysis on the Company's financial position. The Company continues to explore options to hedge the FX exposure related to its USD denominated senior secured loan.

At September 30, 2019 and September 30, 2018, the carrying amounts of the Company's USD financial instruments are as follows (in CAD):

	September 30 2019	September 30 2018
Cash and cash equivalents	\$ 1	\$ 25
	1	25
<i>Financial liabilities</i>		
Trade and other payables	(724)	(81)
Interest bearing liabilities	(47,162)	(40,705)
	<b>(47,886)</b>	<b>(40,786)</b>
<b>Net exposure</b>	<b>\$ (47,885)</b>	<b>\$ (40,761)</b>

At September 30, 2019, if the conversion rate between the Canadian and United States Dollars had increased/(decreased) by 100 basis points, with all other variables held constant, net income and equity would have been affected by (\$0.479 million)/\$0.479 million (September 30, 2018 – (\$0.314million)/\$0.314million).

Management believes the balance sheet date risk exposures are representative of the risk exposure inherent in the Financial Statements.

##### (c) Credit risk

Credit risk arises from the financial assets of the Company, which comprise cash and cash equivalents, trade and other receivables. The Company's exposure to credit risk arises from the potential default of the counter party, with a maximum exposure equal to the carrying amount of these instruments.

It is the Company's policy that all customers who wish to trade on credit terms are subject to verification procedures including an assessment of their independent credit rating, financial position, past experience and industry reputation. Receivables are monitored on an ongoing basis with the result that the Company's exposure to bad debts is not significant.



## Northern Silica Corporation

### Notes to the Consolidated Financial Statements

for the period ended September 30, 2019 and September 30, 2018

(All amounts are in thousands of Canadian dollars, unless otherwise noted)

#### 16. Financial risk management objectives and policies (continued)

The Company's revenue is mainly derived from one customer. The customer is deemed creditworthy and has had no collection issues thus far. Other than revenue concentration, the main risk to the Company is payment failure of the third-parties that the customer contracts to. The silica is purchased by the customer on an as-needed basis. This somewhat mitigates the risk that the customer cannot use the silica in its drilling operations and thus cannot generate funds to pay their outstanding balances. As of September 30<sup>th</sup>, 2019 and September 30<sup>th</sup>, 2018 the Company's trade receivables were comprised of the following:

	September 30 2019	September 30 2018
Current	\$ 597	\$ 113
1-30 days	9	-
31-60 days	1	-
61-90 days	-	-
Over 90 days	-	-
<b>Total trade receivables</b>	<b>\$ 607</b>	<b>\$ 113</b>
Accrued receivables	718	27
<b>Total receivables</b>	<b>\$ 1,325</b>	<b>\$ 140</b>

No credit loss provision was booked for the period ending September 30, 2019 as all outstanding amounts were received shortly after year end.

#### (d) Liquidity risk

Liquidity risk arises from the financial liabilities of the Company and the Company's subsequent ability to meet its obligations to repay its financial liabilities as and when they fall due.

The liquidity position of the Company is managed to ensure sufficient liquid funds are available to meet the Company's financial commitments in a timely and cost-effective manner. The Company's objective is to maintain a balance between continuity and flexibility through the use of bank overdrafts, bank loans, finance leases and equity investments. At September 30, 2019, the Company had a working capital deficit of \$61.0 million (September 30, 2018 – deficit of \$36.3 million). Refer to Note 1 on the going concern and the management's plans on remediation of the liquidity risk, and its dependency on shareholders for continued financing.

The Company manages its liquidity risk by monitoring the total cash inflows and outflows by producing weekly and monthly cash flow forecasts forward for a minimum of twelve months.

The following maturity analysis reflects all contractually fixed pay-offs, repayments and interest resulting from recognized financial liabilities as at balance date. The timing of cash flows for liabilities is based on the contractual terms of the underlying contract. Where the counterparty has a choice of when the amount is paid, the liability is allocated to the earliest period in which the Company is required to pay. When the Company is committed to make amounts available in instalments, each instalment is allocated in the earliest period in which the Company is required to pay.

## Northern Silica Corporation

### Notes to the Consolidated Financial Statements

for the period ended September 30, 2019 and September 30, 2018

(All amounts are in thousands of Canadian dollars, unless otherwise noted)

#### 16. Financial risk management objectives and policies (continued)

The risk implied from the values shown in the table below, reflects a balanced view of cash inflows and outflows of non-derivative financial instruments. Trade payables and other financial liabilities mainly originate from the financing of assets used in the Company's ongoing operations such as mine development, property plant and equipment and investments in working capital (e.g. inventories and receivables). The Company has obtained a waiver from Taurus with respect to non-compliance with certain covenants of its Senior Loan Facility.

The following table reflects all contractually fixed repayments and interest resulting from recognized financial liabilities at reporting date:

	Within 1 year	2-5 Years	More than 5 years	Total
Trade and other payables	\$ 5,020	\$ -	\$ -	\$ 5,020
Provisions	40	-	-	40
Site restoration provision	-	-	437	437
Loans and borrowings	64,178	-	-	64,178
	\$ 69,238	\$ -	\$ 437	\$ 69,675

#### (d) Market risk

Market risk is the risk or uncertainty arising from market price movements and their impact on the future performance of the business. Market price movements that could adversely affect the value of the Company's financial assets, liabilities and expected future cash flows include US dollar currency, commodity price, and interest rate and credit risks. Sensitivity analysis is presented above in this note.

#### 17. Capital management

The Company's objectives when managing capital are to safeguard the Company's ability to continue as a going concern in order to provide returns for shareholders and benefits for other stakeholders and to maintain an optimal capital structure to reduce the cost of capital.

The Company manages its capital based on current economic conditions, the risk characteristics of the underlying assets, and planned capital requirements within guidelines approved by its Board of Directors. Total capitalization is maintained or adjusted by drawing on existing debt facilities, issuing new debt or equity securities when opportunities are identified.

The Company monitors its capital structure and financing requirements using financial metrics included in its debt covenants, consisting of the ratios listed in the Note 11. As at September 30, 2019 the Company breached requirements of certain loan covenants (refer to Note 11).

**Northern Silica Corporation**  
**Notes to the Consolidated Financial Statements**

for the period ended September 30, 2019 and September 30, 2018  
 (All amounts are in thousands of Canadian dollars, unless otherwise noted)

**18. Commitment and contingencies**

**(a) Operating Leases**

Leases of plant and equipment under which the Company or its controlled entities assume substantially all the risks and benefits incidental to ownership are classified as finance leases. Other leases are classified as operating leases.

The operating leases comprise property leases and various equipment leases. These leases are non-cancellable with three to ten year terms, with rent payable in advance. Payments made under operating leases are expensed on a straight-line basis over the lease term.

The property lease agreement is a five year fixed annual rental agreement. An option exists to renew the lease at the end of the five-year term for an additional term of five years.

	2019	2018
<i>Operating leases payable</i>		
Within one year	\$ 976	\$ 2,051
After one year but not more than five years	3,542	3,633
After more than five years	3,832	4,421
<b>Total minimum lease payments</b>	<b>\$ 8,350</b>	<b>\$ 10,105</b>

Rail car leases comprise \$8.3 million (2018 - \$8.8 million) of the total minimum lease payments. The Company has a capital commitment to purchase an estimated \$0.9 million in propane purchases up to March 31, 2022, based on committed contract volume and forecasted future propane prices.

**(b) Finance Leases**

The Company has finance leases and hire purchase contracts for various items of plant and machinery. The Company's obligations under finance leases are secured by the lessor's title to the leased assets. Future minimum lease payments under finance leases and hire purchase contracts, together with the present value of the net minimum lease payments are, as follows:

	September 30, 2019		September 30, 2018	
	Minimum payments	Present value of minimum payments	Minimum payments	Present value of minimum payments
<i>Minimum finance leases payable:</i>				
Within one year	\$ 135	\$ 135	\$ 245	\$ 246
After one year but not more than five years	-	-	123	88
<b>Total minimum lease payments</b>	<b>135</b>	<b>135</b>	<b>368</b>	<b>334</b>
Less amounts representing finance charges	-	-	(34)	-
<b>Total</b>	<b>\$ 135</b>	<b>\$ 135</b>	<b>\$ 334</b>	<b>\$ 334</b>

## Northern Silica Corporation

### Notes to the Consolidated Financial Statements

for the period ended September 30, 2019 and September 30, 2018

(All amounts are in thousands of Canadian dollars, unless otherwise noted)

#### 18. Commitment and contingencies (continued)

##### (c) Litigation

The Company is involved in various legal claims and legal proceedings arising in the ordinary course of business. Although the outcome of such matters cannot be predicted with certainty, management does not consider the Company's exposure to litigation to be material to these consolidated financial statements.

