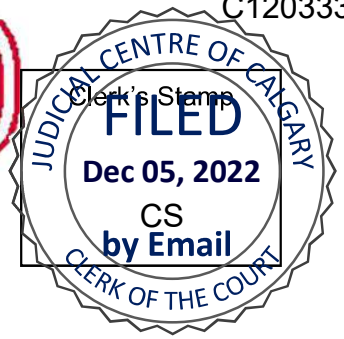


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COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANTS

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS
AMENDED

COM
Dec 6 2022

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF NORTH AMERICAN LAMB
COMPANY LTD., CANADA SHEEP AND LAMB FARMS
LTD., CANADA SHEEP HOLDINGS LTD., LAMB CLUB
MARKETING LIMITED, CANADA LAMB GROWERS LTD.,
CANADA LAMB PROCESSORS LTD. AND CANINE FARE
LTD.

DOCUMENT

**SECOND REPORT OF ERNST & YOUNG INC. IN ITS
CAPACITY AS THE MONITOR OF THE NALCO GROUP**

NOVEMBER 29, 2022

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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TABLE OF CONTENTS OF THE SECOND REPORT OF THE MONITOR

| | |
|--|----|
| INTRODUCTION..... | 2 |
| PURPOSE..... | 4 |
| BACKGROUND | 4 |
| TERMS OF REFERENCE AND DISCLAIMER | 5 |
| ACTIVITIES SINCE THE FILING OF THE FIRST REPORT OF THE MONITOR | 5 |
| FORECAST-TO-ACTUAL ANALYSIS | 7 |
| REVISED CASH FLOW STATEMENT | 8 |
| SALES PROCESS UPDATE..... | 12 |
| SISP ASSET SALE APPROVAL | 14 |
| INTERIM DISTRIBUTIONS | 17 |
| STAY EXTENSION..... | 18 |
| RECOMMENDATIONS..... | 18 |

APPENDICES

| | |
|------------|---|
| APPENDIX A | CASH FLOW STATEMENT OF THE NALCO GROUP FOR THE 15-WEEK PERIOD ENDING ON MARCH 4, 2023 |
| APPENDIX B | ALBERTA TEMPLATE PURCHASE AND SALE AGREEMENT |
| APPENDIX C | MANITOBA TEMPLATE PURCHASE AND SALE AGREEMENT |

INTRODUCTION

1. On August 8, 2022, North American Lamb Company Ltd. ("**NALCO**") and its subsidiaries, Canada Sheep and Lamb Farms Ltd., Canada Sheep Holdings Ltd., Lamb Club Marketing Limited, Canada Lamb Growers Ltd., Canada Lamb Processors Ltd., and Canine Fare Ltd. (collectively, the "**Subsidiaries**" and together with NALCO, the "**NALCO Group**" or the "**Company**") were granted protection and permission to commence proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "**CCAA**") pursuant to an Order of this Honourable Court (the "**Initial Order**").
2. The Initial Order appointed Ernst & Young Inc. as Monitor ("**EYI**" or the "**Monitor**") in the CCAA Proceedings and established an initial stay of proceedings (the "**Initial Stay of Proceedings**") in favour of the NALCO Group from August 8, 2022 (the "**Filing Date**") until August 18, 2022. Pursuant to the Initial Order, the Monitor was granted enhanced powers (the "**Enhanced Powers**") to ensure that the Company could continue to operate during the course of the CCAA proceedings and to ensure that a restructuring could be pursued.
3. The Enhanced Powers include the ability to, among other items:
 - A. exercise such rights, powers and obligations of the NALCO Group as the Monitor deems necessary or advisable;
 - B. exercise any power which may be properly exercised by an officer or the board of directors of the NALCO Group;
 - C. take any steps in order to direct or cause the NALCO Group to exercise any rights or fulfill any of their duties under the Initial Order;
 - D. take any and all steps in order to direct or cause the NALCO Group to manage the business, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, cease to perform any contracts of the NALCO Group and/or disclaim any leases on behalf of the NALCO Group;
 - E. take any and all steps in order to direct or cause the NALCO Group to administer the NALCO Group's property or to perform such other functions or duties as the Monitor considers necessary or desirable to deal with the NALCO Group's property;
 - F. execute, assign, issue, and endorse documents of whatever nature in respect of the NALCO Group property and/or the business in the name and on behalf of the NALCO Group;

- G. cause the NALCO Group to retain the service of any person as an employee, consultant, or other similar capacity; and
 - H. prepare, negotiate, and file with this Court a Plan in respect of the NALCO Group.
4. Following the issuance of the Initial Order and a temporary stay of proceedings, the Monitor, pursuant to its Enhanced Powers, made an application to Court seeking various relief on the NALCO Group's behalf, which included requests to make certain amendments to the Initial Order as well as a request to have the Court authorize a sales process for the sale of certain Company assets.
5. On August 17, 2022, this Honourable court issued:
- A. An amended and restated initial order ("**ARIO**") which, among other things,
 - i. granted an extension to the Initial Stay of Proceedings until December 9, 2022;
 - ii. removed the obligation to seek Court authorization before the NALCO Group completed a transaction for the sale of livestock, meat form processed livestock, or livestock feed (the "**Livestock Assets**") to third parties, subject to the Monitor taking into account certain key considerations regarding the sale of Livestock Assets;
 - iii. created a Selling Agent's Charge to secure the fees and expenses of a selling agent responsible for facilitating a sale and investment solicitation process ("**SISP**") on behalf of the NALCO Group;
 - iv. enabled the Monitor to enter into a First Amended and Restated Interim Financing Facility for \$1.5 million (the "**Amended Financing Facility**") provided by the Bank of Nova Scotia ("**BNS**" or "**Interim Lender**"); and
 - v. increased the Interim Lender Charge to facilitate increased borrowings under the Amended Financing Facility initially authorized under the Initial Order; and
 - B. A Sales and Investment Solicitation Process Approval Order:
 - i. facilitating the sale of the business and property of the NALCO Group excluding the Livestock Assets (the "**SISP Assets**"), including through a share purchase or reverse vesting order if proposed by a successful bidder;
 - ii. establishing a process to market the properties of the NALCO Group on behalf of the Monitor in accordance with the terms of a sales and investment solicitation process

(the “**SISP**”); and

- iii. approving Ernst & Young Orenda Corporate Finance Inc. and Ernst & Young Real Estate Services Inc. to act as the exclusive selling agent (the “**Selling Agent**”) for the NALCO Group's SISP Assets.

PURPOSE

- 6. The purpose of this Second Report is to provide this Honourable Court and the NALCO Group's stakeholders with information and the Monitor's comments with respect to the following:
 - A. an update on the activities of the Monitor since the First Report of the Monitor, dated August 15, 2022 (the “**First Report**”)
 - B. A forecast-to-actual analysis comparing the Company's forecasted cash flow statement filed in connection with the Company's ARIO application (“**CFS#2**”) to actual results;
 - C. a revised Cash Flow Statement (“**CFS#3**”) for the 15-week period ending on March 4, 2023 (the “**Revised Forecast Period**”) and the key assumptions upon which CFS#3 is based;
 - D. an update on the SISP;
 - E. the NALCO Group's request for orders approving the sale and vesting of title of certain real property held by the NALCO Group, including all chattels located on site, but excluding any Livestock Assets;
 - F. the Monitor's request for the authority to issue interim distributions to the Senior Secured Lenders (as defined below);
 - G. the NALCO Group's requests for a stay extension to March 4, 2023; and
 - H. the Monitor's recommendations with respect to same.

BACKGROUND

- 7. The NALCO Group is a privately held lamb producer and processor. The NALCO Group carries on its business operations at six separate facilities located in Alberta and Manitoba. The NALCO Group's operations are vertically integrated, and include the operation of accelerated sheep breeding facilities, lamb growing facilities, a lamb feedlot, and a lamb processing plant. The NALCO Group currently has the capacity to finish approximately 80,000 lambs annually and processes lambs both

from independent lamb producers throughout Western Canada and from its own breeding facilities.

8. Additional background information on the NALCO Group and the CCAA Proceedings is available on the Monitor's website, located at: www.ey.com/ca/NALCO (the "**Monitor's Website**").

TERMS OF REFERENCE AND DISCLAIMER

9. In preparing this Second Report, the Monitor has been provided with, and has relied upon certain information, including unaudited financial information of the Company, books and records, and discussions with the NALCO Group management (collectively, the "**Information**").
10. Except as described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Canadian auditing standards pursuant to the Chartered Professional Accountants of Canada Handbook.
11. Future oriented information referred to in this Second Report was prepared based on management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable; the actual results may vary from the projections and the variances may be material.
12. All references to dollars are in Canadian dollars.
13. Capitalized terms not defined herein are as defined in the ARIO, the Pre-filing Report of the Monitor, or the First Report.

ACTIVITIES SINCE THE FILING OF THE FIRST REPORT OF THE MONITOR

14. Since the First Report, the activities of the Monitor include:
 - A. monitoring the Company's operations and financial affairs and, due to the departure of the NALCO Group's financial controller, establishing enhanced financial controls over Company disbursements;
 - B. due to the stronger than initially forecast cash position of the NALCO Group as described in more detail below, fully repaying all borrowings on the \$1.5M Amended Financing Facility. All borrowings, initially drawn in the first week of these CCAA proceedings, were fully repaid during the week ending September 24, 2022;
 - C. assisting the Company with the preparation of weekly: (a) forecast-to-actual variance reports (which compare actual financial performance of the Company relative to prepared forecasts),

- (b) livestock movement schedules, and (c) revised cash flow statements;
- D. coordinating the sale of Livestock Assets to third party purchasers, which included entering into a Processing Agreement and a Finishing Agreement to facilitate a bulk sale of livestock;
 - E. coordinating with the Chief Veterinary Officer of Manitoba and a third-party veterinarian to address and respond to various animal welfare matters and to ensure the well-being of Company livestock;
 - F. assisting the Company with the wind down of all farming operations in Manitoba. Due to these efforts, the NALCO Group no longer controls any livestock in Manitoba;
 - G. disclaiming certain real property leases for agricultural land in Manitoba in accordance with para 10(c) of the ARIO and s32 of the CCAA;
 - H. compiling information and responding to various trust exams conducted by the Canada Revenue Agency;
 - I. coordinating with the Selling Agent to advance the objectives of the SISP, which included compiling relevant company information for prospective purchasers and coordinating site visits;
 - J. coordinating with operations and human resources staff to address and respond to all aspects of human resource management, including hiring staff, including temporary foreign workers, terminating staff, assisting with workplace investigations, etc.;
 - K. working with the NALCO Group's existing insurers to ensure continued post filing insurance coverage;
 - L. developing a revised cash flow, i.e., CFS#3, in consultation with the NALCO Group's operations and finance departments, which is described in further detail below;
 - M. participating in discussions with certain large creditors and suppliers of the NALCO Group to ensure continuity of supplies and services during the course of the CCAA proceedings; and
 - N. updating and providing information to BNS and Farm Credit Canada ("**FCC**"), the senior secured lenders of the NALCO Group (together the "**Senior Secured Lenders**") with respect to the status of the CCAA proceedings generally, the SISP, and other matters of interest.
15. As of the date of this Second Report, the Monitor has not identified any material or adverse changes to the Company's operations and has obtained the full cooperation and assistance of the Company

and its employees to advance these CCAA proceedings.

FORECAST-TO-ACTUAL ANALYSIS

16. The Monitor has continuously reviewed the operations and cash flows of the Company since the Filing Date. In addition to holding regular meetings with the NALCO Group's operations and finance staff, the Monitor has actively worked with the Company to manage and track the Company's receipts and disbursements.
17. Due to additional receipts from the sale of Livestock Assets and slightly lower than forecast disbursements, the NALCO Group's cash position is significantly stronger than initially forecast in CFS#2. As described in further detail below, the NALCO Group had \$3.9M cash on hand as at November 19, 2022 and has fully repaid all borrowings under the Amended Financing Facility, which compares to CFS#2 which forecast the NALCO Group having only \$364K cash on hand as at November 19, 2022 while also still owing \$1.0M on the Amended Financing Facility.
18. The actual cash flow results for the Company from the Filing Date through to November 19, 2022 (the "Reporting Period") is presented in Exhibit 1.0. These actual results have been compared to the forecasts outlined in CFS#2:

| The NALCO Group Consolidated Forecast to Actual For the period of August 8, 2022 to November 19, 2022 (the "Reporting Period") | | | | Exhibit 1.0 | |
|--|-------|-----------------|-----------------|---------------|----------------|
| \$000's | | Forecast | Actual | Variance (\$) | Variance (%) |
| Week ending: | Notes | Period total | Period total | Period total | Period total |
| Operating receipts | | | | | |
| Receipts | A | 11,704 | 15,780 | 4,077 | 34.8% |
| Net operating receipts | | 11,704 | 15,780 | 4,077 | 34.8% |
| Operating disbursements | | | | | |
| Labour | B | (3,073) | (2,505) | 568 | -18.5% |
| Feed | C | (2,715) | (2,342) | 373 | -13.7% |
| Miscellaneous operating disbursements | D | (5,066) | (6,144) | (1,078) | 21.3% |
| Restructuring/professional fees | E | (875) | (1,120) | (245) | 28.1% |
| Contingency | | (585) | - | 585 | -100.0% |
| Total operating disbursements | | (12,314) | (12,111) | 202 | -1.6% |
| Net change in cash from operations | | (610) | 3,669 | 4,279 | -701.7% |
| Financing | | | | | |
| Interim Financing - principal draw / (repayment) | F | 1,000 | - | (1,000) | -100.0% |
| Interim Financing - interest / fees | | (26) | (21) | 5 | -20.7% |
| Net change in cash from financing | | 974 | (21) | (995) | -102.1% |
| Net change in cash | | | | | |
| Opening cash | G | - | 252 | 252 | 0.0% |
| Net change in cash from operations | | (610) | 3,669 | 4,279 | -701.7% |
| Net change in cash from financing | | 974 | (21) | (995) | -102.1% |
| Ending cash | | 364 | 3,900 | 3,536 | 971.1% |

19. The Monitor notes that there were material variances between the NALCO Group's actual cash flows and CFS#2 during the Reporting Period. Due to the Monitor's increased understanding of the NALCO Group's business following the commencement of the CCAA proceedings, the Monitor regularly prepared and circulated revised forecasts to the Senior Secured Lenders during the Forecast Period. These forecasts were most recently compiled on a divisional basis (i.e., the farming division, the processing division, and the corporate division) but, for the sake of consistency, has been presented in a format consistent with CFS#2 included in the First Report.
20. The Monitor's comments on the material variances between the Company's actual cash flows and CFS#2 during the Reporting Period are as follows:
- A. receipts were higher than anticipated primarily due to the sale of Livestock Assets;
 - B. labour costs were lower than anticipated due to staff attrition driven by flock depopulation and subsequent farm closures. Labour costs include payments under the Key Employee Incentive Plan ("**KEIP**"). The Monitor anticipates that total payments under the KEIP will be lower than originally authorized under the ARIO;
 - C. feed costs were lower than anticipated due to faster than anticipated flock depopulation;
 - D. miscellaneous operating disbursements were higher than anticipated due to a larger than expected property insurance payment as well as higher operating costs at the Innisfail Processing Plant;
 - E. professional fees were higher than initially forecast due to the complexity of the NALCO Group's operations and the CCAA proceedings generally;
 - F. the Monitor initially drew \$1.0M under the Amended Financing Facility but was able to repay this amount in full during the Reporting Period; and
 - G. opening cash was agreed to bank statements provided by Management. During Period 2, the Monitor became aware of Royal Bank of Canada bank accounts holding cash and a GIC. The Monitor liquidated the GIC during the Reporting Period.

REVISED CASH FLOW STATEMENT

21. The NALCO Group, in consultation with the Monitor, has prepared CFS#3 for anticipated receipts and disbursements for the 15-week period ending on March 4, 2023 (i.e., the Revised Forecast Period). A copy of CFS#3 is included at **Appendix "A"**.

22. In accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 9. "Cash-Flow Statement", the Monitor hereby reports as follows:
- a) CFS#3 has been prepared by the NALCO Group in consultation with the Monitor for the purpose described in the notes to the Cash Flow Statement, using the probable assumptions and the hypothetical assumptions set out in the accompanying notes;
 - b) The Monitor's review consisted of inquiries, analytical procedures and discussion related to information supplied by the NALCO Group. The Monitor's procedures with respect to the hypothetical assumptions were limited to evaluating whether they were consistent with the purpose of CFS#3. The Monitor has also reviewed the support provided by the NALCO Group for the probable assumptions, and the preparation and presentation of CFS#3; and
 - c) Based on its review, nothing has come to the attention of the Monitor that causes it to believe that, in all material respects:
 - i. The hypothetical assumptions are not consistent with the purpose of CFS#3;
 - ii. As at the date of this Second Report, the probable assumptions developed by the NALCO Group in consultation with the Monitor are not suitably supported and consistent with the plans of the Company or do not provide a reasonable basis for CFS#3, given the hypothetical assumptions; or
 - iii. CFS#3 does not reflect the probable and hypothetical assumptions.
23. Since CFS#3 is based on assumptions regarding future events, actual results may vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Monitor expresses no assurance as to whether the projections outlined in the CFS#3 will be achieved. The Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report or relied upon in preparing this report.
24. CFS#3 has been prepared solely for the purpose described above, and readers are cautioned that it may not be appropriate for other purposes.
25. During the Revised Forecast Period, the NALCO Group anticipates receipts of \$10.9M and operating disbursements totalling \$9.4M, which primarily consist of payments for external lambs (\$3.5M), labour (\$1.6M), and processing plant operating expenses (\$1.3M). CFS#3 incorporates certain KEIP payments authorized under the ARIO which are payable during the Revised Forecast Period.

26. Based on CFS#3, the Monitor anticipates that the NALCO Group's operations will continue to generate sufficient liquidity during the CCAA proceedings. Note that for the purposes of CFS#3, the Monitor has not incorporated any proceeds associated with the monetization of certain working capital assets or the sale of any SISP Assets as any sale (described in further detail below) remains subject to approval by this Honourable Court. In the event a transaction for the sale of any of the SISP Assets is concluded, the cash position of the NALCO Group will increase materially during the Revised Forecast Period.
27. As of the date of this Second Report, all livestock previously held in Manitoba has been sold or relocated to Alberta. Accordingly, operations in Manitoba are now effectively wound down and the Manitoba based SISP assets are now being held for sale as part of the SISP. As such, the majority of disbursements in CFS#3 relate to assets situated in Alberta.
28. A summary of CFS#3, exclusive of any receipts associated with the sale of the SISP Assets, is provided in Exhibit 2.0 below:

| The NALCO Group | | Exhibit 2.0 |
|--|-------|----------------|
| Consolidated Cash Flow Statement #3 | | |
| For the period of November 20, 2022 to March 4, 2023 (the "Revised Forecast Period") | | |
| \$ 000's | | |
| Week ending: | Notes | 15-week total |
| Operating receipts | | |
| Sales | A | 7,112 |
| Accounts receivable collection | B | 2,163 |
| Livestock sales | C | 697 |
| Feed cost reimbursement | D | 948 |
| Net operating receipts | | 10,920 |
| Operating disbursements | | |
| Labour | E | (1,627) |
| Feed | F | (962) |
| Lamb purchases | G | (3,493) |
| Processing plant operating disbursements | H | (1,316) |
| Farm operating disbursements | I | (770) |
| Miscellaneous corporate disbursements | J | (180) |
| Restructuring/professional fees | K | (550) |
| Contingency | L | (546) |
| Total operating disbursements | | (9,444) |
| Net change in cash from operations | | 1,476 |
| Net change in cash | | |
| Opening cash | M | 3,900 |
| Net change in cash from operations | | 1,476 |
| Net change in cash from financing | | - |
| Ending cash | | 5,376 |

29. CFS#3 is based on the following key assumptions.

- A. sales relate to the sale of meat generated from livestock processed at the processing plant;
- B. outstanding accounts receivable are forecast to be collected after the anticipated sale of the Alberta based SISP Assets;
- C. further to the First Report and the ARIO, the Monitor received Court approval to sell Livestock Assets without prior Court approval. Livestock sales represent receipts from the sale of Livestock Assets to third parties. Sales occurring after January 28, 2022 relate to the sale of finished lambs to the anticipated purchaser of the Processing Plant;
- D. the Monitor entered into an agreement with a third party for the bulk sale of livestock that is currently held on the NALCO Group's property and cared for by the NALCO Group. Feed cost reimbursement represents feed and other animal health and welfare costs that are incurred by the NALCO Group in caring for these third party animals but are otherwise reimbursed;
- E. labour costs include all NALCO Group salaries and wages, including insurance and benefits. Labour costs also include payments under the KEIP;
- F. animal feed is required to sustain operations and maintain the health and welfare of livestock on hand. Beyond December 24, 2022, feed costs incurred are reimbursable as they relate to third party animals, as described in assumption C above;
- G. finished lambs are purchased from third parties to be used as feedstock for the Processing Plant. Third party lambs supplement the supply of internal NALCO Group lambs in order for the processing plant to reach an optimal weekly throughput;
- H. processing plant operating disbursements relate to fuel, supplies, equipment costs, quality control costs and other operating disbursements related to the processing of lamb;
- I. farm operating disbursements relate to fuel, repairs and maintenance, vet services and vet supplies, utilities, and other operating disbursements at the farm locations;
- J. the \$180K miscellaneous corporate disbursement relates to an anticipated insurance payment;
- K. restructuring/professional fees are estimates of the cost of the Monitor, the Monitor's Counsel, and the Senior Secured Lender's counsel and advisors. Restructuring/professional fees do not include Selling Agent costs incurred through the SISP;

L. CFS#3 incorporates a 5% contingency calculated on net operating receipts to account for unascertained expenditures or lower revenues during the fifteen-week forecast period; and

M. the opening cash balance was agreed to bank statements provided by Management.

SALES PROCESS UPDATE

30. As described above, on August 17, 2022, a SISP Order was granted by this Honourable Court to facilitate the sale of the SISP Assets. Pursuant to the SISP Order, the Selling Agent was engaged to evaluate the SISP Assets, complete marketing research, and to develop a marketing plan and materials for the purpose of concluding a transaction for the sale of the SISP Assets.
31. The key components of the SISP process are more fully described at paragraphs 51-54 of the First Report and Appendix A of the SISP Order. For ease of reference, the key milestones of the SISP are as follows:

| Milestone | Deadline |
|-------------------------------------|--------------------------------|
| Selling Agent to initiate marketing | September 12, 2022 |
| Bid Deadline | October 27, 2022 |
| Signed PSA | November 15, 2022 |
| Court Approval | On or before December 7, 2022 |
| Transaction Closing | On or before December 23, 2022 |

32. Following the issuance of the SISP Order, the Selling Agent immediately undertook extensive marketing activities to solicit offers to purchase the SISP Assets, which include each of the following properties (including all buildings and fixtures attached), assumed contracts tied to the properties, and all chattels located on site, excluding leases:
- A. The Innisfail Processing Plant - 4312 – 51st Street, Innisfail, AB, consisting of approx. 11 acres and a 63,000 sf processing plant (the “**Processing Plant**”);
 - B. Iron Springs - 115015 Hwy 845, Iron Springs, AB, consisting of approx. 149 acres & 204,000 sf of structures which is used for breeding, growing, and finishing livestock (the “**Iron Springs Property**”);
 - C. Lundar – NW-14-19-5-W1, Lundar, MB, consisting of approx. 219 acres & 49,000 sf of structures primarily used for livestock breeding (the “**Lundar Property**”);
 - D. Stony Mountain – SW-27-12-2-E1, Rosser, MB, consisting of approx. 80 acres & 181,000 sf of

structures primarily used for growing livestock (the “**Stony Mountain Property**”);

E. Rockwood – SE 5-13-3 E1, Rockwood, MB, consisting of approx. 159 acres & 99,000 sf of structures primarily used for breeding livestock (the “**Rockwood Property**”); and

F. Sarto – NW 21-5-6-E1, Sarto, MB, consisting of approx. 465 acres & 92,000 sf of structures primarily used for breeding livestock and growing crops (the “**Sarto Property**”);

33. The marketing activities of the Selling Agent included:

A. developing comprehensive marketing materials including a teaser and confidential information memorandum;

B. establishing a data room with key Company information (the “**NALCO Data Room**”) and making same available to any prospective purchaser that signed a standard non-disclosure agreement (“**NDA**”);

C. placing advertisements about the SISP opportunity in relevant media platforms including the National Post, the Calgary Herald, the Lethbridge Herald, and the Winnipeg Free press; and

D. contacting 271 targeted investors, including domestic and international companies in the lamb industry (including from Australia, China, and the United States), other similar meat producers and processors, brokers, and private equity firms. In addition, the Selling Agent reached out to local real estate brokers specializing in farmland sales in Alberta and Manitoba and members of the Canadian Sheep Federation to discuss the SISP opportunity.

34. Due to the marketing efforts of the Selling Agent:

A. 23 prospective purchasers executed NDA’s and accessed the NALCO Group’s Data Room;

B. 10 prospective purchasers performed site visits; and

C. 14 Letters of Intent (“**LOI**”) were received from prospective purchasers confirming an interest in the SISP Assets, including 5 LOI’s for the NALCO Group’s Alberta based assets and 9 for the Manitoba based assets.

35. In total, the Selling Agent received 10 separate purchase and sale agreements (individually, a “**PSA**”) from prospective purchasers which, collectively, resulted in an offer to purchase each of the SISP Assets. All PSA’s received were based on template agreements (the “**Template PSA**”) prepared by the Monitor and were, where necessary, accompanied by a blackline against the Template PSA

agreement. Copies of the Template PSA's, one for the Alberta based SISP Assets (the "**AB Template PSA**"), and one for the Manitoba based SISP Assets (the "**MB Template PSA**"), are included at **Appendix B and C** respectively.

36. A summary of the PSA's received will be included within a confidential supplemental report to this Second Report (the "**Confidential Supplement**"). The Monitor will be seeking a sealing order (the "**Sealing Order**") with respect to the Confidential Supplement on the basis that the Confidential Supplement contains sensitive commercial information, the dissemination of which could be prejudicial to the SISP and the successful completion of any future SISP Asset sale in the event an approved sale does not close.

SISP ASSET SALE APPROVAL

37. In accordance with the SISP Order, the Monitor reviewed and consulted with the Selling Agent, the Senior Secured Lenders and the Interim Lender about each of the 10 PSA's received. Based on that consultation, the Monitor negotiated and settled the terms and conditions of 6 PSA's for the purchase of the SISP Assets.
38. The Monitor entered into PSA's with the following parties (collectively the "**SISP PSA's**"):
- A. WestFine Meats Inc. and West Excelamb Inc. (the "**West Group**") for the purchase of the Processing Plant and the Iron Springs Property. A single PSA was negotiated with the West Group for the purchase of both properties.
 - B. ABAS Girls Ranch Ltd. ("**ABAS**") for the purchase of the Lundar Property, the Rockwood Property, and the Stony Property. Three separate PSA's were negotiated with ABAS, one for each of the properties;
 - C. Sheldon Harms ("**Harms**") for the purchase of select portions of the Sarto Property. The PSA negotiated with Harms would result in a carveout of the Sarto Property such that a central land parcel would be transferred to Harms; and
 - D. 2 Flag Farms Ltd. ("**2Flag**") for the purchase of select portions of the Sarto Property. The PSA negotiated with 2Flag would result in a carveout of the Sarto Property such that the outer land parcels and buildings would be transferred to 2Flag.
39. Copies of the 6 PSA's, which include information on purchase price, have been included in the Confidential Supplement. As noted, the Monitor is seeking a sealing order with respect to the Confidential Supplement on the basis that it contains commercially sensitive information and that this

information should remain confidential to preserve the integrity of the SISP in the event a transaction for a SISP asset does not close.

40. The PSA's submitted for the Manitoba based SISP Assets by ABAS, Harms, and 2Flag did not contain any substantive deviation from the MB Template PSA. The only exception is that the ABAS PSA for the Lundar Property stipulated that the offer on the Lundar Property was conditional on the acceptance of ABAS' offer for each of the Rockwood Property and the Stony Property. Each of these PSA's stipulate a proposed closing date of December 23, 2022, unless otherwise mutually agreed upon in writing, which is consistent with the key milestones of the SISP described above.
41. The PSA submitted by the West Group contained a number of amendments to the AB Template PSA. The key substantive amendments are described below:
 - A. The West Group identified 5 lease agreements which it wished to assume as part of its PSA. Note that the AB Template PSA contemplated this possibility by incorporating "Assumed Contracts" within the definition of Property to be sold under the PSA. The lease agreements relate to five (5) assets located at the Iron Springs Property (the "**Assumed Contracts**"), namely:
 - i. a John Deere Model 331G, Serial: 1T0331GKJKE346301
 - ii. a Bobcat Model S570, Serial: A1M425929
 - iii. a John Deere Model 5441, Serial: 1DW544LHELF707105
 - iv. a John Deere Model HPX615E
 - v. a Ravage Model MP-96, Serial: 8P009620006;
 - B. The West Group PSA incorporated a condition for the West Group's benefit stipulating that, prior to closing, they will receive a Phase II environmental study on the Processing Plant, from a consulting firm of their choice, containing conclusions as to the environmental condition of that property which are satisfactory to the West Group in its sole and entire discretion (the "**Phase II Report**"). Corresponding changes were also made to the Deposit and Grounds for Termination provisions of the PSA allowing the West Group to terminate the PSA in the event that they do not receive a satisfactory Phase II Report;
 - C. The West Group PSA incorporated a provision obligating the Monitor to: (a) where practical, make a backup of all of the data contained in the NALCO Group's IT systems, (b) deliver that

backup to the West Group at closing, and (c) endeavour to limit access to the Company's IT systems only to the Monitor, the Company, and various service providers or hosts of that information, from the date of execution of the PSA through to the closing date. The West Group has agreed to be responsible for all costs related to the transfer of data and licenses;

- D. The West Group has incorporated various provisions into the PSA requesting the transfer of the NALCO Group's intellectual property ("IP") to the West Group. The transfer of the IP includes all IP of the NALCO Group used in connection with its business or lands, and includes trademarks and applications, domain name(s) and social media accounts. The sale of the IP will be completed on an as-is where-is basis and will not include assets that are not owned or are otherwise assignable by the NALCO Group; and
 - E. The proposed closing date has been amended to be by no later than January 28, 2023, or such other date as may be mutually agreed upon in writing between the Parties.
42. After consulting with the West Group, the Monitor understands that the West Group has incorporated these conditions into its PSA primarily due to its intention to immediately continue operating the Processing Plant and the Iron Springs Property as a vertically integrated breeding and growing facility, feedlot, and processing plant.
43. Notwithstanding the conditions attached to the West Group's PSA, the Monitor is of the view that approval of each of the PSA's described above, for both the Alberta and Manitoba based assets, is in the best interest of all stakeholders for the following reasons:
- A. the sales process was carried out in good faith and with due diligence;
 - B. there was a broad marketing of the SISP Assets over a reasonable timeframe and in accordance with the SISP Order;
 - C. the PSA's were negotiated between the various parties at arm's length, in good faith, and are commercially reasonable;
 - D. the PSA is supported by the Senior Secured Lenders, which, as described further below, hold valid and enforceable security over the SISP Assets;
 - E. the consideration offered under each PSA is commercially reasonable, in the best interest of the NALCO Group's creditors, and will maximize the available recovery to creditors. Additional information on this matter is more fully described in the Confidential Supplement; and

- F. the proposed assumption of the Assumed Contracts by the West Group – which the Monitor is in the process of coordinating between the West Group and the various affected lessors – would allow the West Group to continue operations immediately and would ensure the continued viability of the leases for the benefit of the lessors. Note that that Monitor is not aware of any pre-filing amounts owing to the lessors in connection with the Assumed Contracts as at the date of this Second Report.
44. Based on the foregoing, the Monitor is seeking sale approval and vesting orders (the “**Sale Approval and Vesting Orders**”) from this Honourable Court to allow the Monitor, via its enhanced powers under the ARIO, to sell the SISP Assets to the West Group, ABAS, Harms, and 2Flag, as applicable, in accordance with the PSA’s executed by the Monitor and included in the Confidential Supplement.