#### 19. Related party disclosures

##### (a) Remuneration of key management personnel

	2019	2018
Short-term employee benefits	\$ 878	\$ 892
Post-employment benefits	29	50
	<b>\$ 907</b>	<b>\$ 942</b>

##### (b) Related party balances and transactions

Included in the consolidated statements of financial position are the following balances associated with related parties. Taurus and First Samuel are shareholders of the Company and QMetco is wholly owned by Taurus.

Related Party	Description	2019	2018
Taurus	Trade and other payables	\$ 302	\$ 173
First Samuel	Trade and other payables	49	22
		<b>\$ 351</b>	<b>\$ 195</b>
Taurus (Note 11)	Long-term debt	\$ 46,730	\$ 39,802
QMetco (Note 11)	Long-term debt	10,569	-
First Samuel (Note 11)	Long-term debt	5,391	4,555
		<b>\$ 62,690</b>	<b>\$ 44,357</b>

The following transactions occurred with related parties:

	2019	2018
Finance Costs	\$ 6,414	\$ 1,824
General, administrative and operating costs	261	308
	<b>\$ 6,675</b>	<b>\$ 2,132</b>

**Northern Silica Corporation**  
**Notes to the Consolidated Financial Statements**  
for the period ended September 30, 2019 and September 30, 2018  
(All amounts are in thousands of Canadian dollars, unless otherwise noted)

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**20. Operating segments**

The Company is organized into separate segments based on the products and services provided. Management monitors the operating results of each division separately for the purpose of making decisions about resource allocation and performance evaluations.

Starting on February 1, 2018, after the business acquisition of CBS, the Company has two reportable operating segments, as described in Company Information. The Company also reports activities not directly attributed to an operating segment under the corporate division.

The Moberly Mine consists of the mine and processing plant in Golden BC. The operation mines and processes the silica which mainly gets shipped to the Transload facility for sale and distribution to end users. The Transload segment consist of transloading and storage facilities in Penhold, AB.

The Corporate division expenses consist of office and administration costs relating to corporate employees and officers, and interest and finance costs.

## Northern Silica Corporation

### Notes to the Consolidated Financial Statements

for the period ended September 30, 2019 and September 30, 2018

(All amounts are in thousands of Canadian dollars, unless otherwise noted)

#### 20. Operating segments (continued)

*For the twelve months ended September 30, 2019*

	Transload	Moberly Mine	Corporate	Total
Silica sales revenue	\$ -	\$ 2,546	\$ -	\$ 2,546
Transloading services revenue	485	-	-	485
	485	2,546	-	3,031
Cost of sales				
Direct operating	542	14,211	-	14,753
Storage and logistics	379	1,346	-	1,725
	921	15,557	-	16,478
<b>Gross loss</b>	<b>(436)</b>	<b>(13,011)</b>	<b>-</b>	<b>(13,447)</b>
General and administrative costs	147	1,340	2,264	3,751
Depreciation and amortization	347	2,559	79	2,985
Other income	(7)	(6)	(3)	(16)
	487	3,893	2,340	6,720
<b>Operating loss</b>	<b>(923)</b>	<b>(16,904)</b>	<b>(2,340)</b>	<b>(20,167)</b>
Finance costs	60	5,126	348	5,534
Asset impairment	-	41,397	-	41,397
Mine impairment	-	20,280	-	20,280
Loss on foreign exchange	1	436	29	466
	61	67,239	377	67,677
<b>Loss before income tax</b>	<b>(984)</b>	<b>(84,143)</b>	<b>(2,717)</b>	<b>(87,844)</b>
Income tax recovery	-	-	(276)	(276)
<b>Loss and comprehensive loss</b>	<b>(984)</b>	<b>(84,143)</b>	<b>(2,440)</b>	<b>(87,568)</b>
Other comprehensive income (loss)	-	-	-	-
<b>Total comprehensive loss</b>	<b>\$ (984)</b>	<b>\$ (84,143)</b>	<b>\$ (2,440)</b>	<b>\$ (87,568)</b>

**Northern Silica Corporation**  
**Notes to the Consolidated Financial Statements**  
for the period ended September 30, 2019 and September 30, 2018  
(All amounts are in thousands of Canadian dollars, unless otherwise noted)

**20. Operating segments (continued)**

*For the twelve months ended September 30, 2018*

	Transload	Moberly Mine	Corporate	Total
Silica sales revenue	\$ -	\$ 20	\$ -	\$ 20
Transloading services revenue	221	-	-	221
	221	20	-	241
Cost of sales				
Direct operating	125	1,178	-	1,303
Storage and logistics	13	6	-	19
	138	1,184	-	1,322
<b>Gross loss</b>	83	(1,164)	-	(1,081)
General and administrative costs	60	541	2,217	2,818
Depreciation and amortization	217	422	66	705
Other income	(2)	(3)	-	(5)
	275	960	2,283	3,518
<b>Operating loss</b>	(192)	(2,124)	(2,283)	(4,599)
Finance costs	39	1,839	90	1,968
Loss on foreign exchange	-	1,176	19	1,195
Loss on sale of assets	-	-	3	3
Transaction costs and other non-recurring items	-	-	258	258
Realized loss on portfolio investments	-	-	305	305
	39	3,015	675	3,729
<b>Loss before income tax</b>	(231)	(5,139)	(2,958)	(8,328)
Income tax expense	12	-	19	31
<b>Loss and comprehensive loss</b>	(243)	(5,139)	(2,977)	(8,359)
Other comprehensive income (loss)	-	-	-	-
<b>Total comprehensive loss</b>	\$ (243)	\$ (5,139)	\$ (2,977)	\$ (8,359)

**Northern Silica Corporation**  
**Notes to the Consolidated Financial Statements**

for the period ended September 30, 2019 and September 30, 2018  
 (All amounts are in thousands of Canadian dollars, unless otherwise noted)

**20. Operating segments (continued)**

*As at September 30, 2019*

	Transload	Moberly Mine	Corporate	Total
<b>Current assets</b>	\$ 2,054	\$ 5,029	\$ 1,198	\$ 8,281
<b>Property, plant and equipment</b>	2,758	49,420	47	52,225
<b>Intangible assets</b>	1,763	-	-	1,763
<b>Total assets</b>	6,575	54,449	1,245	62,269
<b>Current liabilities</b>	1,519	66,879	840	69,238
<b>Total liabilities</b>	1,519	67,140	840	69,499

*As at September 30, 2018*

	Transload	Moberly Mine	Corporate	Total
Current assets	\$ 262	\$ 9,763	\$ 8,888	\$ 18,913
Property, plant and equipment	1,783	103,151	106	105,040
Intangible assets	1,825	-	-	1,825
Total assets	4,920	111,854	9,004	125,778
Current liabilities	1,500	52,086	1,648	55,234
Total liabilities	1,735	52,484	1,745	55,965

The Company operated in two geographic areas during the year, Canada and Australia. All revenue presented was earned and reported in the Canadian operations and Australia had no non-current assets as of September 30, 2019

**21. Subsequent Events**

**Insurance Claim**

On June 18, 2018 a train derailed near the Moberly plant site which damaged the switch between Canadian Pacific's main line and the rail spur at the plant site. As a result, finished product had to be transported to the Transload facility via truck which is more costly than rail. The Company submitted an insurance claim for this cost differential and some other related costs incurred due to the derailment totaling \$1.0 million. On November 25, 2019 \$0.7 million was approved for payment to the Company which was recorded in fiscal 2019. A further \$0.3 million is expected to be approved and received in Q2 of fiscal 2020.



## Northern Silica Corporation

### Notes to the Consolidated Financial Statements

for the period ended September 30, 2019 and September 30, 2018

(All amounts are in thousands of Canadian dollars, unless otherwise noted)

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#### 21. Subsequent Events (continued)

##### QMetco Secured Facility

On December 6, 2019, an amended loan agreement was executed between the Company and QMetco. The following summarizes the amended agreement:

- Repayment date extended to January 31, 2020. Management is in continuous discussions with the lender to consider extending the repayment date or refinance the loan.
- Interest rate to stay the same at 17.5%
- Loan is now secured with a fixed charge against assets
- Revised borrowing limit of \$18.0 million

This is Exhibit "Q" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.



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

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

# **Northern Silica Corporation**

Consolidated Interim Financial Statements - Unaudited

As at and for the six months ended March 31, 2020 and 2019

## Northern Silica Corporation

Consolidated Statements of Financial Position – Unaudited  
(Stated in thousands of Canadian dollars)

		2020		2019
	Note	March 31	September 30	
<b>Assets</b>				
<b>Current assets</b>				
Cash and cash equivalents	4	\$ 1,030	\$ 1,438	
Accounts receivable & prepaid expenses	5,13	544	1,919	
Inventory	6	4,144	4,924	
<b>Total Current Assets</b>		<b>5,719</b>	<b>8,281</b>	
<b>Non-current assets</b>				
Property, plant and equipment	7	53,982	52,225	
Right of use assets	8	4,595	-	
Intangible assets		1,732	1,763	
<b>Total non-current assets</b>		<b>60,309</b>	<b>53,988</b>	
<b>Total Assets</b>		<b>\$ 66,028</b>	<b>\$ 62,269</b>	
<b>Equity and liabilities</b>				
<b>Current Liabilities</b>				
Trade and other payables	9	\$ 3,139	\$ 5,020	
Provisions	9	44	40	
Current portion of leases payable	11	456	-	
Debt facilities	10	81,227	64,178	
<b>Total Current Liabilities</b>		<b>84,865</b>	<b>69,238</b>	
<b>Non-current liabilities</b>				
Leases payable	11	4,685	-	
Provisions		270	261	
<b>Total non-current Liabilities</b>		<b>4,956</b>	<b>261</b>	
<b>Total Liabilities</b>		<b>\$ 89,822</b>	<b>\$ 69,499</b>	
<b>Equity</b>				
Issued Capital	12	88,110	88,110	
Deficit		(112,268)	(95,704)	
Non-controlling interest		364	364	
<b>Total Equity</b>		<b>\$ (23,794)</b>	<b>\$ (7,230)</b>	
<b>Total Equity and Liabilities</b>		<b>\$ 66,028</b>	<b>\$ 62,269</b>	

Going concern (Note 1)  
Commitments (Note 14)

## Northern Silica Corporation

### Consolidated Statements of Loss and Other Comprehensive Loss - Unaudited (Stated in thousands of Canadian dollars)

	Note	For the three months ended		For the six months ended	
		2020 March 31	2019 March 31	2020 March 31	2019 March 31
Silica sales revenue	14	\$ 281	\$ 1,319	\$ 934	\$ 1,319
Transloading services revenue	14	88	153	123	271
		<b>369</b>	1,472	<b>1,057</b>	1,590
Cost of sales					
Direct operating		1,823	2,086	4,229	2,237
Storage and logistics		40	402	72	402
		<b>1,863</b>	2,488	<b>4,301</b>	2,639
<b>Gross loss</b>		<b>(1,494)</b>	(1,016)	<b>(3,244)</b>	(1,049)
General and administrative costs		1,032	812	2,021	1,812
Depreciation and amortization	7,8	1,130	922	2,285	1,099
Other income		(4)	(2)	(18)	(4)
	-	<b>2,158</b>	1,732	<b>4,288</b>	2,907
<b>Operating loss</b>		<b>(3,651)</b>	(2,748)	<b>(7,531)</b>	(3,956)
Finance costs		2,878	1,593	5,151	1,710
Asset impairment		-	2,270	-	2,270
Loss (gain) on foreign exchange		4,902	(885)	3,882	873
	-	<b>7,780</b>	2,978	<b>9,033</b>	4,853
<b>Loss before income tax</b>		<b>(11,431)</b>	(5,726)	<b>(16,564)</b>	(8,809)
Income tax expense		-	-	-	-
<b>Loss and comprehensive loss</b>		<b>(11,431)</b>	(5,726)	<b>(16,564)</b>	(8,809)
Other comprehensive income		-	-	-	-
<b>Total comprehensive loss</b>		<b>\$ (11,431)</b>	<b>\$ (5,726)</b>	<b>\$ (16,564)</b>	<b>\$ (8,809)</b>

**Northern Silica Corporation**Consolidated Interim Statements of changes in Equity - Unaudited  
(Stated in thousands of Canadian dollars)

	Issued capital	Retained earnings	Non-controlling interest	Total Equity
<b>Balance at September 30, 2018</b>	<b>\$ 77,585</b>	<b>\$ (8,136)</b>	<b>\$ 364</b>	<b>\$ 69,813</b>
Additions during the period	10,525	-	-	10,525
Loss for the twelve months ended September 30, 2019	-	(87,568)	-	(87,568)
<b>Balance at September 30, 2019</b>	<b>\$ 88,110</b>	<b>\$ (95,704)</b>	<b>\$ 364</b>	<b>\$ (7,230)</b>
Additions during the period	-	-	-	-
Loss for the six months ended March 31, 2020	-	(16,564)	-	(16,564)
<b>Balance at March 31, 2020</b>	<b>\$ 88,110</b>	<b>\$ (112,268)</b>	<b>\$ 364</b>	<b>\$ (23,794)</b>

# Northern Silica Corporation

## Consolidated Interim Statements of Cash Flows - Unaudited (Stated in thousands of Canadian dollars)

	Note	For the three months ended		For the six months ended	
		2020 March 31	2019 March 31	2020 March 31	2019 March 31
<b>Cash flows provided by (used in) operating activities</b>					
Loss before income taxes		\$ (11,431)	\$ (5,726)	\$ (16,564)	\$ (8,809)
Adjustments to reconcile profit before tax to net cash flows:					
Depreciation and amortization		1,130	921	2,285	1,099
Asset impairment		-	2,270	-	2,270
Unrealised loss (gain) on foreign exchange		4,902	(885)	3,882	873
Spare parts usage		59	-	129	-
Add: finance costs		2,878	1,593	5,151	1,710
Changes in non-cash working capital	13	1,265	(1,614)	1,636	(3,648)
<b>Net cash flows used in operating activities</b>		<b>(1,197)</b>	<b>(3,440)</b>	<b>(3,482)</b>	<b>(6,505)</b>
<b>Cash flows provided by (used in) investing activities</b>					
Purchase of property, plant and equipment		(993)	(1,602)	(3,839)	(8,117)
Changes in non-cash working capital	13	(982)	(510)	(1,398)	1,181
<b>Net cash flows used in investing activities</b>		<b>(1,975)</b>	<b>(2,112)</b>	<b>(5,237)</b>	<b>(6,937)</b>
<b>Cash flows provided by (used in) financing activities</b>					
Private placement		-	2,720	-	4,062
Proceeds from working capital facility		1,000	-	9,000	-
Payments of term loans		(47)	(30)	(89)	(59)
Payments of finance leases		(291)	(66)	(599)	(141)
<b>Net cash flows provided by financing activities</b>		<b>662</b>	<b>2,625</b>	<b>8,311</b>	<b>3,863</b>
Increase (decrease) in cash and cash equivalents		(2,511)	(2,928)	(408)	(9,579)
<b>Cash and cash equivalents - beginning</b>		<b>3,541</b>	<b>4,747</b>	<b>1,438</b>	<b>11,397</b>
<b>Cash and cash equivalents - ending</b>	4	<b>\$ 1,030</b>	<b>\$ 1,819</b>	<b>\$ 1,030</b>	<b>\$ 1,819</b>

## **NORTHERN SILICA CORPORATION**

### **Notes to the Consolidated Interim Financial Statements – Unaudited**

Six months ended March 31, 2020

(stated in thousands of Canadian dollars, unless otherwise noted)

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#### **1. GENERAL DESCRIPTION OF THE BUSINESS**

Northern Silica Corporation (the “Company”) is a privately held Canadian resource company incorporated in Alberta, Canada on December 1, 2016. The address of the registered office is Suite 204, 1212- 1<sup>st</sup> Street SE, Calgary, Alberta. These consolidated financial statements are comprised of Northern Silica Corporation and its wholly-owned subsidiaries. The Company’s two operating segments are the Moberly Silica Mine (“Moberly”) in Golden, British Columbia which mines and processes silica sand and the Transload segment which provides transloading and storage services and is located in Penhold, Alberta.

#### **2. GOING CONCERN**

The financial statements of the Company have been prepared using International Financial Reporting Standards (“IFRS”) as they apply to a going concern, which contemplates the realization of assets and discharge of liabilities in the normal course of business as they become due.

The Company incurred a net loss of \$16.9 million for the six months ended March 31, 2020 and had a working capital deficiency of \$79.5 million at March 31, 2020. The Company relies on funding from its largest shareholder (Taurus Resources No.2 B.V. or “Taurus”) and other shareholders. As at March 31, 2020 the Company did not meet certain covenants on its Taurus Senior Secured Loan Facility (refer to Note 10) and accordingly, it was classified as a current liability. The Company is dependant on its shareholders not calling the loan to continue as a going concern.

These circumstances cause significant doubt as to the ability of the Company to meet its obligations as they come due and, accordingly, the appropriateness of the use of accounting principles applicable to a going concern. These financial statements do not reflect the adjustments to the carrying values of the assets and liabilities, the reported amounts of revenues and expenses and the classification of the statement of financial position items if the going concern assumption was inappropriate. These adjustments could be material.