INTERIM DISTRIBUTIONS

45. The Monitor’s legal counsel has completed a security review outlining the various security interests in the NALCO Group’s assets (the “**Security Opinion**”). The Security Opinion, subject to customary qualifications, limitations, and assumptions, confirms that the Senior Secured Lenders, together, hold valid and enforceable first charge security on the NALCO Group’s assets that have or are proposed to be realized upon.
46. The Monitor is not currently aware of any material claim that could rank in priority to the Senior Secured Lenders’ claim to the cash held by the Monitor or to the anticipated proceeds from any completed PSA transaction. Further, based on the Monitor’s analysis of anticipated proceeds, the Monitor is of the view that insufficient proceeds will be generated to pay the full balance of the Senior Secured Lenders’ respective claims.
47. In the event this Honourable Court grants the Sale Approval and Vesting Orders and the transactions described above close as anticipated, the Monitor anticipates holding significant cash reserves for which it does not have any immediate use due to the wind down or transfer of effectively all of the NALCO Group’s assets and operations.
48. Accordingly, the Monitor requests authority from this Honourable Court to distribute the proceeds generated from the sale of the NALCO Group’s assets (including SISP Assets or Livestock Assets or working capital) to the Senior Secured Lenders, based on their relative entitlement to those proceeds, subject only to a reasonable holdback, as determined by the Monitor, sufficient to enable the NALCO Group to continue meeting its obligations during the course of the CCAA proceedings.
49. Any interim distribution made to the Senior Secured Lenders will be made in consultation with the

Senior Secured Lenders, after taking into account any reasonable holdback required to complete the administration of the CCAA proceedings, and will be subject to their prior approval and agreement.

50. Any distribution made to the Senior Secured Lenders will be reported to this Honourable Court in subsequent reports made in these CCAA proceedings.

STAY EXTENSION

51. Pursuant to the ARIO, the Stay of Proceedings in favour of the NALCO Group expires on December 9, 2022. The NALCO Group is seeking a stay extension up to and including March 4, 2023 (the **“Proposed Stay Extension Date”**).
52. The Proposed Stay Extension Date is supported by CFS#3 and provides sufficient time for the Monitor to close the SISP PSA's in the event they are approved by this Honourable Court. As noted above, even if none of the SISP PSA's close as anticipated, it is forecast that the NALCO Group will retain sufficient cash to continue operations through to the Proposed Stay Extension Date. The closing of any particular PSA will only increase the cash available to address the Company's ongoing obligations.
53. In addition, the Proposed Stay Extension Date will also provide the Monitor with additional time to fully wind down the NALCO Group's operations, address any outstanding amounts owing from the Company, coordinate with the Senior Secured Lenders on residual CCAA matters, and analyze final distributions, if any, to be made to creditors.
54. In the Monitor's view, the NALCO Group has and continues to act in good faith and with due diligence and is complying with its obligations as set out in the ARIO. The Monitor does not believe that any creditor will be materially prejudiced if the stay of proceedings is extended to the Proposed Stay Extension Date.

RECOMMENDATIONS

55. The Monitor respectfully recommends that this Honourable Court:
 - A. approve the Sale Approval and Vesting Orders for the purpose of enabling the Monitor to close transactions in accordance with the SISP PSA's;
 - B. authorize the Monitor, subject only to a reasonable holdback as determined by the Monitor sufficient to enable the NALCO Group to continue meeting its obligations during the course of the CCAA proceedings, to make Interim Distributions to the Senior Secured Lenders;

C. approve the request for a stay extension through to March 4, 2023; and,

D. issue a Sealing Order for the Confidential Supplement.

Dated at Calgary, this 29th day of November, 2022.

ERNST & YOUNG INC.

Licensed Insolvency Trustee
acting solely in its capacity as the Monitor of the NALCO Group
and not in its personal or corporate capacity

per:



Neil Narfason, CPA, CA, CIRP, LIT, CBV, ICD.D
President, Ernst & Young Inc.



Christopher Keliher, JD, MBA, CIRP, LIT
Vice President, Ernst & Young Inc.

Appendix A –

Cash Flow Statement of The NALCO Group for the 15-Week Period Ending on March 4, 2023

| The NALCO Group | | | | | | | | | | | | | | | | | Appendix A |
|--|-------|--------|--------|--------|---------|--------|---------|--------|---------|--------|---------|---------|---------|---------|---------|---------|------------|
| Consolidated Cash Flow Statement #3 | | | | | | | | | | | | | | | | | |
| For the period of November 20, 2022 to March 4, 2023 (the "Revised Forecast Period") | | | | | | | | | | | | | | | | | |
| \$ 000's | | Week 1 | Week 2 | Week 3 | Week 4 | Week 5 | Week 6 | Week 7 | Week 8 | Week 9 | Week 10 | Week 11 | Week 12 | Week 13 | Week 14 | Week 15 | 15-week |
| Week ending: | Notes | Nov/26 | Dec/03 | Dec/10 | Dec/17 | Dec/24 | Dec/31 | Jan/07 | Jan/14 | Jan/21 | Jan/28 | Feb/04 | Feb/11 | Feb/18 | Feb/25 | Mar/04 | total |
| Operating receipts | | | | | | | | | | | | | | | | | |
| Sales | A | 892 | 609 | 588 | 864 | 589 | 885 | 867 | 615 | 604 | 600 | - | - | - | - | - | 7,112 |
| Accounts receivable collection | B | - | - | - | - | - | - | - | - | - | - | 861 | 551 | 751 | - | - | 2,163 |
| Livestock sales | C | 156 | 89 | 30 | 58 | - | - | - | - | - | - | - | 244 | - | 30 | 91 | 697 |
| Feed cost reimbursement | D | 95 | 95 | 95 | 95 | 95 | 95 | 95 | 95 | 95 | 95 | - | - | - | - | - | 948 |
| Net operating receipts | | 1,144 | 792 | 712 | 1,016 | 684 | 980 | 961 | 710 | 699 | 695 | 861 | 795 | 751 | 30 | 91 | 10,920 |
| Operating disbursements | | | | | | | | | | | | | | | | | |
| Labour | E | - | (303) | - | (329) | - | (470) | - | (265) | - | (259) | - | - | - | - | - | (1,627) |
| Feed | F | (126) | (115) | (99) | (95) | (93) | (87) | (87) | (87) | (87) | (87) | - | - | - | - | - | (962) |
| Lamb purchases | G | (260) | (202) | (355) | (495) | (317) | (237) | (350) | (478) | (333) | (465) | - | - | - | - | - | (3,493) |
| Processing plant operating disbursements | H | (97) | (130) | (177) | (151) | (76) | (159) | (124) | (151) | (71) | (180) | - | - | - | - | - | (1,316) |
| Farm operating disbursements | I | (78) | (81) | (78) | (78) | (78) | (83) | (74) | (74) | (74) | (74) | - | - | - | - | - | (770) |
| Miscellaneous corporate disbursements | J | - | - | - | - | - | (180) | - | - | - | - | - | - | - | - | - | (180) |
| Restructuring/professional fees | K | (50) | (50) | (50) | (50) | (50) | (50) | (50) | (50) | (50) | (50) | (50) | - | - | - | - | (550) |
| Contingency | L | (57) | (40) | (36) | (51) | (34) | (49) | (48) | (35) | (35) | (35) | (43) | (40) | (38) | (2) | (5) | (546) |
| Total operating disbursements | | (669) | (919) | (795) | (1,249) | (649) | (1,315) | (732) | (1,140) | (649) | (1,150) | (93) | (40) | (38) | (2) | (5) | (9,444) |
| Net change in cash from operations | | 475 | (127) | (83) | (233) | 35 | (336) | 229 | (430) | 50 | (455) | 768 | 755 | 713 | 29 | 86 | 1,476 |
| Net change in cash | | | | | | | | | | | | | | | | | |
| Opening cash | M | 3,900 | 4,375 | 4,247 | 4,165 | 3,932 | 3,967 | 3,631 | 3,860 | 3,430 | 3,480 | 3,025 | 3,793 | 4,548 | 5,261 | 5,290 | 3,900 |
| Net change in cash from operations | | 475 | (127) | (83) | (233) | 35 | (336) | 229 | (430) | 50 | (455) | 768 | 755 | 713 | 29 | 86 | 1,476 |
| Net change in cash from financing | | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Ending cash | | 4,375 | 4,247 | 4,165 | 3,932 | 3,967 | 3,631 | 3,860 | 3,430 | 3,480 | 3,025 | 3,793 | 4,548 | 5,261 | 5,290 | 5,376 | 5,376 |

Appendix B –

ALBERTA TEMPLATE PURCHASE AND SALE AGREEMENT

OFFER TO PURCHASE

ERNST & YOUNG INC., IN ITS CAPACITY AS COURT APPOINTED MONITOR IN RESPECT OF NORTH AMERICAN LAMB COMPANY LTD., CANADA SHEEP AND LAMB FARMS LTD., CANADA SHEEP HOLDINGS LTD., LAMB CLUB MARKETING LIMITED., CANADA LAMB GROWERS LTD., CANADA LAMB PROCESSORS LTD., AND CANINE FARE LTD., AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

and

[PURCHASER]

| | |
|---|-----------|
| OFFER TO PURCHASE TERM SHEET | A |
| ARTICLE 1 INTERPRETATION | 1 |
| 1.1 Definitions..... | 1 |
| 1.2 Interpretation | 6 |
| 1.3 Schedules..... | 7 |
| 1.4 Interpretation if Closing Does Not Occur | 7 |
| ARTICLE 2 PURCHASE AND SALE..... | 7 |
| 2.1 Agreement of Purchase and Sale | 7 |
| 2.2 Acceptance..... | 7 |
| 2.3 Transfer of Property and Assumption of Liabilities | 8 |
| 2.4 Unassignable Contracts | 8 |
| 2.5 Assumed Liabilities and Assumed Obligations | 8 |
| ARTICLE 3 PURCHASE PRICE | 8 |
| 3.1 Purchase Price | 8 |
| 3.2 Deposit | 8 |
| 3.3 Satisfaction of the Purchase Price | 9 |
| 3.4 Allocation of Purchase Price | 9 |
| ARTICLE 4 ADJUSTMENTS..... | 9 |
| 4.1 Statement of Adjustments | 9 |
| 4.2 Pro Rata Adjustments | 9 |
| ARTICLE 5 TRANSFER TAXES | 10 |
| 5.1 Transfer Taxes | 10 |
| 5.2 GST | 10 |
| ARTICLE 6 REPRESENTATIONS AND WARRANTIES | 10 |
| 6.1 Vendor's Representations | 10 |
| 6.2 Purchaser's Representations | 11 |
| 6.3 Enforcement of Representations and Warranties | 12 |
| ARTICLE 7 "AS IS, WHERE IS" AND NO ADDITIONAL REPRESENTATIONS AND WARRANTIES.. | 12 |
| 7.1 Due Diligence Acknowledgement | 12 |
| 7.2 "As Is, Where Is", No Additional Representations | 13 |
| ARTICLE 8 RISK, INSURANCE AND EXPROPRIATION..... | 15 |
| 8.1 Risk | 15 |
| 8.2 Insurance..... | 15 |
| 8.3 Expropriation | 15 |

| | |
|--|-----------|
| ARTICLE 9 INDEMNIFICATION | 15 |
| 9.1 Indemnification Given by Purchaser | 15 |
| 9.2 Third Party Claims..... | 16 |
| 9.3 Failure to Give Timely Notice | 16 |
| 9.4 No Merger | 17 |
| ARTICLE 10 ENVIRONMENTAL MATTERS..... | 17 |
| 10.1 Defined Terms..... | 17 |
| 10.2 Assumption of Environmental Liabilities | 18 |
| ARTICLE 11 COVENANTS | 18 |
| 11.1 Court Approval | 18 |
| 11.2 Court Filings | 18 |
| 11.3 Leases | 19 |
| 11.4 Possession | 19 |
| 11.5 Purchaser's Title Insurance..... | 19 |
| ARTICLE 12 CONDITIONS | 19 |
| 12.1 Court Approval Condition | 19 |
| 12.2 Mutual Conditions | 20 |
| 12.3 Conditions for the Benefit of the Purchaser | 20 |
| 12.4 Conditions for the Benefit of the Vendor | 20 |
| 12.5 Satisfaction of Conditions..... | 21 |
| 12.6 Monitor's Certificate | 21 |
| ARTICLE 13 CLOSING | 21 |
| 13.1 Closing Date and Place of Closing | 21 |
| 13.2 Deliveries on Closing by the Vendor | 21 |
| 13.3 Deliveries on Closing by the Purchaser | 22 |
| ARTICLE 14 TERMINATION..... | 22 |
| 14.1 Grounds for Termination | 22 |
| 14.2 Effect of Termination | 23 |
| ARTICLE 15 GENERAL | 23 |
| 15.1 Public Announcements | 23 |
| 15.2 Dissolution of Vendor | 23 |
| 15.3 Survival..... | 23 |
| 15.4 Governing Law | 24 |
| 15.5 Consequential Damages..... | 24 |

| | |
|---|----------|
| 15.6 Further Assurances | 24 |
| 15.7 Assignment..... | 24 |
| 15.8 Waiver | 25 |
| 15.9 Amendment | 25 |
| 15.10 Time of the Essence | 25 |
| 15.11 Costs and Expenses | 25 |
| 15.12 Entire Agreement..... | 25 |
| 15.13 Notices | 26 |
| 15.14 Enurement | 27 |
| 15.15 Third Party Beneficiaries | 27 |
| 15.16 Severability | 27 |
| 15.17 Counterparts | 27 |
| SCHEDULE A LANDS | 1 |
| SCHEDULE B PERMITTED ENCUMBRANCES..... | 1 |
| SCHEDULE C ALLOCATION OF PURCHASE PRICE..... | 1 |

This Term Sheet forms part of the attached Offer to Purchase.

Facsimile No.: _____

6 **DEFINITIONS:** Each capitalized term used in this Term Sheet shall have the meaning given to it in the Offer to Purchase.

OFFER TO PURCHASE

BETWEEN:

ERNST & YOUNG INC. in its capacity as Court appointed Monitor in respect of North American Lamb Company Ltd., Canada Sheep and Lamb Farms Ltd., Canada Sheep Holdings Ltd., Lamb Club Marketing Limited., Canada Lamb Growers Ltd., Canada Lamb Processors Ltd., and Canine Fare Ltd., and not in its personal or corporate capacity

(the **Vendor**)

-and-

(the **Purchaser**)

RECITALS

- A. On August 8, 2022, Ernst & Young Inc. (the **Monitor**) was appointed monitor of North American Lamb Company Ltd., Canada Sheep and Lamb Farms Ltd., Canada Sheep Holdings Ltd., Lamb Club Marketing Limited., Canada Lamb Growers Ltd., Canada Lamb Processors Ltd., and Canine Fare Ltd. (collectively, the **Companies**), pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the **Order**).
- B. The Monitor has commenced a sales process intended to solicit interest in the sale of the assets and/or the business of the Companies.
- C. The Purchaser wishes to offer to purchase the Property from the Vendor, subject to the terms and conditions set forth herein and subject to Court Approval (as defined below).

NOW THEREFORE, this Agreement witnesses that in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged by each Party to the other, the Parties covenant and agree as follows.