The Moberly Silica Sand operation was designed and built to supply frac sand to the domestic (Alberta) market and while the mine has historically supplied industrial silica buyers the operation is not currently geared to that alternative market. Similarly, the Penhold transloading facility is currently arranged to handle frac sand, however historically it has also loaded fertilizer products. Management has taken proactive steps to reduce cash outflows in the face of current low market pricing for frac sand and the singular market focus our assets currently have. This includes a shutdown of the Company’s Moberly processing plant as of February 18, 2020 and conducting research and development of new industrial silica products while simultaneously seeking customers for those products. The impact of the COVID19 pandemic on local and global supply chains has delayed the evaluation and possible entry into industrial markets and continues to investigate the quality of materials the operation could make. The Company will continue to evaluate market conditions, but currently has not established a timeframe for alternative market participation.

The Company received a waiver in respect to the Deed to its Taurus Senior Loan Facility. The waiver deferred the project completion test to June 30, 2020 and \$0.3 million of principal repayments to June 30, 2020. On January 30, 2020, Management amended the QMetco Loan Facility to increase the amount available to \$19.0 million and extend the repayment date to February 28, 2020. On March 31, 2020 the QMetco Loan Facility repayment date was amended to April 30, 2020.



## **NORTHERN SILICA CORPORATION**

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There is no assurance that the steps Management have taken will be successful in increasing cash flows. Continued soft pricing for frac sand and industrial silica marketing issues related to COVID-19 pandemic could have a material effect on the Company to continue as a going concern.

### **3. BASIS OF PRESENTATION**

These consolidated interim financial statements have been prepared in accordance with IFRS 34, Interim Financial Reporting as at and for the three months ended December 31, 2019 and do not include all of the information required for full annual statements. Accordingly, these financial statements should be read in conjunction with the Company's audited annual financial statements.

These consolidated interim financial statements were authorized for issuance by the Board of Directors on April 17, 2020.

#### **Use of estimates and judgements**

The preparation of the consolidated interim financial statements in conformity with IFRS requires management to make judgements, estimates and assumptions that affect the application of accounting policies and the reported amount of any assets, liabilities, income and expenses. Estimates and judgements are continually evaluated and are based on historical evidence and other factors, including expectations of future events that are believed to be reasonable under the circumstances.

#### **Significant accounting policies**

The accounting policies applied in these consolidated interim financial statements are the same as those applied in the Company's consolidated financial statements as at and for the year ended September 30, 2019 except for the below:

#### **Leases**

On October 1, 2019 the Company adopted IFRS 16, *Leases* which replaced IAS 17, *Leases* and related interpretations. The Company used the Modified Retrospective approach where it recognized the Right of Use assets and lease liabilities at the present value of the remaining lease payments, which were discounted at rates between 5.0% and 13.8%. The Company used the following practical expedients permitted by the standard:

- the accounting for lease payments as expenses for leases for which the underlying asset is of low value; and
- the accounting for leases with a remaining term of twelve or less months as at October 1, 2019 as short-term leases.

Right-of-use (RoU) assets are measured at costs which includes the following:

- the amount of the initial measurement of the lease liability; and
- initial direct costs.

Payments associated with short-term leases and leases of low value are recognized on a straight-line basis in the Consolidated Statements of Loss and Other Comprehensive Loss in the period which they occurred.

**NORTHERN SILICA CORPORATION****Notes to the Consolidated Interim Financial Statements – Unaudited**

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**4. CASH AND CASH EQUIVALENTS****Cash & Cash Equivalents**

	<b>March 31</b>	September 30
	<b>2020</b>	2019
Cash at bank and in hand <sup>(1)</sup>	\$ 820	\$ 979
Restricted cash <sup>(2)</sup>	150	150
Holdback cash <sup>(3)</sup>	59	309
	<b>\$ 1,030</b>	<b>\$ 1,438</b>

(1) Cash at bank earns interest at floating rates based on daily bank deposit rates.

(2) The company has in place letters of credit totalling \$0.15 million with the Government of Canada in relation to the issue of mining and agriculture permits of the Moberly Mine. The letters of credit are guaranteed by cash in the Company's bank accounts.

(3) Cash held as a holdback to the Contractor used in the construction of the Moberly plant.

The Company has an USD0.17 million letter of credit in favour of the lessor of its railcars. The letter of credit is cross guaranteed by an agency of the Canadian Government.

**5. ACCOUNTS RECEIVABLE AND PREPAID EXPENSES**

	<b>March 31</b>	September 30
	<b>2020</b>	2019
Trade receivables	\$ 103	\$ 1,325
Goods and services tax	140	438
Prepaid expenses	284	144
Security deposits	17	12
	<b>\$ 544</b>	<b>\$ 1,919</b>

As at March 31, 2020, \$nil of the Company's receivables were overdue. Refer to Note 14 (c) for the Company's material risk exposures.

**6. INVENTORY**

	<b>March 31</b>	September 30
	<b>2020</b>	2019
Raw materials at plant - at net realizable value	\$ 3,313	\$ 3,422
Raw materials at mine - at net realizable value	831	827
Finished goods - at net realizable value	-	675
	<b>\$ 4,144</b>	<b>\$ 4,924</b>

Inventory is carried at the lower of cost or net realizable value. During the quarter ended March 31, 2020 a net realizable value analysis was completed which resulted in a \$0.2 million write-down of finished goods.

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**7. PROPERTY, PLANT AND EQUIPMENT**

	Mine Development <sup>(1)</sup>	Land & Building	Plant & Equipment <sup>(3)</sup>	Computer & Motor Vehicles <sup>(3)</sup>	Construction in Progress <sup>(1) (2)</sup>	Total
<b>Cost</b>						
At September 30, 2018	\$ 25,870	\$ 1,853	\$ 3,284	\$ 55	\$ 74,600	\$ 105,662
Additions	3,383	3,306	3,373	12	2,878	12,952
Reallocation of opening balances	211	310	1,888	350	3	2,762
Capital spares usage	-	-	-	-	(1,056)	(1,056)
Reclamation adjustment	(9)	-	-	-	-	(9)
Transfers <sup>(4)</sup>	5,866	48,076	17,373	9	(71,426)	(102)
<b>At September 30, 2019</b>	<b>35,321</b>	<b>53,545</b>	<b>25,918</b>	<b>426</b>	<b>4,999</b>	<b>120,209</b>
Additions	-	-	-	-	<b>3,839</b>	<b>3,839</b>
Capital spares usage	-	-	-	-	<b>(129)</b>	<b>(129)</b>
Transfers <sup>(4)</sup>	-	-	-	-	-	-
<b>At March 31, 2020</b>	<b>\$ 35,321</b>	<b>\$ 53,545</b>	<b>\$ 25,918</b>	<b>\$ 426</b>	<b>\$ 8,709</b>	<b>\$ 123,919</b>
<b>Accumulated depreciation</b>						
At September 30, 2018	\$ (25)	\$ (94)	\$ (559)	\$ 56	\$ -	\$ (622)
Reallocation of opening balances	(213)	(310)	(1,888)	(351)	-	(2,762)
Impairment	(20,280)	(28,396)	(10,940)	(37)	(2,024)	(61,677)
Depreciation & Depletion	(195)	(1,237)	(1,427)	(64)	-	(2,923)
<b>At September 30, 2018</b>	<b>(20,713)</b>	<b>(30,037)</b>	<b>(14,814)</b>	<b>(396)</b>	<b>(2,024)</b>	<b>(67,984)</b>
Depreciation & Depletion	<b>(179)</b>	<b>(834)</b>	<b>(921)</b>	<b>(19)</b>	-	<b>(1,953)</b>
<b>At March 31, 2020</b>	<b>\$ (20,892)</b>	<b>\$ (30,871)</b>	<b>\$ (15,735)</b>	<b>\$ (415)</b>	<b>\$ (2,024)</b>	<b>\$ (69,937)</b>
<b>Net book value at March 31, 2020</b>	<b>\$ 14,429</b>	<b>\$ 22,674</b>	<b>\$ 10,183</b>	<b>\$ 11</b>	<b>\$ 6,685</b>	<b>\$ 53,982</b>
Net book value at September 30, 2019	\$ 14,608	\$ 23,508	\$ 11,104	\$ 30	\$ 2,975	\$ 52,225

- (1) Mine Development includes expenditures relating to the construction of the Moberly Project plant and ancillary infrastructure.
- (2) Assets under construction include expenditures related to the construction of the Moberly Project, which includes capitalized borrowing costs.
- (3) Motor vehicles with a carrying amount of \$0.002 million (September 30, 2019 - \$0.020 million) are pledged as securities for long-term leases (see note 11).
- (4) Transfers relate to the costs associated with the construction of the plant.

Effective January 1, 2019, the Company finalized the construction of its Moberly processing facility. The Moberly Project is financed by a related party under a secured debt facility agreement.

The amount of borrowing costs capitalized for the six months ended March 31, 2020 is \$nil (March 31, 2019 - \$1.8 million). Included in Property, Plant and Equipment is \$1.5 million of critical spare parts (September 30, 2019 - \$1.4 million).