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement:

- (a) **Acceptance Date** has the meaning ascribed to that term in Section 2.2;
- (b) **Affiliate** means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with that specified Person. For the purposes of this definition, **control** (including with correlative meanings, controlling, controlled by and under common control with) means the power to direct or cause the direction of the management and policies of that Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise and, it being understood and agreed that with respect to a corporation or partnership, control shall mean direct or indirect ownership of more than 50% of the voting shares in any such corporation or of the general partnership interest or voting interest in any such partnership;

- (c) **Agreement** has the meaning ascribed to that term in Section 2.2;
- (d) **Applicable Law** means, in respect of any Person, asset, transaction, event or circumstance: (i) statutes (including regulations enacted thereunder); (ii) judgments, decrees and orders of courts of competent jurisdiction (including the common law); (iii) regulations, orders, ordinances and directives issued by Governmental Authorities; and (iv) the terms and conditions of all permits, licenses, approvals and authorizations, in each case which are applicable to such Person, asset, transaction, event or circumstance;
- (e) **Approval and Vesting Order** means an order of the Court approving the Transaction in accordance with the provisions of this Agreement, and vesting all of the Vendor's Interest in and to the Property in the Purchaser, such order to be in a form and content satisfactory to the Vendor in its sole discretion;
- (f) **Approved Lease(s)** has the meaning ascribed to that term in Section 11.3;
- (g) **Assignment and Assumption Agreement** means an assignment and assumption agreement, in form and substance satisfactory to the Vendor and the Purchaser, acting reasonably, evidencing the assignment to the Purchaser of the Vendor's Interest in, to and under the Assumed Contracts and the assumption by the Purchaser of all of the Assumed Liabilities under or in respect of the Assumed Contracts;
- (h) **Assumed Contracts** means the contracts, agreements, easements, restrictions, Approved Leases, permits, understandings and arrangements as determined by the Vendor in its sole discretion;
- (i) **Assumed Environmental Liabilities** has the meaning ascribed to that term in Section 10.1(a);
- (j) **Assumed Liabilities** means all liabilities and obligations arising from the possession, ownership and/or use of the Property following Closing, all Assumed Obligations and all Assumed Environmental Liabilities;
- (k) **Assumed Obligations** has the meaning ascribed to that term in Section 2.5;
- (l) **Business Day** means any day other than a Saturday, Sunday or a statutory holiday in the City of Calgary in the Province of Alberta;
- (m) **CCAA Proceedings** means the proceedings commenced under the Order;
- (n) **Chattels** means any equipment, furniture, inventory, appliances, chattels and personal property situated or located in or upon any of the Lands and used for the general operation and management of the applicable Lands, but excluding, for greater certainty: (a) all livestock, meat processed livestock and feed; and (b) any chattels owned or leased by any Tenants;
- (o) **Claim** means any right, claim, cause of action or complaint of any Person that may be asserted or made in whole or in part against the Vendor, its Affiliates and their respective Representatives, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including without limitation, by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to

property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right, claim, cause of action or complaint is executory or anticipatory in nature;

- (p) **Closing** means the completion of the purchase by the Purchaser, and sale by the Vendor, of the Vendor's Interest in and to the Property and the completion of all other transactions contemplated by this Agreement that are to occur contemporaneously with such purchase and sale, all subject to and in accordance with the terms and conditions of this Agreement;
- (q) **Closing Cash Payment** has the meaning ascribed to that term in Section 3.3(b);
- (r) **Closing Date** means, subject to Section 12.1, December 23, 2022, or such other date as may be mutually agreed upon in writing between the Vendor and the Purchaser, provided, however, that if the Closing Date falls on a Monday or Friday, it shall be extended to the following Business Day that is not a Monday or Friday;
- (s) **Companies** has the meaning ascribed to that term in the recitals hereto;
- (t) **Conditions Certificate** has the meaning ascribed to that term in Section 12.6;
- (u) **Confidentiality Agreement** means the confidentiality and non-disclosure agreement between the Vendor and the Purchaser dated _____, 20__;
- (v) **Court** means the Court of King's Bench of Alberta, Judicial Centre of Calgary;
- (w) **Court Approval** means both the issuance of the Approval and Vesting Order by the Court approving the sale of the Property, and such Approval and Vesting Order having become a Final Order;
- (x) **Court Approval Date** means December 7, 2022, as may be extended and in accordance with Section 12.1;
- (y) **Court Orders** means, collectively, the Order and the Approval and Vesting Order;
- (z) **CRA** means the Canada Revenue Agency;
- (aa) **Data Room Information** means all information made available (by the Monitor or otherwise) for the Purchaser's review in electronic form in relation to, *inter alia*, the Companies, its Affiliates and/or the Property;
- (bb) **Deposit** has the meaning ascribed to that term in Section 3.2(a);
- (cc) **Encumbrances** means any pledges, liens, encumbrances, claims, charges, options or other security interests of any kind or other agreement or arrangement having the effect of conferring security;
- (dd) **Environmental Laws** has the meaning ascribed to that term in Section 10.1(b);
- (ee) **Environmental Liabilities** has the meaning ascribed to that term in Section 10.1(c);

- (ff) **Excluded Contract** means all contracts which are not Assumed Contracts and all Unassignable Contracts;
- (gg) **Final Order** means an order of the Court that has not been vacated, stayed, set aside, amended, reversed, annulled or modified, as to which no appeal or application for leave to appeal therefrom has been filed and the applicable appeal period with respect thereto shall have expired without the filing of any appeal or application for leave to appeal, or if any appeal(s) or application(s) for leave to appeal therefrom have been filed, any (and all) such appeal(s) or application(s) have been dismissed, quashed, determined, withdrawn or disposed of with no further right of appeal and all opportunities for rehearing, re-argument, petition for certiorari and appeal being exhausted or having expired without any appeal, motion or petition having been filed and remaining pending, any requests for rehearing have been denied, and no order having been entered and remaining pending staying, enjoining, setting aside, annulling, reversing, remanding, or superseding the same, and all conditions to effectiveness prescribed therein or otherwise by Applicable Law or order having been satisfied;
- (hh) **Governmental Authority** means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, tribunal, commission, bureau, board, court (including the Court) or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government, having jurisdiction over a Party, the Property or the Transaction;
- (ii) **GST** means taxes, interest, penalties and fines imposed under Part IX of the *Excise Tax Act* (Canada) and the regulations made thereunder; and **GST Legislation** means such act and regulations collectively;
- (jj) **Lands** means those lands described in Schedule A attached hereto;
- (kk) **Lease(s)** means any lease arrangement(s) entered into by the Vendor or the Companies or any of its Affiliates with respect to the Property;
- (ll) **Legal Proceeding** means any litigation, action, suit, investigation, hearing, claim, complaint, grievance, arbitration proceeding or other proceeding and includes any appeal or review or retrial of any of the foregoing and any application for same;
- (mm) **Losses and Liabilities** means any and all assessments, charges, costs, damages, debts, expenses, fines, liabilities, losses, obligations and penalties, whether accrued or fixed, absolute or contingent, matured or un-matured or determined or determinable, including those arising under any Applicable Law, Claim by any Governmental Authority or any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority, and those arising under any contract, agreement, arrangement, commitment or undertaking and costs and expenses of any Legal Proceeding, assessment, judgment, settlement or compromise relating thereto, and all interest, fines and penalties and reasonable legal fees and expenses incurred in connection therewith (on a full indemnity basis);
- (nn) **Monitor** has the meaning ascribed to that term in the recitals hereto, in the capacity as the Court-appointed monitor of the Companies and not in its personal or corporate capacity;
- (oo) **Monitor's Certificate** means the certificate, attached to the Approval and Vesting Order, to be delivered by the Monitor to the Purchaser on Closing and thereafter filed by the Monitor with the Court;

- (pp) **Notice Period** has the meaning ascribed to that term in Section 9.2(b);
- (qq) **Offer** means this offer to purchase and any schedule attached hereto which are referred to in this offer to purchase, together with any amendment or supplement thereto;
- (rr) **Order** has the meaning ascribed to that term in the recitals hereto;
- (ss) **Parties** means, collectively, the Purchaser and the Vendor, and **Party** means any one of them;
- (tt) **Permitted Encumbrances** means the Encumbrances set forth in Schedule B attached hereto;
- (uu) **Person** means any individual, corporation, limited or unlimited liability company, joint venture, partnership (limited or general), trust, trustee, executory, Governmental Authority, or other entity however designated or instituted;
- (vv) **Property** means the Lands and the Vendor's Interest in: (i) all buildings, erections, structures, systems, fixtures, and other improvements to and located on the Lands; (ii) the Assumed Contracts; and (iii) the Chattels;
- (ww) **Purchase Price** has the meaning ascribed to that term in Section 3.1;
- (xx) **Purchaser** has the meaning ascribed to that term in the recitals hereto;
- (yy) **Purchaser's Solicitors** means the law firm of _____;
- (zz) **Remediation and Reclamation Obligations** has the meaning ascribed to that term in Section 10.1(d);
- (aaa) **Representative** means, in respect of a Person, each director, officer, employee, agent, legal counsel, accountant, consultant, contractor, professional advisor and other representative of such Person and its Affiliates, and with respect to the Vendor, includes the Monitor;
- (bbb) **Statement of Adjustments** has the meaning ascribed to that term in Section 4.1;
- (ccc) **Tax** means all taxes, assessments, charges, dues, duties, rates, fees, imposts, levies and similar charges of any kind lawfully levied, assessed or imposed by any Governmental Authority under any applicable federal, provincial, territorial, municipal and local, foreign, or other statutes, ordinances or regulations imposing a tax, including income, capital, capital gains, goods and services, sales, use, consumption, excise, value added (including GST), business, real property, personal property, transfer, franchise, withholding, payroll, or employer health taxes, Canada Pension Plan contributions, employment insurance premiums, and provincial workers' compensation payments, levy, assessment, whether computed on a separate, combined, unitary, or consolidated basis or any other manner, including any interest, penalties and fines associated therewith;
- (ddd) **Tax Return** shall mean any report, return, information statement, schedule, attachment, payee statement or other information required to be provided to any Governmental Authority with respect to Taxes and any amendment thereof;
- (eee) **Tenants** means all Persons having a right to occupy space in the Property pursuant to a Lease; and **"Tenant"** means any one of the Tenants;

- (fff) **Third Party** means any Person who is not a Party;
- (ggg) **Third Party Claim** means any Claim by a Third Party asserted against the Vendor for which the Purchaser has indemnified the Vendor or is otherwise responsible pursuant to this Agreement;
- (hhh) **Transaction** means the transaction for the purchase and sale of the Property as contemplated in this Agreement;
- (iii) **Transfer Taxes** means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Property, including GST;
- (jjj) **Unassignable Contracts** has the meaning ascribed to that term in Section 2.4;
- (kkk) **Vendor** has the meaning ascribed to that term in the recitals hereto;
- (lll) **Vendor's Interest** means, when used in relation to any asset, undertaking or property, all the right, title and interest, if any, of each of the Companies in and to such asset, undertaking or property; and
- (mmm) **Vendor's Solicitors** means the law firm of Norton Rose Fulbright Canada LLP.

1.2 Interpretation

The following rules of construction shall apply to this Agreement unless the context otherwise requires.

- (a) All references to monetary amounts, unless indicated to the contrary, are to the lawful currency of Canada.
- (b) Words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine and neuter genders.
- (c) The word **include** and **including** and derivatives thereof shall be read as if followed by the phrase **without limitation**.
- (d) The words **hereto**, **herein**, **hereof**, **hereby**, **hereunder** and similar expressions refer to this Agreement and not to any particular provision of this Agreement.
- (e) The headings contained in this Agreement are for convenience of reference only, and shall not affect the meaning or interpretation hereof.
- (f) Reference to any Article, Section or Schedule means an Article, Section or Schedule of this Agreement unless otherwise specified.
- (g) If any provision of a Schedule hereto conflicts with or is at variance with any provision in the body of this Agreement, the provisions in the body of this Agreement shall prevail to the extent of the conflict.
- (h) All documents executed and delivered pursuant to the provisions of this Agreement are subordinate to the provisions hereof and the provisions hereof shall govern and prevail in the event of a conflict.

- (i) This Agreement has been negotiated by each Party with the benefit of legal representation, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party does not apply to the construction or interpretation of this Agreement.
- (j) Reference to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof.
- (k) References to an Applicable Law means such Applicable Law as amended from time to time and includes any successor Applicable Law thereto and any regulations promulgated thereunder.
- (l) Where anything is required to be done under this Agreement on a day which is not a Business Day, then the date for such thing to be done shall be deemed to be done or performed on the next Business Day. All reference to time in this Agreement will be in Alberta time unless indicated otherwise.

1.3 Schedules

The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

| | |
|------------|------------------------------|
| Schedule A | Lands |
| Schedule B | Permitted Encumbrances |
| Schedule C | Allocation of Purchase Price |

1.4 Interpretation if Closing Does Not Occur

If Closing does not occur, each provision of this Agreement which presumes that the Purchaser has acquired the Property shall be construed as having been contingent upon Closing having occurred.

ARTICLE 2 PURCHASE AND SALE

2.1 Agreement of Purchase and Sale

The Purchaser hereby offers to purchase from the Vendor all of the Vendor's Interest in and to the Property, in each case free and clear of all Encumbrances (other than Permitted Encumbrances) subject to the terms and conditions of this Agreement, and in consideration of the Purchase Price and the assumption of the Assumed Liabilities.

2.2 Acceptance

The execution of this Offer (the **Acceptance Date**) by the Vendor will convert this Offer into a binding agreement (this **Agreement**) for the purchase and sale of the Vendor's Interest in and to the Property.

2.3 Transfer of Property and Assumption of Liabilities

Provided that Closing occurs and subject to the terms and conditions of this Agreement, possession, risk, and legal and beneficial ownership of the Property shall transfer from the Vendor to the Purchaser on the Closing Date, and the Purchaser agrees to assume, discharge, perform and fulfil all obligations and liabilities, known or unknown, of the Vendor with respect to the Property (including the Assumed Liabilities), from and after the Closing Date.

2.4 Unassignable Contracts

In the event that there are any Assumed Contracts which are not assignable by the Vendor to the Purchaser in whole or in part without the consent, approval or waiver of any party or parties to them, and if any such consents, approvals or waivers with respect thereto have not yet been obtained as of the Closing Date (any such Assumed Contracts, collectively, the **Unassignable Contracts**), then each such Unassignable Contract, in the Vendor's sole discretion, shall be deemed an Excluded Contract under this Agreement, without any adjustment of any kind whatsoever to the Purchase Price.

2.5 Assumed Liabilities and Assumed Obligations

Following Closing, the Purchaser shall assume, perform, discharge and pay when due all of the Assumed Liabilities, including the obligations and liabilities of the Vendor related to the development of the Property arising pursuant to the Assumed Contracts (collectively, the **Assumed Obligations**). For greater certainty, the Purchaser acknowledges and agrees that the Assumed Obligations and the Assumed Environmental Liabilities are inextricably linked to the Property.

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price

The consideration payable by the Purchaser for the Property shall be the sum of _____ **DOLLARS** (\$_____) (the **Purchase Price**) and the assumption of the Assumed Liabilities. The Purchase Price shall be satisfied in accordance with Section 3.3, and subject to adjustment only as set forth in Article 4.

3.2 Deposit

- (a) The sum of \$_____ (being ten (10%) percent of the Purchase Price) shall be paid by wire transfer to the Vendor's Solicitors by the Purchaser upon execution of this Offer by the Purchaser (the **Deposit**).
- (b) If Closing occurs in accordance with the terms and conditions of this Agreement, the Deposit shall be credited against the Purchase Price, in partial satisfaction of the Purchaser's obligation to pay the Purchase Price at Closing.
- (c) If the Vendor does not accept this Offer, then the Deposit shall be returned to the Purchaser without interest or deduction, within five (5) Business Days.
- (d) If this Agreement is terminated:
 - (i) (A) pursuant to Section 14.1(a) by mutual agreement of the Parties, or (B) pursuant to Sections 14.1(b) by the Purchaser, then the Deposit, without interest,

shall be returned to the Purchaser, within five (5) Business Days of such termination; or

- (ii) (A) pursuant to Section 14.1(c) by the Vendor or (B) for any other reason, the full amount of the Deposit shall be forfeited to the Vendor, and, subject to Section 14.2, each Party shall be released from all obligations and liabilities under or in connection with this Agreement. In the event of termination of this Agreement under this Section 3.2(d)(ii) pursuant to which the Vendor shall be entitled to retain the Deposit, the Parties agree that the amount of the Deposit constitutes a genuine pre-estimate of liquidated damages representing the Vendor's Losses and Liabilities as a result of Closing not occurring. without prejudice to any other rights or remedies that the Vendor may have against the Purchaser pursuant to this Agreement, in law or in equity. The Purchaser hereby waives any claim or defence that the amount of the Deposit is a penalty or is otherwise not a genuine pre-estimate of the Vendor's damages.