There are no new indicators of impairment as of March 31, 2020, however the Company is closely monitoring the impact of COVID-19 pandemic and continued low oil prices for indications of impairment on its Property, Plant and Equipment.

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**8. RIGHT OF USE ASSETS**

Cost	Rail Cars	Building	Plant & Equipment	Total
Balance at October 1, 2019	\$ 4,743	\$ 100	\$ 43	\$ 4,886
Additions	-	-	-	-
At March 31, 2020	\$ 4,743	\$ 100	\$ 43	\$ 4,886
<b>Accumulated depreciation</b>				
Balance at October 1, 2019	\$ -	\$ -	\$ -	\$ -
Depreciation	(254)	(26)	(11)	(291)
At March 31, 2020	\$ (254)	\$ (26)	\$ (11)	\$ (291)
Net book value at October 1, 2019	\$ 4,743	\$ 100	\$ 43	\$ 4,886
<b>Net book value at March 31, 2020</b>	<b>\$ 4,489</b>	<b>\$ 74</b>	<b>\$ 32</b>	<b>\$ 4,595</b>

**9. TRADE AND OTHER PAYABLES**

	March 31 2020	September 30 2019
Trade payables	\$ 316	\$ 1,162
Sundry creditors and accrued expenses	359	566
Payables relating to the Moberly Project	2,464	3,292
	<b>3,139</b>	<b>5,020</b>
Provisions - annual leave	44	40
	<b>\$ 3,183</b>	<b>\$ 5,060</b>

**10. DEBT FACILITIES**

	March 31 2020	September 30 2019
<b>Current</b>		
Senior loan facility (secured) (i)	\$ 53,588	\$ 46,730
Working capital facility (secured) (ii)	20,694	10,569
Loan note subscription (unsecured) (iii)	5,709	5,391
Term loans (secured) (iiii)	1,234	1,295
Obligations under finance leases (secured)	-	193
<b>Total current portion of debt facilities</b>	<b>81,227</b>	<b>64,178</b>
<b>Total non-current portion of debt facilities</b>	<b>-</b>	<b>-</b>
<b>Total debt facilities</b>	<b>\$ 81,227</b>	<b>\$ 64,178</b>

## **NORTHERN SILICA CORPORATION**

### **Notes to the Consolidated Interim Financial Statements – Unaudited**

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#### **(i) Senior Loan Facility**

The Company has an USD25.0 million secured debt facility with Taurus Funds Management Pty Ltd (“Taurus”), a shareholder to the Company, to fund the construction of the Moberly Project. The facility is available in two tranches.

The debt facility bears interest at 12.5% per annum, a commitment fee of 2% per annum on undrawn amounts at each phase, and 2% Fee on Train Gross Revenue Royalty, ex Plant Price. The facility is secured over a first charge over the Company’s assets. The facility maturity date is August 31, 2020. As at March 31, 2020, the Company had drawn USD25.0 million (CAD35.4 million) of the USD25.0 million facility.

#### *Covenants*

The Company needs to ensure at each quarter ending, the Project Life Cover Ratio (“PLCR”) is not less than 1.3:1, the Project Debt Service Cover Ratio (“PDSCR”) is not less than 1.1:1, the Historical DSCR is not less than 1.1:1, and there is minimum liquidity of at least USD5.0 million.

PLCR ratio, the ratio of N:A, is calculated based on “N” equalling the net present value of the projected future operating cash flows over a 5 year period from each quarter ending period, discounted at 10% per annum, and “A” equaling the aggregate amount of loans outstanding.

Projected DSCR ratio, the ratio of C:D, is calculated based on “C” equaling the operating cash flows from the preceding 6 months ending and projected future operating cash flows for the next 6 month period from each quarter ending period, and “D” equaling the aggregate amount of financing costs and repayment installments projected to be due and payable.

Historic DSCR ratio, the ratio of C:D, is calculated based on “C” equaling the operating cash flows from the preceding 12 months ending from each quarter ending period and “D” equaling the aggregate amount of financing costs and repayment installments projected to be due and payable.

The Company has breached the covenants related to the PLCR and Historic DSCR ratios as at March 31, 2020 and has obtained waivers for the breach of covenants (see note 2), however, the debt was classified as short-term. Refer to Note 2 for management’s plans for the remediation of these covenants.

#### **(ii) Secured Working Capital Facility**

On June 28, 2019 the Company entered into a Working Capital Facility agreement with QMetco Limited to fund the working capital needs of the Company as it moves into full production. The facility bears interest at 17.5% per annum with is capitalized to repayment. On December 6, 2019, the Facility Agreement was amended to increase the amount available to \$18.0 million, extend the repayment date to January 31, 2020 and provide a secure fixed charge against the Company’s assets. There are no covenants associated with this facility. On January 30, 2020 the Company and QMetco Limited agreed to increase the facility limit to \$19.0 million and extend the repayment date to February 28, 2020. On March 31, 2020 the repayment date was amended to April 30, 2020.

## NORTHERN SILICA CORPORATION

### Notes to the Consolidated Interim Financial Statements – Unaudited

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#### (iii) Loan Note Subscription (“LNSA”)

The company entered into a LNSA on April 27, 2018 for \$4.4 million with First Samuel Limited on behalf of its Managed Discretionary Accounts Clients (“First Samuel”) to fund ongoing remediation and the operational readiness program. The LNSA has a redemption date of August 30, 2021 and carries an interest rate of 8.0% per annum, which is capitalized to repayment. The Company has an option, subject to Shareholder notice under Section 5.1 of the Company’s Unanimous Shareholder Agreement, to issue equity at market price as repayment of all principal and capitalized interest. In order to exercise this option, the value of the capitalized interest will be amended to yield cumulative returns of 12.0% on the \$4.4 million of principal. There are no covenants associated with the LNSA.

#### (iv) Term Loans

Two secured term loans with Alberta Treasury Branches (“ATB”) totalling \$1.5 million were assumed on February 1, 2018, the date of the acquisition of Custom Bulk Services (“CBS”). Both loans incur interest at prime plus 0.5% and are repayable in combined monthly installments of \$0.014 million. Both loans are secured by land held by CBS and corporate guarantees and are treated as short-term loans because they are renewed on an annual basis.

##### *Covenants*

ATB Loan 1 requires CBS to maintain Total Debt to Equity in excess of 3.0:1, and a Debt Service Coverage ratio (“DSCR”) of less than 2.0:1. ATB Loan 2 requires CBS to maintain Total Debt to Equity in excess of 5.0:1 and a DSCR ratio of less than 1.25:1.

CBS, based on its intercompany reporting has breached the DSCR ratio for both loans as at March 31, 2020. Refer to Note 2 for management’s plans for the remediation of these covenants.

## 11. LEASE LIABILITIES

The Company incurs lease payments related to rail cars, vehicles, office space and small equipment. Lease liabilities are measured at the present value of the remaining lease payments at incremental borrowing rates of 5.0% to 13.8%. Leases with a lease term of twelve months or less are expensed to direct operating or general & administrative expenses.

As at September 30, 2019	\$	193
Additions on adoption		4,886
Interest expense		331
Lease payments		(599)
Changes in F/X rate		331
<b>As At March 31, 2020</b>	<b>\$</b>	<b>5,142</b>
Less: Current portion		456
<b>Total long-term leases</b>	<b>\$</b>	<b>4,686</b>

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The following table reconciles the operating lease commitments disclosed at September 30, 2019 to the present value of the remaining lease payments as at October 1, 2019:

Operating lease commitments disclosed as at September 30, 2019	\$ 8,350
Discount from application of the incremental borrowing rates as at October 1, 2019	(3,509)
Adjustment for extension of office lease	45
<b>Lease liabilities on adoption of IFRS 16</b>	<b>\$ 4,886</b>

**12. ISSUED CAPITAL**

<i>Ordinary shares issued and fully paid</i>	Number of Shares ( '000)	Amount ( '000)
At September 30, 2019	1,172,321	\$ 88,110
<b>At March 31, 2020</b>	<b>1,172,321</b>	<b>\$ 88,110</b>

The Company's authorized share capital consists of an unlimited number of common shares without par value and an unlimited number of preferred shares issuable in series. At March 31, 2020, 1,172,321 thousand common shares were outstanding and no preferred shares were outstanding.

As at December 31, 2019, a subsidiary of the Company, Heemskirk Mining Pty Ltd., had 7,881,075 options issued to Taurus a shareholder of the Company as part of the debt facility (refer to Note 10). These options are exercisable at AUD0.0878, are fully vested and expire on July 15, 2020. As at December 31, 2019 all issued options were still outstanding.