3.3 Satisfaction of the Purchase Price

At Closing, the Purchase Price shall be paid and satisfied as follows:

- (a) as to the amount of the Deposit, by crediting and set-off of the Deposit against the amount of the Purchase Price by an amount equal to the Deposit; and
- (b) as to the balance of the Purchase Price (as adjusted pursuant to Article 4, the **Closing Cash Payment**), the Purchaser shall pay to the Vendor or the Vendor's Solicitors (in trust for and on behalf of the Vendor) such amount by wire transfer.

3.4 Allocation of Purchase Price

The Purchase Price shall be allocated in the manner provided in Schedule C. The Purchaser shall indemnify and save harmless the Vendor from and against any and all Claims, liabilities, penalties, interest, costs and legal and other expenses incurred, directly or indirectly, in connection with the filing of its Tax Returns and making any inconsistent statements or taking any inconsistent positions on any Tax Returns with respect to such allocation.

ARTICLE 4 ADJUSTMENTS

4.1 Statement of Adjustments

The Vendor shall prepare and deliver to the Purchaser at least three (3) Business Days prior to Closing a statement setting forth the Vendor's calculation of the adjustments to the Purchase Price contemplated by this Article 4 (the **Statement of Adjustments**). The Statement of Adjustments shall be used to calculate the Purchase Price payable at Closing, and shall be deemed final and binding for all purposes in connection with the adjustments contemplated by this Article 4.

4.2 Pro Rata Adjustments

Items of revenue and expense, including, but not limited to, Taxes, utilities, interest and rents with respect to the Lands, as would customarily be adjusted for in a similar transaction in Alberta, shall be adjusted between the Purchaser and the Vendor as of the Closing Date, with the Purchaser paying all expenses and receiving all income related to the Property from and including the Closing Date. For clarity, to the extent that there are any outstanding municipal property taxes with respect to the Lands (inclusive of penalties and interest thereon) as at the Closing Date in

respect of the period up to but not including the Closing Date, then such outstanding amount shall be a credit to the Purchaser, and the Purchaser shall be responsible to remit payment thereof to the City/Town of _____.

ARTICLE 5 TRANSFER TAXES

5.1 Transfer Taxes

The Parties agree that:

- (a) the Purchase Price does not include Transfer Taxes and the Purchaser shall be liable for and shall pay, and be solely responsible for, any and all Transfer Taxes pertaining to the Purchaser's acquisition of the Property; and
- (b) the Purchaser shall indemnify the Vendor for, from and against any Transfer Taxes (including any interest or penalties imposed by a Governmental Authority) that the Vendor is required to pay or for which the Vendor may become liable as a result of any failure by the Purchaser to pay or remit such Transfer Taxes (including GST pursuant to Section 5.2).

5.2 GST

Notwithstanding the generality of Section 5.1, the Parties agree that:

- (a) unless the Purchaser is registered under the GST Legislation, the Purchaser shall pay to the Vendor or the Vendor's Solicitors by electronic wire transfer on Closing all GST payable in respect of the Transaction in accordance with the GST Legislation and similar provincial legislation, and the Vendor shall remit such GST to the CRA when and to the extent required by the GST Legislation and similar provincial legislation; and
- (b) if the Purchaser is registered under the GST Legislation and represents and warrants to the Vendor the fact that the Purchaser is a registrant as at the Closing Date, without limiting the Purchaser's liability for Transfer Taxes in any way under Section 5.1, the Vendor or the Vendor's Solicitors shall not collect GST from the Purchaser in respect of the Transaction and the Purchaser shall self-assess and file returns and remit GST to the CRA in respect of the Transaction when and to the extent required by the GST Legislation and similar provincial legislation, and the Purchaser shall deliver on Closing a GST declaration, undertaking and indemnity to the Vendor indemnifying the Vendor in respect of any amounts, demands or claims owing or which may become owing in respect of any GST exigible on the completion of the Transaction including, without limitation, interest, penalties and legal costs on a solicitor and own client fully indemnity basis.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Vendor's Representations

The Vendor hereby represents and warrants to the Purchaser that:

- (a) it is not a non-resident of Canada within the meaning of such term under the *Income Tax Act* (Canada) and is not an agent or trustee for anyone with an interest in the Property who is a non-resident of Canada within the meaning of such term under the *Income Tax Act* (Canada);

- (b) it will have, after obtaining Court Approval, all necessary authority to execute and deliver this Agreement and all other documents and instruments contemplated herein or therein to which it is or will be party and to perform its obligations hereunder and thereunder; and
- (c) this Agreement, and each of the other agreements, documents and instruments to be executed by the Vendor on or before the Closing, have been or will be duly executed and delivered by the Vendor, and, subject to obtaining Court Approval constitute the valid and binding obligations of the Vendor.

6.2 Purchaser's Representations

The Purchaser hereby represents and warrants to the Vendor that:

- (a) it is, as applicable, a corporation duly incorporated or a limited partnership duly formed and validly subsisting under the laws of the jurisdiction of its incorporation or formation and has the requisite power and authority to enter into this Agreement and to complete the Transaction;
- (b) it has taken all necessary corporate or other acts to authorize the execution, delivery and performance of its obligations under this Agreement;
- (c) neither the execution of this Agreement nor its performance by the Purchaser will result in a breach of any term or provision or constitute a default under any indenture, mortgage, deed of trust or any other agreement to which the Purchaser is a party or by which it is bound which breach could materially affect the ability of the Purchaser to perform its obligations hereunder;
- (d) the execution, delivery and performance of this Agreement by it does not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any Governmental Authority, except where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not prevent or delay the consummation by the Purchaser of the Transaction;
- (e) this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of the Purchaser and is enforceable against the Purchaser in accordance with its terms;
- (f) the Vendor will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the Transaction because of any action taken by, or agreement or understanding reached by, the Purchaser;
- (g) on the Closing Date, the Purchaser will have met all requirements of Governmental Authorities to purchase and accept a transfer of the Property;
- (h) the Purchaser will have the financial resources necessary to pay, as and when due from the Purchaser, the Purchase Price (including the Deposit), the Transfer Taxes, its legal fees and expenses, and any other amounts payable by the Purchaser pursuant hereto; and

- (i) the Purchaser has the financial resources necessary to post or satisfy all necessary security, deposits, letters of credit, guarantees or other financial assurances necessary to take possession of the Property and to satisfy the security required by the Assumed Contracts.

6.3 Enforcement of Representations and Warranties

- (a) The representations and warranties of the Vendor contained in this Agreement shall merge on Closing and shall thereafter be of no further force and effect.
- (b) Effective upon the occurrence of Closing, the Purchaser hereby releases and forever discharges the Vendor from any breach of any representations and warranties set forth in this Agreement. For greater certainty, none of representations and warranties contained in Section 6.1 shall survive Closing and, the Purchaser's sole recourse for any breach of representation or warranty by the Vendor shall be for the Purchaser to not complete the Transaction in accordance with this Agreement.
- (c) The representations and warranties of the Vendor made herein or pursuant hereto are made for the exclusive benefit of the Purchaser, and the representations and warranties of the Purchaser made herein or pursuant hereto are made for the exclusive benefit of the Vendor, as the case may be, and are not transferable and may not be made the subject of any right of subrogation in favour of any other Person.
- (d) The Parties expressly acknowledge and agree that the provisions of this Section 6.3 and the limit on each Party's liability set out in this Section 6.3 are intended by the Parties as a limitation of liability that represents a fair and equitable allocation of the risks and liabilities that each Party has agreed to assume in connection with the subject matter hereof and is not an agreement within the provision of subsection 7(2) of the *Limitations Act* (Alberta).

ARTICLE 7

"AS IS, WHERE IS" AND NO ADDITIONAL REPRESENTATIONS AND WARRANTIES

7.1 Due Diligence Acknowledgement

The Purchaser acknowledges and agrees that:

- (a) it is and was solely responsible to perform any inspections it deemed pertinent to the purchase of the Property and to be satisfied as to the condition of the Property prior to entering into this Agreement with the Vendor;
- (b) notwithstanding the fact that it was permitted to review any diligence materials and disclosures provided by the Vendor, including the Data Room Information, the Vendor assumes no liability for errors or omissions in such diligence materials and disclosure or any other property listings or advertising, promotional or publicity statements and materials, and makes no representations or warranties in respect thereof;
- (c) by entering into this Agreement with the Vendor, the Purchaser shall be deemed to represent, warrant and agree with respect to the Property that:
 - (i) the Purchaser has inspected the Property and is familiar and satisfied with the physical condition thereof and has conducted such investigation of the Property as the Purchaser has determined appropriate;

- (ii) none of the Vendor, its Affiliates or their respective Representatives have made any oral or written representation, warranty, promise or guarantee whatsoever to the Purchaser, expressed or implied, and in particular, that no such representations, warranties, guarantees, or promises have been made with respect to the physical condition, operation, or any other matter or thing affecting or related to the Property and/or the offering or sale of the Property;
- (iii) the Purchaser has not relied upon any representation, warranty, guarantee or promise or upon any statement made or any information provided concerning the Property, whether oral or written, express or implied (by operation of law or otherwise), including the Data Room Information made available to the Purchaser by the Vendor, its Affiliates or their respective Representatives;
- (iv) the Purchaser has entered into this Agreement after having relied solely on its own independent investigation, inspection, analysis, appraisal and evaluation of the Property and the facts and circumstances related thereto;
- (v) any information provided or to be provided by or on behalf of the Vendor with respect to the Property, including all Data Room Information, was obtained from information provided to the Vendor and the Vendor has not made any independent investigation or verification of such information, and makes no representations as to the accuracy or completeness of such information;
- (vi) without limiting the generality of the foregoing, the Vendor was not under any obligation to disclose to the Purchaser, and shall have no liability for its failure to disclose to the Purchaser, any information known to it relating to the Property except as may be required by any Applicable Law; and
- (vii) none of the Vendor, its Affiliates or their respective Representatives are liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property, or the operation thereof, made or furnished by any real estate broker, agent, employee, representative or other Person.

7.2 "As Is, Where Is", No Additional Representations

- (a) Without limiting any other provision of this Agreement, the Purchaser acknowledges and agrees that it is acquiring the Property on an "as is, where is" and "without recourse" basis with all defects, both patent and latent, and with all faults, whether known or unknown, presently existing or that may hereafter arise. The Purchaser acknowledges and agrees that the Vendor, its Affiliates and their respective Representatives have not made, do not make and specifically negate and disclaim any representation, warranty, promise, covenant, agreement or guaranty of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Property. The Vendor makes no representation as to any defaults under the Leases and Assumed Contracts. For greater certainty, but without limitation, except as expressly set forth in this Agreement, none of the Vendor, its Affiliates or their respective Representatives make any condition, representation or warranty whatsoever, express or implied, with respect to:
 - (i) the value, nature, quality or condition of the Property, including, without limitation, the water, soil and geology;
 - (ii) the income to be derived from the Property, if any;

- (iii) the suitability of the Property for any and all purposes, activities and uses which the Purchaser may desire to conduct thereon;
 - (iv) the compliance of or by the Property or its operation with any Applicable Law (including Environmental Laws);
 - (v) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property;
 - (vi) the validity or enforceability of the Leases, the Assumed Contracts or the ability to assign any Unassignable Contracts;
 - (vii) any regulatory approvals, permits and licenses, consents or authorizations that may be needed to complete the purchase of the Property contemplated by this Agreement;
 - (viii) the manner or quality of the construction or materials, if any, incorporated into the Property;
 - (ix) the manner, quality, state of repair or lack of repair of the Property;
 - (x) the existence of any view from the Property or that any existing view will not be obstructed in the future;
 - (xi) the conformity of any plans or specifications for the Property that may be provided to the Purchaser;
 - (xii) the conformity of the Property to applicable zoning by-law or building code requirements and whether the Property complies with any existing land use or zoning by-laws or regulations, or municipal development agreements or plans;
 - (xiii) the existence of soil instability, past soil repairs, susceptibility to landslides, sufficiency of under-shoring, sufficiency of drainage, or any other matter affecting the stability or integrity of the Property or any buildings or improvements situated thereon;
 - (xiv) whether the Property is located in a seismic hazards zone or a flood hazard zone;
 - (xv) the presence of termites or other pests and any damage to the Property and/or its improvements that may have occurred as a result;
 - (xvi) the condition of any improvements included in this Agreement;
 - (xvii) the size and dimensions of the Property, including the aggregate net developable acres;
 - (xviii) the nature and quantum of the Assumed Liabilities; and
 - (xix) any other matter with respect to the Property.
- (b) The Purchaser acknowledges that the release and disclaimer described in this Article 7 is intended to be very broad and the Purchaser expressly waives and relinquishes any rights or benefits it may have under any Applicable Law designed to invalidate releases of unknown or unsuspected claims.

- (c) Except for its express rights under this Agreement, the Purchaser hereby waives all rights and remedies (whether now existing or hereinafter arising and including all common law, tort, contractual and statutory rights and remedies) against the Vendor, its Affiliates and their respective Representatives in respect of the Property and any representations or statements made or information or data furnished to the Purchaser or its Representatives in connection herewith (whether made or furnished orally or by electronic, faxed, written or other means). Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties contained in the *Sale of Goods Act* (Alberta) (or similar applicable statutes, all as may be amended, repealed or replaced), warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and claims of every kind and type, including claims regarding defects, whether or not discoverable or latent, product liability claims, or similar claims, and all other claims that may be later created or conceived in strict liability or as strict liability type claims and rights.

ARTICLE 8 RISK, INSURANCE AND EXPROPRIATION

8.1 Risk

The Property will be at the sole risk and responsibility of the Vendor until the Closing Date, and thereafter at the sole risk and responsibility of the Purchaser.

8.2 Insurance

Any property, liability and other insurance maintained by the Vendor shall not be transferred at Closing, but shall remain the responsibility of the Vendor until the Closing Date. The Purchaser shall be responsible for placing its own property, liability and other insurance coverage with respect to the Property in respect of the period from and after 12:01 a.m. on the Closing Date.

8.3 Expropriation

If before the Closing Date:

- (a) all or substantially all of the Property is expropriated or seized by any Governmental Authority or any other Person in accordance with Applicable Law or if notice of any such expropriation or seizure shall have been given in accordance with Applicable Law, the Purchaser, in its discretion, acting reasonably, shall have the option, exercisable by notice to the Vendor given prior to the Closing Date to either: (i) complete the Transaction; or (ii) terminate this Agreement as provided in Section 14.1(b); or
- (b) if less than all or substantially all of the Property is expropriated or seized by any Governmental Authority or any other Person in accordance with Applicable Law or if notice of any such expropriation or seizure shall have been given in accordance with Applicable Law, the Purchaser shall be required to complete the Transaction, without any reduction or adjustment to the Purchase Price.

ARTICLE 9 INDEMNIFICATION

9.1 Indemnification Given by Purchaser

If Closing occurs, the Purchaser shall:

- (a) be liable to the Vendor, its Affiliates and their respective Representatives for; and

- (b) as a separate covenant, indemnify and save harmless the Vendor, its Affiliates and their respective Representatives from and against,

all Losses and Liabilities suffered, sustained, paid or incurred by the Vendor, its Affiliates or their respective Representatives related to or in connection with the Property and the Assumed Liabilities, whether arising or accruing before, on or after the Closing Date; including: (i) all Losses and Liabilities attributable to the ownership, operation, use, construction or maintenance of the Property following the Closing Date; (ii) all Losses and Liabilities related to any Assumed Contracts or Leases; and (iii) any other Losses and Liabilities for which the Purchaser has agreed to indemnify the Vendor pursuant to this Agreement.

9.2 Third Party Claims

- (a) If the Vendor receives written notice of the commencement or assertion of any Third Party Claim for which the Purchaser is liable (or has otherwise agreed to indemnify the Vendor, its Affiliates or their respective Representatives against) pursuant to this Agreement, the Vendor shall give the Purchaser reasonably prompt notice thereof, but in any event no later than ten (10) days after receipt of such notice of such Third Party Claim. Such notice to the Purchaser shall describe the Third Party Claim in reasonable detail and shall indicate, if reasonably practicable, the estimated amount (or the method of computation of the amount) of the Losses and Liabilities that has been or may be sustained by the Vendor, and a reference to the provisions of this Agreement upon which such claim is based.
- (b) The Purchaser may participate in the defence of any Third Party Claim by giving notice to that effect to the Vendor not later than ten (10) days after receiving notice of that Third Party Claim (the **Notice Period**) so long as: (i) the Purchaser first acknowledges to the Vendor, in writing, liability to the Vendor under this Agreement with respect to such Third Party Claim and that the outcome of such Third Party Claim does not alter or diminish the Purchaser's obligation to indemnify the Vendor pursuant to this Agreement, subject to the Purchaser's right to contest in good faith the Third Party Claim; (ii) the Purchaser has the financial resources to defend against the Third Party Claim and fulfill any indemnification obligations and has provided the Vendor with evidence thereof; (iii) the Third Party Claim involves monetary damages; and (iv) the Purchaser participates in the defence of the Third Party Claim actively and diligently. The Purchaser's right to do so shall be subject to the rights of any insurer or other third party who has potential liability in respect of that Third Party Claim. The Purchaser shall pay all of its own expenses of participating in or assuming such defence. In the event that the Purchaser elects to participate in the defence of a Third Party Claim pursuant to this Section 9.2(b), then the Vendor shall cooperate in good faith in the defence of each Third Party Claim and may participate in such defence assisted by counsel of its own choice at its own expense.
- (c) If the Vendor has not received notice within the Notice Period that the Purchaser has elected to participate in the defence of such Third Party Claim in accordance with Section 9.2(b), or if the Purchaser has given such notice but thereafter fails or is unable to participate in the defence of such Third Party Claim actively and diligently, the Vendor may, at its option, elect to settle or compromise the Third Party Claim on terms of its choosing, or assume such defence assisted by counsel of its own choosing, and the Purchaser shall be liable for all reasonable costs and expenses paid or incurred in connection therewith and any Losses and Liabilities suffered or incurred by the Vendor with respect to such Third Party Claim.

9.3 Failure to Give Timely Notice

Notwithstanding that time is of the essence, a failure to give timely notice as provided in this Article 9 shall not affect the rights or obligations of any Party except and only to the extent that, as

a result of such failure, any Party which was entitled to receive such notice was deprived of its right to recover any payment under any applicable insurance coverage or was otherwise prejudiced as a result of such failure.

9.4 No Merger

There shall not be any merger of any liability or indemnity hereunder in any assignment, conveyance, transfer or document delivered pursuant hereto notwithstanding any rule of law, equity or statute to the contrary and all such rules are hereby waived.

ARTICLE 10 ENVIRONMENTAL MATTERS

10.1 Defined Terms

For the purpose of this Agreement:

- (a) **Assumed Environmental Liabilities** means all Environmental Liabilities arising or accruing before, on or after the Closing Date and related to or in connection with the Property;
- (b) **Environmental Laws** means all statutes, regulations, ordinances, by-laws, and codes, now or hereafter in existence in Canada (whether federal, provincial or municipal) relating to the protection and preservation of the environment, occupational health and safety, transportation of dangerous goods or hazardous substances, including, without limitation, the *Environmental Protection and Enhancement Act* (Alberta), as amended, replaced, or restated from time to time;
- (c) **Environmental Liabilities** means all claims, Losses and Liabilities, damages or expenses (whether accrued, actual, contingent, latent or otherwise), whenever arising, which relate to the Property, or arise from or in connection with past, present or future operations in respect thereof or which relate to or are associated with the environment, including, without limitation, Losses and Liabilities related to or arising from:
 - (i) the non-compliance with, the breach of or any liability under the applicable Environmental Laws;
 - (ii) presence, transportation, storage, use or disposal of toxic or hazardous substances;
 - (iii) release, spill, escape, emission, leak, discharge, migration or dispersal of toxic or hazardous substances;
 - (iv) removal, assessment, monitoring, sampling, response, abatement, clean-up, investigation, reporting of pollution or contamination of, or damage or other adverse effects to the environment; and
 - (v) Remediation and Reclamation Obligations,including, without limitation, liabilities to compensate Third Parties for damages and Losses and Liabilities resulting from the items described in items (i) through (v) above and, for purposes of this Agreement, "the environment" includes, without limitation, the air, the surface and subsurface of the earth, bodies of water (including, without limitation, rivers, streams, lakes, aquifers, groundwater) and plant and animal life (including humans); and

- (d) **Remediation and Reclamation Obligations** means all obligations to dismantle, decommission, abandon, remediate, restore and reclaim the surface or subsurface of lands associated with the Property, all as may be required in accordance with all applicable Environmental Laws.

10.2 Assumption of Environmental Liabilities

The Purchaser acknowledges that insofar as the environmental condition of the Property is concerned, and without limiting the generality of Section 7.2, it will acquire the Property on an "as is, where is" and "without recourse" basis. The Purchaser acknowledges that it has had the opportunity to inspect and assess the environmental condition of the Property and that it is not relying upon any representation or warranty of the Vendor, its Affiliates or their respective Representatives as to the environmental condition of the Property, Environmental Liabilities or Remediation and Reclamation Obligations. The Purchaser further agrees that, it shall be solely liable and responsible for any and all Losses and Liabilities which the Vendor, its Affiliates or their respective Representatives may suffer, sustain, pay or incur, as a result of any matter or thing arising out of, resulting from, attributable to or connected with any Assumed Environmental Liabilities. Once Closing has occurred and without limiting the foregoing, the Purchaser shall be solely responsible for all Assumed Environmental Liabilities, hereby releases the Vendor from any claims the Purchaser may have against the Vendor with respect to all such Assumed Environmental Liabilities, and acknowledges its indemnification obligations described in Article 9.

ARTICLE 11 COVENANTS

11.1 Court Approval

- (a) The Vendor shall prepare all materials, and shall as soon as reasonably practicable after the Acceptance Date: (i) bring an application for the issuance of the Approval and Vesting Order in the Court; and (ii) serve such parties as the CCAA Proceedings, the Court and the Purchaser, acting reasonably, may require for applications and motions seeking the entry of the Approval and Vesting Order. The Purchaser, at its own expense, shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably request to obtain the Approval and Vesting Order, including such information as may be required to reasonably evaluate the Purchaser's financial ability to perform its obligations hereunder. The application for the Approval and Vesting Order may be adjourned or rescheduled by the Vendor or their Representatives upon notice to the Purchaser.
- (b) In the event an appeal is taken, or a stay pending appeal is requested, from the Court Orders, the Vendor shall promptly notify the Purchaser of such appeal or stay request and shall provide to the Purchaser a copy of the related notice of appeal or order of stay. The Vendor shall also provide the Purchaser with notice of any motion or application filed in connection with any appeal from either of such orders.

11.2 Court Filings

- (a) From and after the Acceptance Date and until the Closing Date, the Vendor shall use commercially reasonable efforts to deliver to the Purchaser copies of all pleadings, motions, notices, statements, schedules, applications, reports and other papers that relate, in whole or in part, to this Agreement, or to the Purchaser or its Representatives, that are to be filed by the Vendor in connection with the Court Approval in advance of their filing, before the filing of such papers, and shall provide the Purchaser with a reasonable opportunity to review and comment thereon.

- (b) The Vendor shall act reasonably in considering any comments provided by the Purchaser to such papers; provided, however that, the Vendor shall have no obligation to accept and incorporate the Purchaser's comments to such papers and neither the Vendor's inadvertent failure to comply with this Section 11.2, nor the Vendor's failure to comply with this Section 11.2 due to emergency circumstances, shall constitute a breach under this Agreement.

11.3 Leases

- (a) Subject to section 11.3(b), the Purchaser acknowledges that it is purchasing the Property subject to any Leases provided the assignment of such Lease has been approved by the Court on or before the Court Approval Date (herein referred to as the **Approved Lease(s)**), each of which shall be a Permitted Encumbrance, and which shall constitute an Assumed Contract, and in accordance with such acknowledgement, the Purchaser agrees that it is purchasing the Lands subject to the rights of any Tenant pursuant to an Approved Lease.
- (b) For greater clarity, nothing in this Agreement shall be construed as an assignment of, or an attempt to assign to the Purchaser any Lease without the prior approval of the Court. The Vendor shall, at its sole cost and expense, apply for and use commercially reasonable efforts to obtain approval of the Court to the assignment of the Leases on or before the Court Approval Date. In the event any such consent is not obtained as of the Court Approval Date, then each such Lease shall be deemed an Excluded Contract under this Agreement, without any adjustment of any kind to the Purchase Price. The failure to obtain the consent of the Court to the assignment of any Lease shall not be a breach of this Agreement by the Vendor and shall not entitle the Purchaser to terminate this Agreement or to any other right or remedy whatsoever. This Section 11.3(b) shall survive Closing.

11.4 Possession

The Purchaser will have vacant possession of the Property on the Closing Date, free from all Encumbrances, except for the Permitted Encumbrances. The Vendor shall deliver to the Purchaser on the Closing Date any keys, combinations, codes and other similar such items and information relating to the Property, if any.

11.5 Purchaser's Title Insurance

The Purchaser shall obtain title insurance coverage with a reputable title insurance provider in order to allow for the unconditional release of the Purchase Price on the Closing Date notwithstanding that the Approval and Vesting Order may not be registered against title to the Lands as at such date. The Vendor shall use commercially reasonable efforts to assist the Purchaser in obtaining such title insurance coverage. The cost of obtaining any title insurance in connection with the purchase of the Property shall be for the sole cost of the Purchaser.

ARTICLE 12 CONDITIONS

12.1 Court Approval Condition

The respective obligations of the Parties to complete the purchase and sale of the Property are subject to the condition that on or before the Court Approval Date, the Vendor shall have obtained the Approval and Vesting Order and the Approval and Vesting Order shall be a Final Order and shall be in registerable form for all jurisdictions in which the Property is located. The Vendor may, in its sole discretion, extend the Court Approval Date one (1) or more times up to a total of thirty

(30) Business Days by providing notice thereof to the Purchaser and the Closing Date shall be extended by the same period, provided that in no event shall the Vendor have any liability to the Purchaser in connection with any extension of any such dates.

12.2 Mutual Conditions

The respective obligations of the Parties to complete the purchase and sale of the Property are subject to the following conditions being fulfilled or performed as at or prior to the Closing Date:

- (a) no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable order or Applicable Law which has the effect of: (i) making any of the transactions contemplated by this Agreement illegal; or (ii) otherwise prohibiting, preventing or restraining the Vendor from the sale of the Property; and
- (b) the Closing is not otherwise prohibited by Applicable Law.

The foregoing conditions are for the mutual benefit of the Vendor and the Purchaser and may be asserted by the Vendor or the Purchaser regardless of the circumstances and may be waived only with the agreement of both the Vendor and the Purchaser.

12.3 Conditions for the Benefit of the Purchaser

The obligation of the Purchaser to complete the purchase of the Property is subject to the following conditions being fulfilled or performed as at or prior to the Closing Date:

- (a) all representations and warranties of the Vendor contained in Section 6.1 of this Agreement shall be true and correct in all material respects as at the Closing Date with the same force and effect as if made at and as of such time, and the Vendor shall have delivered to the Purchaser a certificate to that effect;
- (b) the Vendor shall have complied with and performed, in all material respects, all of its covenants and obligations contained in this Agreement; and
- (c) the Vendor shall have executed and delivered or caused to have been executed and delivered to the Purchaser at or before the Closing all the documents contemplated in Section 13.2.

The foregoing conditions are for the exclusive benefit of the Purchaser and may be waived by it in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the Purchaser may have.

12.4 Conditions for the Benefit of the Vendor

The obligation of the Vendor to complete the sale of the Property is subject to the following conditions being fulfilled or performed as at or prior to the Closing Date:

- (a) all representations and warranties of the Purchaser contained in Section 6.2 of this Agreement shall be true and correct in all material respects as at the Closing Date with the same force and effect as if made at and as of such time, and the Purchaser shall have delivered to the Vendor a certificate to that effect;
- (b) the Purchaser shall have complied with and performed in all material respects all of its covenants and obligations contained in this Agreement;

- (c) the Purchaser shall have executed and delivered or caused to have been executed and delivered to the Vendor at or before the Closing all the documents contemplated in Section 13.3; and
- (d) the Vendor has not lost its ability to convey the Property due to an order of the Court or otherwise pursuant to the CCAA Proceedings, provided such order or other action pursuant to the CCAA Proceedings or is not at the voluntary initiative of the Vendor.

The foregoing conditions are for the exclusive benefit of the Vendor and may be waived by it in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the Vendor may have.

12.5 Satisfaction of Conditions

Each of the Parties shall proceed diligently and in good faith and use all commercially reasonable efforts to fulfill and assist in the fulfillment of the conditions set forth in Sections 12.1, 12.2, 12.3 and 12.4. In addition, each of the Parties agrees not to take any action that could reasonably be expected to preclude, delay or have an adverse effect on the Transaction or would render, or may reasonably be expected to render, any representation or warranty made by it in this Agreement untrue in any material respect.

12.6 Monitor's Certificate

When the conditions to Closing set out in Sections 12.1, 12.2, 12.3 and 12.4 have been satisfied and/or waived by the each of the Vendor and the Purchaser, as applicable, the Purchaser will deliver to the Monitor written confirmation that such conditions of Closing, as applicable, have been satisfied and/or waived (the **Conditions Certificate**). Upon receipt by the Vendor of: (i) payment in full of the Purchase Price to be paid on Closing; (ii) the applicable Transfer Taxes to be paid on Closing (or evidence of payment of, or agreement to pay, all Transfer Taxes by the Purchaser to any relevant Governmental Authorities or counterparty); and (iii) the Conditions Certificate, the Monitor shall, if required by the Court Approval: (A) issue forthwith its Monitor's Certificate to the Purchaser, at which time the Closing will be deemed to have occurred; and (B) file as soon as practicable a copy of the Monitor's Certificate with the Court, if necessary (and shall provide a true copy of such filed certificate to the Purchaser).

ARTICLE 13 CLOSING

13.1 Closing Date and Place of Closing

Subject to the conditions set out in this Agreement, the Transaction shall close and be completed on the Closing Date, or at such earlier date as may be mutually agreed upon in writing between the Vendor and the Purchaser.

13.2 Deliveries on Closing by the Vendor

The Vendor shall deliver (or cause to be delivered) to the Purchaser's Solicitor on or before the Closing Date:

- (a) a Court certified copy of the Approval and Vesting Order;
- (b) a bill of sale for the Chattels;
- (c) the Assignment and Assumption Agreement duly executed by the Vendor, if applicable;

- (d) all documents listed in Section 13.3 which contemplate execution by the Vendor;
- (e) the Monitor's Certificate referred to in Article 12; and
- (f) any other documents, resolutions and certificates as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

13.3 Deliveries on Closing by the Purchaser

The Purchaser shall deliver (or cause to be delivered) to the Vendor's Solicitor on or before the Closing Date:

- (a) the Closing Cash Payment in accordance with Section 3.3(b);
- (b) a GST declaration, undertaking and indemnity executed by the Purchaser, in a form approved by the Vendor, acting reasonably;
- (c) the Assignment and Assumption Agreement duly executed by the Purchaser, if applicable;
- (d) all documents listed in Section 13.2 which contemplate execution by the Purchaser;
- (e) a copy of the Commitment to Title Insure confirming gap coverage obtained by the Purchaser;
- (f) the certificate of the Purchaser referred to in Article 12; and
- (g) any other documents, resolutions and certificates as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

ARTICLE 14 TERMINATION

14.1 Grounds for Termination

This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written agreement of the Vendor and the Purchaser, provided however that if this Agreement has been approved by the Court, any such termination shall require approval of the Court;
- (b) by written notice from the Purchaser to the Vendor in accordance with Section 8.3(a); or
- (c) by the Vendor, upon written notice to the Purchaser, if there has been a material breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Vendor, and: (i) such breach is not curable and has rendered the satisfaction of any condition in Section 12.4 impossible by the Closing Date; or (ii) if such breach is curable, the Vendor has provided prior written notice of such breach to the Purchaser, and such breach has not been cured within ten (10) days (or, if not curable within ten (10) days, such longer period as is reasonable under the circumstances, not to exceed thirty (30) days) following the date upon which the Purchaser received such notice.