**13. SUPPLEMENTAL CASH FLOW INFORMATION**

	For the three months ended		For the six months ended	
	2020 March 31	2019 March 31	2020 March 31	2019 March 31
Accounts receivable	\$ 561	\$ (253)	\$ 1,375	\$ (15)
Inventories	459	(2,131)	780	(2,626)
Trade and other payables	(751)	351	(1,921)	250
Provisions	14	(91)	4	(76)
<b>Total</b>	<b>\$ 282</b>	<b>\$ (2,124)</b>	<b>237</b>	<b>(2,467)</b>

**Related to:**

Operating activities	1,265	(1,614)	1,636	(3,648)
Investing activities	(982)	(510)	(1,398)	1,181
<b>Total</b>	<b>\$ 282</b>	<b>\$ (2,124)</b>	<b>\$ 237</b>	<b>\$ (2,467)</b>

## **NORTHERN SILICA CORPORATION**

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#### **14. FINANCIAL INSTRUMENT AND RISK MANAGEMENT**

##### **(a) Risk management overview**

The Company's activities expose it to a variety of financial risks including credit risk, liquidity risk and market risk. The Company employs risk management strategies and policies to ensure that any exposures to risk are in compliance with the Company's business objectives and risk tolerance levels.

##### **(b) Fair value of financial instruments**

The fair values of cash, accounts receivable, accrued receivables, accounts payable, accrued liabilities, loan facilities and term loans approximate the carrying values due to their short-term maturities.

The Company analyses financial instruments carried at fair value, by valuation method. The different levels have been defined as:

- Level 1:** Values based on unadjusted quoted prices in active markets for identical assets or liabilities, accessible at the measurement date.
- Level 2:** Values based on quoted prices in markets that are not active or model inputs that are observable either directly or indirectly for substantially the full-term of the asset or liability.
- Level 3:** Values based on prices or valuation techniques that require inputs for the asset or liability that are not based on observable market data (unobservable inputs).



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March 31, 2020	Carrying amount	Fair Value		
		Level 1	Level 2	Level 3
<b>Financial assets at amortized cost:</b>				
Cash and cash equivalents	\$ 1,030	\$ 1,030	\$ -	\$ -
Accounts receivable	360	360	-	-
<b>Financial liabilities at amortized cost:</b>				
Senior loan facility	\$ 53,588	\$ -	\$ -	\$ 53,588
Working capital facility	20,694	-	-	20,694
Accounts payable and accrued liabilities	3,183	3,183	-	-
Loan note subscription	5,709	-	-	5,709
Term loans	1,234	-	1,234	-
Leases - short-term	456	-	456	-
Leases - long-term	4,685	-	4,685	-

September 30, 2019	Carrying amount	Fair Value		
		Level 1	Level 2	Level 3
<b>Financial assets at amortized cost:</b>				
Cash and cash equivalents	\$ 1,438	\$ 1,438	\$ -	\$ -
Accounts receivable	1,325	1,325	-	-
<b>Financial liabilities at amortized cost:</b>				
Senior loan facility	\$ 46,730	\$ -	\$ -	\$ 46,730
Working capital facility	10,569	-	-	10,569
Accounts payable and accrued liabilities	5,020	5,020	-	-
Loan note subscription	5,391	-	-	5,391
Term loans	1,295	-	1,295	-
Finance leases - short-term	193	-	193	-

**(c) Credit risk**

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its obligations. Substantially all of the Company's accounts receivable are due from purchasers of silica sand.

It is the Company's policy that all customers who wish to trade on credit terms are subject to verification procedures including an assessment of their independent credit rating, financial position, past experience and industry reputation. Accounts receivable are monitored on an ongoing basis with the result that the Company's exposure to bad debts is not significant.

One customer accounts for a substantial portion of the Company's revenues. The customer is deemed credit worthy and no collection issues have arisen thus far. Significant changes in industry conditions will increase the risk of not collecting receivables. Management believes that this risk is materially mitigated by the size and reputation of the customer.

As of March 31, 2020 and September 30, 2019, The Company's trade receivables were comprised of the following:

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		March 31 2020		September 30 2019
Current	\$	86	\$	597
1-30 days		17		9
31-60 days		-		1
61-90 days		-		-
Over 90 days		-		-
<b>Total trade receivables</b>	<b>\$</b>	<b>103</b>	<b>\$</b>	<b>607</b>
Accrued receivables		-		718
<b>Total receivables</b>	<b>\$</b>	<b>103</b>	<b>\$</b>	<b>1,325</b>

The Company's maximum exposure to credit risk is the fair value of accounts receivable on the balance sheet. No loss provision was booked as there is no historical loss events for this customer and market conditions have not changed since the prior quarter.

**(d) Liquidity risk**

Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they come due. The Company manages its liquidity risk by producing weekly and monthly cash flow forecasts and budgets and monitoring its performance against these forecasts and budgets. The liquidity position of the Company is managed to ensure sufficient liquid funds are available to meet the Company's financial commitments in a timely and cost-effective manner. As at March 31, 2020, the Company had a working capital deficit of \$79.5 million (September 30, 2019: deficit of \$61.0 million). Refer to Note 2 for Management's plans to remediate this risk.

The financial liabilities on the Consolidated Statements of Financial Position consist of accounts payable and accrued liabilities, debt facilities, restoration provision and leases. The Company manages this risk through detailed monitoring of budgeted and projected operating results and cash requirements.

The risk implied from the values shown in the table below, reflects a balanced view of cash outflows of non-derivative financial instruments. The Company has obtained a waiver from Taurus with respect to non-compliance with certain covenants of the Senior Loan Facility.

The following table reflects all contractually fixed repayments and interest for the recognized financial liabilities at March 31, 2020:

	Within 1 year		2-5 Years		More than 5 years	Total
Trade and other payables	\$	3,139	\$	-	\$	3,139
Provisions		44		-		44
Site restoration provision		-		-	437	437
Leases		1,002		3,554	3,401	7,957
Propane purchases		120		240	-	360
Loans and borrowings		81,227		-	-	81,227
	<b>\$</b>	<b>85,531</b>	<b>\$</b>	<b>3,794</b>	<b>\$</b>	<b>3,838</b>
				<b>\$</b>	<b>3,838</b>	<b>\$ 93,163</b>

**NORTHERN SILICA CORPORATION****Notes to the Consolidated Interim Financial Statements – Unaudited**

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**(e) Market risk**

Market risk is the risk or uncertainty arising from market price movements and their impact on the future performance of the business. These include changes in commodity prices, foreign exchange rates and interest rates. Market price movements that could adversely affect the value of the Company's financial assets, liabilities and expected future cash flows. The primary market risks are:

***Foreign currency risk***

The Company undertakes transactions for procuring equipment and services in foreign currencies. In addition, the Senior Loan Facility is and the long-term Rail Lease are denominated in United States ("US") Dollars.

At March 31, 2020 and September 30, 2019, the carrying amounts of the Company's US Dollar financial instruments are as follows (in CAD):

	<b>March 31</b>	September 30
	<b>2020</b>	2019
Cash and cash equivalents	\$ 3	\$ 1
	<b>3</b>	<b>1</b>
<i>Financial liabilities</i>		
Trade and other payables	(87)	(724)
Leases	(4,941)	-
Interest bearing liabilities	(53,785)	(47,162)
	<b>(58,814)</b>	<b>(47,886)</b>
<b>Net exposure</b>	<b>\$ (58,811)</b>	<b>\$ (47,885)</b>

At March 31, 2020, if the conversion rate between the Canadian and US Dollar had increased/(decreased) by 100 basis points, with all other variables held constant net income would have been affected by (\$0.6 million)/\$0.6 million (September 30, 2019: (\$0.5 million)/\$0.5 million). Management believes at the balance sheet date, risk exposures are representative of the risk exposure inherent in the Financial Statements.

## **NORTHERN SILICA CORPORATION**

### **Notes to the Consolidated Interim Financial Statements – Unaudited**

Six months ended March 31, 2020

(stated in thousands of Canadian dollars, unless otherwise noted)

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#### ***Interest rate risk***

The Company's policy is to manage its interest rate risk by using a mix of fixed and variable rate debt. The Company's exposure to changes in interest rates relates primarily to floating rates on cash in the bank and changes in the prime rate for the Company's ATB Term loans. At March 31, 2020, the impact if rates had increased/ (decreased) by 100 basis points would have been approximately \$0.012 million (September 30, 2019: \$0.013 million).

#### **(f) Capital management**

The Company's objectives when managing capital are to safeguard the ability to continue as a going concern in order to provide returns for shareholders and to maintain an optimal capital structure to reduce the cost of capital. The Company manages its capital based on current economic conditions, the risk characteristics of the underlying assets, and planned capital requirements within guidelines approved by its Board of Directors. Total capitalization is maintained or adjusted by drawing on existing debt facilities, issuing new debt or equity securities when opportunities are identified.

The Company monitors its capital structure and financing requirements using the ratios included in its debt covenants. As at March 31, 2020 the Company breached certain loan covenants (refer to Note 10).