14.2 Effect of Termination

Notwithstanding any termination of this Agreement by the Vendor or the Purchaser as permitted under Section 14.1, the provisions of Sections 3.2 (Deposit), 11.3(b) (Leases) 15.1 (Public Announcements), 15.4 (Governing Law), 15.5 (Consequential Damages), 15.11 (Costs and Expenses) and 15.15 (Third Party Beneficiaries) shall remain in full force and effect following any such permitted termination, and the Deposit shall be governed by Section 3.2.

ARTICLE 15 GENERAL

15.1 Public Announcements

- (a) Subject to Section 15.1(b), if a Party intends to issue a press release or other public disclosure of this Agreement, the terms hereof or the Transaction, the disclosing Party shall provide the other Parties with an advance copy of any such press release or public disclosure with sufficient time to enable the other Parties to review such press release or other public disclosure and provide any comments. The disclosing Party shall not issue such press release or other public disclosure without the prior written consent of the other Parties, such consent not to be unreasonably withheld.
- (b) Notwithstanding Section 15.1(a): (i) this Agreement may be filed by the Vendor with the Court; and (ii) the Transaction may be disclosed by the Vendor to the Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. The Parties further agree that:
 - (i) the Monitor may prepare and file reports and other documents with the Court containing references to the Transaction and the terms of such Transaction; and
 - (ii) the Vendor and its professional advisors may prepare and file such reports and other documents with the Court containing references to the Transaction contemplated by this Agreement and the terms of such Transaction as may reasonably be necessary to obtain the Court Approvals and to complete the Transaction contemplated by this Agreement or to comply with their obligations to the Court.

15.2 Dissolution of Vendor

The Purchaser acknowledges and agrees that nothing in this Agreement shall operate to prohibit or diminish in any way the right of the Vendor or any of its Affiliates to dissolve, wind-up or otherwise cease operations in any manner or at any time subsequent to the Closing Date as they may determine in their sole discretion, which may be exercised without regard to the impact any such action may have on the Vendor's ability to fulfil its obligations under this Agreement that survive Closing.

15.3 Survival

Upon Closing, the obligations, covenants, representations and warranties of the Parties set out in this Agreement shall expire, be terminated and extinguished and of no further force or effect, provided that notwithstanding the Closing contemplated hereunder or the delivery of documents pursuant to this Agreement, the obligations and covenants of the Parties set out in Sections 6.3 (Enforcement of Representations and Warranties), 9.1 (Indemnification Given by Purchaser) 11.3 (Leases) and 11.4 (Possession), and Article 5 (Transfer Taxes), Article 7 ("As Is, Where Is" and No Additional Representations and Warranties), Article 9 (Indemnification), Article 10 (Environmental Matters) and Article 15 (General), shall survive Closing, shall remain in full force

and effect, shall not merge as a result of Closing and shall be binding on the Purchaser indefinitely thereafter except as expressly stated to the contrary therein.

15.4 Governing Law

- (a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein (excluding any conflict of law rule or principle of such laws that might refer such interpretation or enforcement to the laws of another jurisdiction). The Parties attorn to the exclusive jurisdiction of the Alberta Court of King's Bench (Judicial Centre of Calgary or Edmonton, as determined by the Vendor in its sole discretion). All actions or proceedings arising out of or relating to this Agreement shall be litigated in such court and the Parties unconditionally accept the exclusive jurisdiction of the said court and waive any defense of *forum non-conveniens*.
- (b) Notwithstanding Section 15.4(a), any and all documents or orders that may be filed, made or entered in the CCAA Proceedings, and the rights and obligations of the Parties thereunder, including all matters of construction, validity and performance thereunder, shall in all respects be governed by, and interpreted, construed and determined in accordance with the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the Court, as applicable, for the resolution of any such disputes, regardless of whether such disputes arose under this Agreement. Each Party agrees that service of process on such Party as provided in Section 15.13 shall be deemed effective service of process on such Party.

15.5 Consequential Damages

Under no circumstance shall any of the Parties, their Representatives or their respective directors, officers, employees or agents be liable for any punitive, exemplary, consequential or indirect damages (including for greater certainty, any loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the Transaction.

15.6 Further Assurances

Each of the Parties from and after the date hereof shall, from time to time, and at the request and expense of the Party requesting the same, do all such further acts and things and execute and deliver such further instruments, documents, matters, papers and assurances as may be reasonably requested to complete the Transaction and for more effectually carrying out the true intent and meaning of this Agreement.

15.7 Assignment

The Purchaser shall not, without the Vendor's prior written consent, assign any right or interest in this Agreement, which consent may be withheld in the Vendor's sole and absolute discretion, except that the Purchaser shall have the right to assign any or all of its rights, interests or obligations hereunder to one or more Affiliates of the Purchaser, provided that: (a) such Affiliate agrees to be bound by the terms of this Agreement; (b) the Purchaser shall remain liable hereunder for any breach of the terms of this Agreement by such Affiliate; (c) such assignment shall not release the Purchaser from any obligation or liability hereunder in favour of the Vendor; and (d) the Purchaser shall acknowledge and confirm its continuing obligations in favour of the Vendor in an assignment and assumption agreement in form and substance satisfactory to the Vendor.

15.8 Waiver

No failure on the part of any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any right or remedy in law or in equity or by statute or otherwise conferred. No waiver by any Party of any breach (whether actual or anticipated) of any of the terms, conditions, representations or warranties contained herein shall take effect or be binding upon that Party unless the waiver is expressed in writing under the authority of that Party. Any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other or future breach.

15.9 Amendment

This Agreement shall not be varied in its terms or amended by oral agreement or by representations or otherwise other than by an instrument in writing dated subsequent to the date hereof, executed by a duly authorized representative of each Party.

15.10 Time of the Essence

Time is of the essence in this Agreement.

15.11 Costs and Expenses

Unless otherwise provided for in this Agreement, each Party shall be responsible for all costs and expenses (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisors) incurred by it in connection with this Agreement and the Transaction. Notwithstanding any other provision of this Agreement, the Purchaser shall pay the cost of all surveys, title insurance policies and title reports ordered by the Purchaser and be responsible for GST and for registration fees payable in connection with the Transaction.

15.12 Entire Agreement

This Agreement and the Confidentiality Agreement (the terms and conditions of which are incorporated by reference into this Agreement, and binding upon the Parties, as if such agreement were signed directly by the Parties) constitute the entire agreement between the Parties with respect to the subject matter hereof and cancel and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, between the Parties with respect to the subject matter hereof. There are no conditions, covenants, agreements, representations, warranties or other provisions, whether oral or written, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof other than those contained in this Agreement or in the Confidentiality Agreement.

15.13 Notices

Any notice, direction or other communication given regarding the matters contemplated by this Agreement must be in writing, sent by personal delivery, courier or electronic mail and addressed:

- (a) in the case of the Vendor:

Ernst & Young Inc.
Calgary City Centre
2200, 215 - 2nd Street SW
Calgary, Alberta T2P 1M4

Attention: Neil Narfason / Christopher Keliher
Telephone: 403-206-5067 / 403-206-5661
Fax: 403-206-5075
Email: neil.narfason@parthenon.ey.com
christopher.keliher@parthenon.ey.com

with a copy to the Vendor's Solicitors:

Norton Rose Fulbright Canada LLP
3700, 400 – 3rd Avenue SW
Calgary, AB T2P 4H2

Attention: Howard Gorman
Email: howard.gorman@nortonrosefulbright.com

- (b) In the case of the Purchaser:

[●]

Attention: [●]
Email: [●]

with a copy to the Purchaser's Solicitors:

[●]

Attention: [●]
Email: [●]

A notice is deemed to be given and received if: (i) sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day; or (ii) email, on the date of transmission if it is a Business Day and the transmission was made prior to 4:00 p.m. (local time in place of receipt), and otherwise on the next Business Day. A Party may change its address for service from time to time by providing a notice in accordance with the foregoing. Any subsequent notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a notice will be assumed not to be changed. **Sending a copy of a notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice to that Party. The failure to send a copy of a notice to legal counsel does not invalidate delivery of that notice to a Party.**

15.14 Enurement

The terms of this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

15.15 Third Party Beneficiaries

Except as otherwise provided for in Article 9 (Indemnification), each Party intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties and their successors and permitted assigns, and, except for the Representatives indemnified by the Purchaser pursuant to Article 9 (Indemnification), no Person, other than the Parties and their successors and permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum. Despite the foregoing, the Purchaser acknowledges to each of the Vendor's Representatives its direct rights against them under Article 9 (Indemnification) of this Agreement. To the extent required by Applicable Law to give full effect to these direct rights, the Purchaser agrees and acknowledges that the Vendor is acting as agent and/or as trustee of its Representatives.

15.16 Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision validity or enforceability in any other jurisdiction.

15.17 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or other electronic means of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

[the signature page is next]

The Purchaser agrees that its offer created by its execution of this Offer and delivery to the Vendor shall be irrevocable by the Purchaser until 4:00 p.m. on the forty-fifth (45th) day after the date of execution of this Offer by the Purchaser, after which time, if not accepted in the manner hereinafter set forth, this Offer shall be null and void and the Deposit shall be returned in accordance with Section 3.2.

IN WITNESS WHEREOF, the Purchaser has executed this Offer by the hands of its authorized officer in that behalf as of _____ day of _____, 20__.

[PURCHASER]

WITNESS (if Purchaser is an individual)

Name:

Per: _____

Name: _____

Title: _____

Name:

Per: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Vendor accepts this Offer this ____ day of _____, 20__.

ERNST & YOUNG INC. in its capacity as Court appointed Monitor in respect of North American Lamb Company Ltd., Canada Sheep and Lamb Farms Ltd., Canada Sheep Holdings Ltd., Lamb Club Marketing Limited., Canada Lamb Growers Ltd., Canada Lamb Processors Ltd., and Canine Fare Ltd., and not in its personal or corporate capacity

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

SCHEDULE A
Lands

SCHEDULE B
Permitted Encumbrances

1. The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown, including, without limitation, the reservation of any mines and minerals in the Crown or in any other person and any implied conditions set out in s.61(1) of the *Land Titles Act* (Alberta) as amended, replaced or restated from time to time.
2. Encumbrances given as security to a public utility or any Governmental Authority when required in the ordinary course of business but only insofar as they relate to any obligations or amounts not due as at the Closing Date.
3. All rights reserved to or vested in any Governmental Authority pursuant to Applicable Law to control or regulate the Property in any manner, including any unregistered, undetermined or inchoate liens, levies or claims in favour of the Crown, any province or municipality or any Governmental Authority.
4. Rights of expropriation, access or use or any similar right conferred or reserved by or in any statute of Alberta or Canada.
5. Applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements, servicing or industrial agreements, utility agreements, airport zoning regulations, cost sharing reciprocal agreements and building and other zoning restrictions and other similar agreements with Governmental Authorities or private or public utilities affecting the development or use of the Property.
6. Any easements, servitudes, rights-of-way, licenses, agreements, restrictions that run with the land and other Encumbrances (including easements, rights-of-way and agreements for railways, sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables).
7. Encumbrances respecting minor encroachments by the Property over neighbouring lands and/or permitted under agreements with the owners of such other lands and minor encroachments over the Property by improvements of abutting land owners.
8. Any privilege in favour of any lessor, licensor or permitter for rent to become due or for other obligations or acts, the performance of which is required under contracts of the Vendor so long as the payment or the performance of such other obligation or act is not delinquent and provided that such Encumbrances or privileges do not materially affect the use or the operation of the assets affected thereby.
9. Encumbrances which will be vested out or otherwise discharged at Closing pursuant to the Approval and Vesting Order.
10. Any Approved Leases and any caveats or notices registered in respect thereof.

SCHEDULE C
Allocation of Purchase Price

The Purchase Price shall be allocated as follows:

Lands: \$ _____

Building: \$ _____

Chattels: \$ _____

Appendix C –

MANITOBA TEMPLATE PURCHASE AND SALE AGREEMENT

OFFER TO PURCHASE

ERNST & YOUNG INC., IN ITS CAPACITY AS COURT APPOINTED MONITOR IN RESPECT OF NORTH AMERICAN LAMB COMPANY LTD., CANADA SHEEP AND LAMB FARMS LTD., CANADA SHEEP HOLDINGS LTD., LAMB CLUB MARKETING LIMITED., CANADA LAMB GROWERS LTD., CANADA LAMB PROCESSORS LTD., AND CANINE FARE LTD., AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

and

[PURCHASER]

| | |
|---|-----------|
| OFFER TO PURCHASE TERM SHEET | A |
| ARTICLE 1 INTERPRETATION | 1 |
| 1.1 Definitions..... | 1 |
| 1.2 Interpretation | 6 |
| 1.3 Schedules..... | 7 |
| 1.4 Interpretation if Closing Does Not Occur | 7 |
| ARTICLE 2 PURCHASE AND SALE..... | 7 |
| 2.1 Agreement of Purchase and Sale | 7 |
| 2.2 Acceptance..... | 7 |
| 2.3 Transfer of Property and Assumption of Liabilities | 7 |
| 2.4 Unassignable Contracts | 8 |
| 2.5 Assumed Liabilities and Assumed Obligations | 8 |
| ARTICLE 3 PURCHASE PRICE | 8 |
| 3.1 Purchase Price | 8 |
| 3.2 Deposit | 8 |
| 3.3 Satisfaction of the Purchase Price | 9 |
| 3.4 Allocation of Purchase Price | 9 |
| ARTICLE 4 ADJUSTMENTS..... | 9 |
| 4.1 Statement of Adjustments | 9 |
| 4.2 Pro Rata Adjustments | 9 |
| ARTICLE 5 TRANSFER TAXES | 10 |
| 5.1 Transfer Taxes | 10 |
| 5.2 GST | 10 |
| ARTICLE 6 REPRESENTATIONS AND WARRANTIES | 10 |
| 6.1 Vendor's Representations | 10 |
| 6.2 Purchaser's Representations | 11 |
| 6.3 Enforcement of Representations and Warranties | 11 |
| ARTICLE 7 "AS IS, WHERE IS" AND NO ADDITIONAL REPRESENTATIONS AND WARRANTIES.. | 12 |
| 7.1 Due Diligence Acknowledgement | 12 |
| 7.2 "As Is, Where Is", No Additional Representations | 13 |
| ARTICLE 8 RISK, INSURANCE AND EXPROPRIATION..... | 15 |
| 8.1 Risk | 15 |
| 8.2 Insurance..... | 15 |
| 8.3 Expropriation | 15 |

| | |
|--|-----------|
| ARTICLE 9 INDEMNIFICATION | 15 |
| 9.1 Indemnification Given by Purchaser | 15 |
| 9.2 Third Party Claims..... | 16 |
| 9.3 Failure to Give Timely Notice | 16 |
| 9.4 No Merger | 16 |
| ARTICLE 10 ENVIRONMENTAL MATTERS..... | 17 |
| 10.1 Defined Terms..... | 17 |
| 10.2 Assumption of Environmental Liabilities | 18 |
| ARTICLE 11 COVENANTS | 18 |
| 11.1 Court Approval | 18 |
| 11.2 Court Filings | 18 |
| 11.3 Leases | 19 |
| 11.4 Possession | 19 |
| 11.5 Purchaser's Title Insurance..... | 19 |
| ARTICLE 12 CONDITIONS | 19 |
| 12.1 Court Approval Condition | 19 |
| 12.2 Mutual Conditions | 19 |
| 12.3 Conditions for the Benefit of the Purchaser | 20 |
| 12.4 Conditions for the Benefit of the Vendor | 20 |
| 12.5 Satisfaction of Conditions..... | 21 |
| 12.6 Monitor's Certificate | 21 |
| ARTICLE 13 CLOSING | 21 |
| 13.1 Closing Date and Place of Closing | 21 |
| 13.2 Deliveries on Closing by the Vendor | 21 |
| 13.3 Deliveries on Closing by the Purchaser | 22 |
| ARTICLE 14 TERMINATION..... | 22 |
| 14.1 Grounds for Termination | 22 |
| 14.2 Effect of Termination | 22 |
| ARTICLE 15 GENERAL | 23 |
| 15.1 Public Announcements | 23 |
| 15.2 Dissolution of Vendor | 23 |
| 15.3 Survival..... | 23 |
| 15.4 Governing Law | 23 |
| 15.5 Consequential Damages..... | 24 |

| | |
|---|----------|
| 15.6 Further Assurances | 24 |
| 15.7 Assignment..... | 24 |
| 15.8 Waiver | 24 |
| 15.9 Amendment | 25 |
| 15.10 Time of the Essence | 25 |
| 15.11 Costs and Expenses..... | 25 |
| 15.12 Entire Agreement..... | 25 |
| 15.13 Notices | 25 |
| 15.14 Enurement | 26 |
| 15.15 Third Party Beneficiaries | 26 |
| 15.16 Severability | 27 |
| 15.17 Counterparts | 27 |
| SCHEDULE A LANDS | 1 |
| SCHEDULE B PERMITTED ENCUMBRANCES..... | 1 |
| SCHEDULE C ALLOCATION OF PURCHASE PRICE..... | 1 |

**OFFER TO PURCHASE
TERM SHEET**

This Term Sheet forms part of the attached Offer to Purchase.