#### **14. OPERATING SEGMENTS**

The Company is organized into separate operating segments based on the products and services provided. Management monitors the operating results of each segment separately for the purpose of making decisions about resource allocations and performance evaluations.

The Moberly Mine segment consists of the mine and processing plant in Golden, British Columbia. This segment mines and processes the silica which mainly gets shipped to the Transload facility for sale and distribution to end users. The Transload segment consists of transloading and storage facilities in Penhold, Alberta. The Corporate segment consists of administration costs relating to corporate activities and officers.

**NORTHERN SILICA CORPORATION****Notes to the Consolidated Interim Financial Statements – Unaudited**

Six months ended March 31, 2020

(stated in thousands of Canadian dollars, unless otherwise noted)

***For the three months ended March 31, 2020***

	Transload	Moberly Mine	Corporate	Total
Silica sales revenue	\$ -	\$ 281	\$ -	\$ 281
Transloading services revenue	88	-	-	88
	88	281	-	369
Cost of sales				
Direct operating	140	1,684	-	1,823
Storage and logistics	61	(22)	-	40
	201	1,662	-	1,863
<b>Gross loss</b>	<b>(113)</b>	<b>(1,381)</b>	<b>-</b>	<b>(1,494)</b>
General and administrative costs	27	104	901	1,032
Depreciation and amortization	214	897	19	1,130
Other income	(4)	-	-	(4)
	237	1,001	920	2,158
<b>Operating loss</b>	<b>(350)</b>	<b>(2,382)</b>	<b>(920)</b>	<b>(3,652)</b>
Finance costs	178	2,696	3	2,878
Loss on foreign exchange	414	4,481	7	4,902
	593	7,177	10	7,780
<b>Loss before income tax</b>	<b>(942)</b>	<b>(9,559)</b>	<b>(929)</b>	<b>(11,431)</b>
Income tax expense	-	-	-	-
<b>Loss and comprehensive loss</b>	<b>(942)</b>	<b>(9,559)</b>	<b>(929)</b>	<b>(11,431)</b>
Other comprehensive income (loss)	-	-	-	-
<b>Total comprehensive loss</b>	<b>\$ (942)</b>	<b>\$ (9,559)</b>	<b>\$ (929)</b>	<b>\$ (11,431)</b>

**NORTHERN SILICA CORPORATION****Notes to the Consolidated Interim Financial Statements – Unaudited**

Six months ended March 31, 2020

(stated in thousands of Canadian dollars, unless otherwise noted)

***For the six months ended March 31, 2020***

	Transload	Moberly Mine	Corporate	Total
Silica sales revenue	\$ -	\$ 934	\$ -	\$ 934
Transloading services revenue	123	-	-	123
	123	934	-	1,057
Cost of sales				
Direct operating	354	3,876	-	4,229
Storage and logistics	74	(3)	-	72
	428	3,873	-	4,301
<b>Gross loss</b>	<b>(305)</b>	<b>(2,939)</b>	<b>-</b>	<b>(3,244)</b>
General and administrative costs	57	228	1,736	2,021
Depreciation and amortization	429	1,829	27	2,285
Other income	(8)	(9)	(2)	(18)
	478	2,048	1,761	4,288
<b>Operating loss</b>	<b>(783)</b>	<b>(4,987)</b>	<b>(1,761)</b>	<b>(7,531)</b>
Finance costs	354	4,776	20	5,151
Loss on foreign exchange	325	3,550	7	3,882
Realized loss on portfolio investments	-	-	-	-
	680	8,326	27	9,032
<b>Loss before income tax</b>	<b>(1,463)</b>	<b>(13,314)</b>	<b>(1,788)</b>	<b>(16,564)</b>
Income tax recovery	-	-	-	-
<b>Loss and comprehensive loss</b>	<b>(1,463)</b>	<b>(13,314)</b>	<b>(1,788)</b>	<b>(16,564)</b>
Other comprehensive income (loss)	-	-	-	-
<b>Total comprehensive loss</b>	<b>\$ (1,463)</b>	<b>\$ (13,314)</b>	<b>\$ (1,788)</b>	<b>\$ (16,564)</b>

**NORTHERN SILICA CORPORATION****Notes to the Consolidated Interim Financial Statements – Unaudited**

Six months ended March 31, 2020

(stated in thousands of Canadian dollars, unless otherwise noted)

***For the six months ended March 31, 2020***

	Transload	Moberly Mine	Corporate	Total
Silica sales revenue	\$ -	\$ 934	\$ -	\$ 934
Transloading services revenue	123	-	-	123
	123	934	-	1,057
Cost of sales				
Direct operating	354	4,163	-	4,517
Storage and logistics	74	(3)	-	72
	428	4,160	-	4,588
<b>Gross loss</b>	<b>(305)</b>	<b>(3,226)</b>	<b>-</b>	<b>(3,531)</b>
General and administrative costs	57	228	1,736	2,021
Depreciation and amortization	429	1,829	27	2,285
Other income	(8)	(9)	(2)	(18)
	478	2,048	1,761	4,288
<b>Operating loss</b>	<b>(783)</b>	<b>(5,275)</b>	<b>(1,761)</b>	<b>(7,819)</b>
Finance costs	354	4,776	20	5,151
Loss on foreign exchange	325	3,550	7	3,882
Realized loss on portfolio investments	-	-	-	-
	680	8,326	27	9,033
<b>Loss before income tax</b>	<b>(1,463)</b>	<b>(13,601)</b>	<b>(1,788)</b>	<b>(16,852)</b>
Income tax recovery	-	-	-	-
<b>Loss and comprehensive loss</b>	<b>(1,463)</b>	<b>(13,601)</b>	<b>(1,788)</b>	<b>(16,852)</b>
Other comprehensive income (loss)	-	-	-	-
<b>Total comprehensive loss</b>	<b>\$ (1,463)</b>	<b>\$ (13,601)</b>	<b>\$ (1,788)</b>	<b>\$ (16,852)</b>

**NORTHERN SILICA CORPORATION****Notes to the Consolidated Interim Financial Statements – Unaudited**

Six months ended March 31, 2020

(stated in thousands of Canadian dollars, unless otherwise noted)

*For the six months ended March 31, 2019*

	Transload	Moberly Mine	Corporate	Total
Silica sales revenue	\$ -	\$ 1,319	\$ -	\$ 1,319
Transloading services revenue	271	-	-	271
	271	1,319	-	1,590
Cost of sales				
Direct operating	411	1,826	-	2,237
Storage and logistics	402	-	-	402
	813	1,826	-	2,639
<b>Gross loss</b>	(542)	(507)	-	(1,049)
General and administrative costs	71	457	1,284	1,812
Depreciation and amortization	152	915	32	1,099
Other income	(3)	(1)	-	(4)
	220	1,371	1,316	2,907
<b>Operating loss</b>	(762)	(1,878)	(1,316)	(3,956)
Finance costs	31	1,664	15	1,710
Asset impairment	-	2,270	-	2,270
Loss on foreign exchange	-	852	21	873
	31	4,786	36	4,853
<b>Loss before income tax</b>	(793)	(6,664)	(1,352)	(8,809)
Income tax expense	-	-	-	-
<b>Loss and comprehensive loss</b>	(793)	(6,664)	(1,352)	(8,809)
Other comprehensive income (loss)	-	-	-	-
<b>Total comprehensive loss</b>	\$ (793)	\$ (6,664)	\$ (1,352)	\$ (8,809)



**NORTHERN SILICA CORPORATION****Notes to the Consolidated Interim Financial Statements – Unaudited**

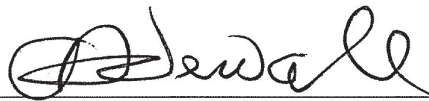
Six months ended March 31, 2020

(stated in thousands of Canadian dollars, unless otherwise noted)

***As at March 31, 2020***

	Transload	Moberly Mine	Corporate	Total
<b>Current assets</b>	\$ 296	\$ 4,565	\$ 859	\$ 5,719
<b>Right of use assets</b>	4,489	22	84	4,595
<b>Property, plant and equipment</b>	2,614	51,361	7	53,982
<b>Intangible assets</b>	1,732	-	-	1,732
<b>Total assets</b>	9,131	55,947	951	66,028
<b>Current liabilities</b>	1,604	82,477	784	84,865
<b>Total liabilities</b>	6,258	82,755	809	89,822

This is Exhibit "R" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.

A handwritten signature in black ink, appearing to read "Adewale", written over a horizontal line.

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

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

## Nasri, Behnoosh

---

**From:** marc rabinov <contactmarcrabinov@gmail.com>  
**Sent:** Sunday, April 19, 2020 8:57 PM  
**To:** Martin Boland; Philip Katz; marc rabinov  
**Subject:** Fwd: NS  
**Attachments:** NS proposition April 2020 .docx

Dear Martin

Philip and I have worked hard over the weekend and have put our thoughts in the attached document for your review

We look forward to hearing from

Kind regards

Marc and Philip

[Report this message as spam](#)

Dear Martin

Thank you for your proposal and the discussions we have had to date. Philip and I have worked hard to clarify our thoughts on this and have outlined them below. While they differ from your approach, we believe they are valid.

As a first step, we believe it would help to clarify where we see the business could go in the short term if the silicone metal option is successful

We have sketched out a model below. If you are aware of information that would change this model, we would appreciate you sharing it

Scott has suggested that the gross margin could be as high as \$100 per tonne. We do not know what level of confidence to attach to that. Given all the uncertainties we assumed a margin \$70 / tonne and assume that throughput remains about 300,000 tonnes per annum. We are aware that this could be upsized significantly, but Scott has indicated that to do that a new road and interchange would be needed and that could cost \$10 million. As a result, we have stuck with the base case assumptions above.

This model suggests that net revenues would be in the vicinity of \$21 million pa

Assume head office costs \$2 million, rail car costs circa \$1.0 million and assume Penhold washes its face

This leaves us with pre-tax net of \$18 million pa

While we have tax losses to use up, for valuation purposes, it is necessary to look at net after tax profit which we assume would be \$12.6 million using a 30% tax rate

If we apply a ten multiple to this, based on the belief that production will continue for many years, then the business is worth \$126 million

We assume that the debt converts to equity as you have proposed. Say the existing \$74 million of debt (ignore FS debt) converts to about 60% of the equity which would equate to the face value of the debt. Then, the \$6 million of new money will become worth 40% of \$126 million or \$50 million. It is important to note that it is likely that subsequent raises will be necessary and hence the \$6 million may be \$12 million before the Silicone business is operational. Even under these circumstances, this arrangement makes it possible for the new money to participate in a reasonable share of the upside.

The question remains as to who contributes the new \$6 million at this time. It seems to us that this should be done by offering existing shareholders a fraction commensurate with their current equity investment. This would be about 10% or \$600,000 for Katz / Rabinov and about \$3 million for Taurus. Clearly this leaves a \$2.4 million deficiency as FS is not contributing. The options are that the remaining partners divide up this sum or that a new partner is identified.

It seems completely unfair to insist that Katz / Rabinov must assume all this deficiency as Taurus currently believes. Indeed, if this deficiency is allocated proportionately, we could be asked to make up 10% or \$240,000 of it with Taurus bearing the rest.

We are aware that this proposal is different to the proposal that Taurus has put forward, but we believe that any independent person would conclude that our proposal is the fairer one.

Finally, given all the issues to date, we believe that our contribution should come with a board seat, anti-dilution provisions and some rights on certain major decisions.

We would appreciate Taurus giving this alternative assessment due consideration and look forward to your reply

Kind regards

Marc Rabinov

On behalf of myself and Philip Katz

## Nasri, Behnoosh

---

**From:** Philip Katz <philipckatz@gmail.com>  
**Sent:** Monday, April 20, 2020 9:21 PM  
**To:** Martin Boland  
**Cc:** marc rabinov; Peter Briggs  
**Subject:** Re: NS

Good Day Martin

Thank you for your response - we have every desire to work with Taurus and find a way forward. The unfortunate reality is that all the money, debt and equity, that we collectively have injected, is now underwater.

In an arms length sale a buyer or investor injecting fresh capital would demand far more than we are proposing.

In a Chapter 11 reorganization we would be arguing over value and a plan forward which benefits all stakeholders; Further, Taurus, Qmetco and the Board of Directors would be under a microscope and need to justify it's actions that led to the current state of affairs. The company would come under the control of a court appointed trustee.

Our proposal, spelled out in the attachment to Marc's email, has the participating shareholders contributing capital pro rata to ownership (a standard commercial practice for a capital raise by existing shareholders).

We are ready willing and able to write a check and continue along this journey with Taurus; our proposal is a reasonable step toward reorganizing and moving forward.

On behalf of Marc Rabinov and Philip Katz

*Philip Katz*

Tel Office: [+1.917.386.2223](tel:+19173862223)

Mobile: [+1.347.886.2963](tel:+13478862963)

*GOD BLESS AMERICA*

On Mon, Apr 20, 2020 at 12:34 AM Martin Boland <[mboland@taurusfunds.com.au](mailto:mboland@taurusfunds.com.au)> wrote:

Philip / Marc,

Acknowledging receipt of your email.

Suggest we arrange a call for Monday evening NYC / Tuesday morning Melbourne time if that suits.

In advance of a call a few initial points to make:

- Since NSC last raised equity, Taurus (via QMetco) has contributed C\$19m of capital into the business. This contribution was always intended to be a bridge to an equity raise. If combined with the targeted C\$6m of fresh capital currently targeted this equates to a notional amount of C\$25m of which your hypothetical pro-rata share would be C\$2.5m and fairly close to C\$3m
- We've never expected you guys to go pro-rata on the proposed convertible note amount of C\$80m (inclusive of retiring **ALL** Taurus debt and raising C\$6m of new capital). This would imply Katz/Rabinov participation of C\$8m and result in roughly 10% see-through ownership. We appreciate this scenario isn't feasible for you
- Based on your below proposal of contributing a total of C\$840k this equates to roughly 1% of the total convertible note amount. As a result your pro-forma shareholding would only be around 1% and we suspect not a palatable investment proposition for you
- We remain open to coming to agreement on including the FS loan notes into the convertible note structure but only if the party holding those notes is contributing at least C\$3m. This would result in your pro-forma shareholding being higher than otherwise would. Per the spreadsheet sent last week a contribution of C\$3m via the convertible notes and agreement to fold-in the FS loan notes at 50% of their face value would result in your pro-forma ownership being around 7.6%
- The alternative for Taurus is to progress through a Chapter 11 style restructuring which is highly unlikely to see any value left for current equity and/or the FS loan notes given they rank as unsecured debt

At this stage no additional details we can add to your commentary on the silicon metal opportunity which remains a work in progress.

Cheers

**Martin Boland**  
**Director**  
**Taurus Funds Management Pty Limited**

P: +612 8314 5503 (Direct)

F: +612 8314 5555 (Fax)

M: +61 417 411 336

E: [mboland@taurusfunds.com.au](mailto:mboland@taurusfunds.com.au)

W: [www.taurusfunds.com.au](http://www.taurusfunds.com.au)

**Business Address:**

Suite 4101, Level 41, Gateway

1 Macquarie Place

Sydney NSW 2000 Australia



Australian Financial Services Licensee Number 307723

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**From:** Philip Katz <[philipckatz@gmail.com](mailto:philipckatz@gmail.com)>  
**Sent:** Monday, 20 April 2020 11:12 AM  
**To:** marc rabinov <[contactmarcrabinov@gmail.com](mailto:contactmarcrabinov@gmail.com)>  
**Cc:** Martin Boland <[mboland@taurusfunds.com.au](mailto:mboland@taurusfunds.com.au)>  
**Subject:** Re: NS

Good Morning Martin

Just confirming, Marc's email and attachment reflect our joint thoughts.

*Philip Katz*

Tel Office: [+1.917.386.2223](tel:+19173862223)

Mobile: [+1.347.886.2963](tel:+13478862963)

*GOD BLESS AMERICA*

On Sun, Apr 19, 2020 at 8:57 PM marc rabinov <[contactmarcrabinov@gmail.com](mailto:contactmarcrabinov@gmail.com)> wrote:

Dear Martin

Philip and I have worked hard over the weekend and have put our thoughts in the attached document for your review

We look forward to hearing from

Kind regards

Marc and Philip

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[Report this message as spam](#)



This is Exhibit "S" referred to in the Affidavit of Martin Boland sworn June 26, 2020, in Melbourne, Australia.

A handwritten signature in black ink, appearing to read 'Adewale', written in a cursive style.

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

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

Clerk's Stamp:

COURT FILE NUMBER 2001-  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF CALGARY

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

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

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

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

DOCUMENT **CONSENT TO ACT**

CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT:

**Cassels Brock & Blackwell LLP**  
Suite 3810, Bankers Hall West  
888-3<sup>RD</sup> Street SW  
Calgary, AB T2P 5C5  
Phone: 403-351-2921  
Fax: 403-648-1151  
Attention : Jeffrey Oliver  
Email: [joliver@cassels.com](mailto:joliver@cassels.com)

Alvarez & Marsal Canada Inc. consents to act as CCAA monitor on terms substantially provided in the draft Initial Order contained in the application filed in the within proceeding.

DATED at the City of Calgary, in the Province of Alberta, this 23<sup>rd</sup> day of June, 2020.

**Alvarez & Marsal Canada Inc.**



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Per:

Name: Orest Konowalchuk, CPA-CA, CIRP, LIT

Title: Senior Vice President