1 **PURCHASER:** _____

 AUTHORIZED CONTACT: _____

 ADDRESS: _____
 (for mailing or delivery) Telephone No.: _____
 E-mail Address: _____
 Facsimile No.: _____

2 **PURCHASE PRICE:** \$ _____
 Note: Exclusive of any Transfer Tax

3 **DEPOSIT:** \$ _____
 (a minimum of 10% of the
 Purchase Price)

4 **SHORT LEGAL/MUNICIPAL
 ADDRESS OF THE LANDS** _____

5 **PURCHASER'S GST NO.:** _____
 (if applicable)

6 **DEFINITIONS:** Each capitalized term used in this Term Sheet shall have the
 meaning given to it in the Offer to Purchase.

OFFER TO PURCHASE

BETWEEN:

ERNST & YOUNG INC. in its capacity as Court appointed Monitor in respect of North American Lamb Company Ltd., Canada Sheep and Lamb Farms Ltd., Canada Sheep Holdings Ltd., Lamb Club Marketing Limited., Canada Lamb Growers Ltd., Canada Lamb Processors Ltd., and Canine Fare Ltd., and not in its personal or corporate capacity

(the **Vendor**)

-and-

(the **Purchaser**)

RECITALS

- A. On August 8, 2022, Ernst & Young Inc. (the **Monitor**) was appointed monitor of North American Lamb Company Ltd., Canada Sheep and Lamb Farms Ltd., Canada Sheep Holdings Ltd., Lamb Club Marketing Limited., Canada Lamb Growers Ltd., Canada Lamb Processors Ltd., and Canine Fare Ltd. (collectively, the **Companies**), pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the **Order**).
- B. The Monitor has commenced a sales process intended to solicit interest in the sale of the assets and/or the business of the Companies.
- C. The Purchaser wishes to offer to purchase the Property from the Vendor, subject to the terms and conditions set forth herein and subject to Court Approval (as defined below).

NOW THEREFORE, this Agreement witnesses that in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged by each Party to the other, the Parties covenant and agree as follows.

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement:

- (a) **Acceptance Date** has the meaning ascribed to that term in Section 2.2;
- (b) **Affiliate** means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with that specified Person. For the purposes of this definition, **control** (including with correlative meanings, controlling, controlled by and under common control with) means the power to direct or cause the direction of the management and policies of that Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise and, it being understood and agreed that with respect to a corporation or partnership, control shall mean direct or indirect ownership of more than 50% of the voting shares in any such corporation or of the general partnership interest or voting interest in any such partnership;

- (c) **Agreement** has the meaning ascribed to that term in Section 2.2;
- (d) **Applicable Law** means, in respect of any Person, asset, transaction, event or circumstance: (i) statutes (including regulations enacted thereunder); (ii) judgments, decrees and orders of courts of competent jurisdiction (including the common law); (iii) regulations, orders, ordinances and directives issued by Governmental Authorities; and (iv) the terms and conditions of all permits, licenses, approvals and authorizations, in each case which are applicable to such Person, asset, transaction, event or circumstance;
- (e) **Approval and Vesting Order** means an order of the Court approving the Transaction in accordance with the provisions of this Agreement, and vesting all of the Vendor's Interest in and to the Property in the Purchaser, such order to be in a form and content satisfactory to the Vendor in its sole discretion;
- (f) **Approved Lease(s)** has the meaning ascribed to that term in Section 11.3;
- (g) **Assignment and Assumption Agreement** means an assignment and assumption agreement, in form and substance satisfactory to the Vendor and the Purchaser, acting reasonably, evidencing the assignment to the Purchaser of the Vendor's Interest in, to and under the Assumed Contracts and the assumption by the Purchaser of all of the Assumed Liabilities under or in respect of the Assumed Contracts;
- (h) **Assumed Contracts** means the contracts, agreements, easements, restrictions, Approved Leases, permits, understandings and arrangements as determined by the Vendor in its sole discretion;
- (i) **Assumed Environmental Liabilities** has the meaning ascribed to that term in Section 10.1(a);
- (j) **Assumed Liabilities** means all liabilities and obligations arising from the possession, ownership and/or use of the Property following Closing, all Assumed Obligations and all Assumed Environmental Liabilities;
- (k) **Assumed Obligations** has the meaning ascribed to that term in Section 2.5;
- (l) **Business Day** means any day other than a Saturday, Sunday or a statutory holiday in the City of Calgary in the Province of Alberta;
- (m) **CCAA Proceedings** means the proceedings commenced under the Order;
- (n) **Chattels** means any equipment, furniture, inventory, appliances, chattels and personal property situated or located in or upon any of the Lands and used for the general operation and management of the applicable Lands, but excluding, for greater certainty: (a) all livestock, meat processed livestock and feed; and (b) any chattels owned or leased by any Tenants;
- (o) **Claim** means any right, claim, cause of action or complaint of any Person that may be asserted or made in whole or in part against the Vendor, its Affiliates and their respective Representatives, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including without limitation, by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting,

constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, un-matured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right, claim, cause of action or complaint is executory or anticipatory in nature;

- (p) **Closing** means the completion of the purchase by the Purchaser, and sale by the Vendor, of the Vendor's Interest in and to the Property and the completion of all other transactions contemplated by this Agreement that are to occur contemporaneously with such purchase and sale, all subject to and in accordance with the terms and conditions of this Agreement;
- (q) **Closing Cash Payment** has the meaning ascribed to that term in Section 3.3(b);
- (r) **Closing Date** means, subject to Section 12.1, December 23, 2022, or such other date as may be mutually agreed upon in writing between the Vendor and the Purchaser, provided, however, that if the Closing Date falls on a Monday or Friday, it shall be extended to the following Business Day that is not a Monday or Friday;
- (s) **Companies** has the meaning ascribed to that term in the recitals hereto;
- (t) **Conditions Certificate** has the meaning ascribed to that term in Section 12.6;
- (u) **Confidentiality Agreement** means the confidentiality and non-disclosure agreement between the Vendor and the Purchaser dated _____, 20__;
- (v) **Court** means the Court of King's Bench of Alberta;
- (w) **Court Approval** means both the issuance of the Approval and Vesting Order by the Court approving the sale of the Property, and such Approval and Vesting Order having become a Final Order;
- (x) **Court Approval Date** means December 7, 2022, as may be extended and in accordance with Section 12.1;
- (y) **Court Orders** means, collectively, the Order and the Approval and Vesting Order;
- (z) **CRA** means the Canada Revenue Agency;
- (aa) **Data Room Information** means all information made available (by the Monitor or otherwise) for the Purchaser's review in electronic form in relation to, *inter alia*, the Companies, its Affiliates and/or the Property;
- (bb) **Deposit** has the meaning ascribed to that term in Section 3.2(a);
- (cc) **Encumbrances** means any pledges, liens, encumbrances, claims, charges, options or other security interests of any kind or other agreement or arrangement having the effect of conferring security;
- (dd) **Environmental Laws** has the meaning ascribed to that term in Section 10.1(b);
- (ee) **Environmental Liabilities** has the meaning ascribed to that term in Section 10.1(c);
- (ff) **Excluded Contract** means all contracts which are not Assumed Contracts and all Unassignable Contracts;

- (gg) **Final Order** means an order of the Court that has not been vacated, stayed, set aside, amended, reversed, annulled or modified, as to which no appeal or application for leave to appeal therefrom has been filed and the applicable appeal period with respect thereto shall have expired without the filing of any appeal or application for leave to appeal, or if any appeal(s) or application(s) for leave to appeal therefrom have been filed, any (and all) such appeal(s) or application(s) have been dismissed, quashed, determined, withdrawn or disposed of with no further right of appeal and all opportunities for rehearing, re-argument, petition for certiorari and appeal being exhausted or having expired without any appeal, motion or petition having been filed and remaining pending, any requests for rehearing have been denied, and no order having been entered and remaining pending staying, enjoining, setting aside, annulling, reversing, remanding, or superseding the same, and all conditions to effectiveness prescribed therein or otherwise by Applicable Law or order having been satisfied;
- (hh) **Governmental Authority** means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, tribunal, commission, bureau, board, court (including the Court) or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government, having jurisdiction over a Party, the Property or the Transaction;
- (ii) **GST** means taxes, interest, penalties and fines imposed under Part IX of the *Excise Tax Act* (Canada) and the regulations made thereunder; and **GST Legislation** means such act and regulations collectively;
- (jj) **Lands** means those lands described in Schedule A attached hereto;
- (kk) **Lease(s)** means any lease arrangement(s) entered into by the Vendor or the Companies or any of its Affiliates with respect to the Property;
- (ll) **Legal Proceeding** means any litigation, action, suit, investigation, hearing, claim, complaint, grievance, arbitration proceeding or other proceeding and includes any appeal or review or retrial of any of the foregoing and any application for same;
- (mm) **Losses and Liabilities** means any and all assessments, charges, costs, damages, debts, expenses, fines, liabilities, losses, obligations and penalties, whether accrued or fixed, absolute or contingent, matured or un-matured or determined or determinable, including those arising under any Applicable Law, Claim by any Governmental Authority or any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority, and those arising under any contract, agreement, arrangement, commitment or undertaking and costs and expenses of any Legal Proceeding, assessment, judgment, settlement or compromise relating thereto, and all interest, fines and penalties and reasonable legal fees and expenses incurred in connection therewith (on a full indemnity basis);
- (nn) **Monitor** has the meaning ascribed to that term in the recitals hereto, in the capacity as the Court-appointed monitor of the Companies and not in its personal or corporate capacity;
- (oo) **Monitor's Certificate** means the certificate, attached to the Approval and Vesting Order, to be delivered by the Monitor to the Purchaser on Closing and thereafter filed by the Monitor with the Court;
- (pp) **Notice Period** has the meaning ascribed to that term in Section 9.2(b);

- (qq) **Offer** means this offer to purchase and any schedule attached hereto which are referred to in this offer to purchase, together with any amendment or supplement thereto;
- (rr) **Order** has the meaning ascribed to that term in the recitals hereto;
- (ss) **Parties** means, collectively, the Purchaser and the Vendor, and **Party** means any one of them;
- (tt) **Permitted Encumbrances** means the Encumbrances set forth in Schedule B attached hereto;
- (uu) **Person** means any individual, corporation, limited or unlimited liability company, joint venture, partnership (limited or general), trust, trustee, executory, Governmental Authority, or other entity however designated or instituted;
- (vv) **Property** means the Lands and the Vendor's Interest in: (i) all buildings, erections, structures, systems, fixtures, and other improvements to and located on the Lands; (ii) the Assumed Contracts; and (iii) the Chattels;
- (ww) **Purchase Price** has the meaning ascribed to that term in Section 3.1;
- (xx) **Purchaser** has the meaning ascribed to that term in the recitals hereto;
- (yy) **Purchaser's Solicitors** means the law firm of _____;
- (zz) **Remediation and Reclamation Obligations** has the meaning ascribed to that term in Section 10.1(d);
- (aaa) **Representative** means, in respect of a Person, each director, officer, employee, agent, legal counsel, accountant, consultant, contractor, professional advisor and other representative of such Person and its Affiliates, and with respect to the Vendor, includes the Monitor;
- (bbb) **Statement of Adjustments** has the meaning ascribed to that term in Section 4.1;
- (ccc) **Tax** means all taxes, assessments, charges, dues, duties, rates, fees, imposts, levies and similar charges of any kind lawfully levied, assessed or imposed by any Governmental Authority under any applicable federal, provincial, territorial, municipal and local, foreign, or other statutes, ordinances or regulations imposing a tax, including income, capital, capital gains, goods and services, sales, use, consumption, excise, value added (including GST), business, real property, personal property, transfer, franchise, withholding, payroll, or employer health taxes, Canada Pension Plan contributions, employment insurance premiums, and provincial workers' compensation payments, levy, assessment, whether computed on a separate, combined, unitary, or consolidated basis or any other manner, including any interest, penalties and fines associated therewith;
- (ddd) **Tax Return** shall mean any report, return, information statement, schedule, attachment, payee statement or other information required to be provided to any Governmental Authority with respect to Taxes and any amendment thereof;
- (eee) **Tenants** means all Persons having a right to occupy space in the Property pursuant to a Lease; and **Tenant** means any one of the Tenants;
- (fff) **Third Party** means any Person who is not a Party;

- (ggg) **Third Party Claim** means any Claim by a Third Party asserted against the Vendor for which the Purchaser has indemnified the Vendor or is otherwise responsible pursuant to this Agreement;
- (hhh) **Transaction** means the transaction for the purchase and sale of the Property as contemplated in this Agreement;
- (iii) **Transfer Taxes** means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Property, including GST;
- (jjj) **Unassignable Contracts** has the meaning ascribed to that term in Section 2.4;
- (kkk) **Vendor** has the meaning ascribed to that term in the recitals hereto;
- (lll) **Vendor's Interest** means, when used in relation to any asset, undertaking or property, all the right, title and interest, if any, of each of the Companies in and to such asset, undertaking or property; and
- (mmm) **Vendor's Solicitors** means the law firm of Norton Rose Fulbright Canada LLP.

1.2 Interpretation

The following rules of construction shall apply to this Agreement unless the context otherwise requires.

- (a) All references to monetary amounts, unless indicated to the contrary, are to the lawful currency of Canada.
- (b) Words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine and neuter genders.
- (c) The word **include** and **including** and derivatives thereof shall be read as if followed by the phrase **without limitation**.
- (d) The words **hereto**, **herein**, **hereof**, **hereby**, **hereunder** and similar expressions refer to this Agreement and not to any particular provision of this Agreement.
- (e) The headings contained in this Agreement are for convenience of reference only, and shall not affect the meaning or interpretation hereof.
- (f) Reference to any Article, Section or Schedule means an Article, Section or Schedule of this Agreement unless otherwise specified.
- (g) If any provision of a Schedule hereto conflicts with or is at variance with any provision in the body of this Agreement, the provisions in the body of this Agreement shall prevail to the extent of the conflict.
- (h) All documents executed and delivered pursuant to the provisions of this Agreement are subordinate to the provisions hereof and the provisions hereof shall govern and prevail in the event of a conflict.

- (i) This Agreement has been negotiated by each Party with the benefit of legal representation, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party does not apply to the construction or interpretation of this Agreement.
- (j) Reference to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof.
- (k) References to an Applicable Law means such Applicable Law as amended from time to time and includes any successor Applicable Law thereto and any regulations promulgated thereunder.
- (l) Where anything is required to be done under this Agreement on a day which is not a Business Day, then the date for such thing to be done shall be deemed to be done or performed on the next Business Day. All reference to time in this Agreement will be in Alberta time unless indicated otherwise.

1.3 Schedules

The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

| | |
|------------|------------------------------|
| Schedule A | Lands |
| Schedule B | Permitted Encumbrances |
| Schedule C | Allocation of Purchase Price |

1.4 Interpretation if Closing Does Not Occur

If Closing does not occur, each provision of this Agreement which presumes that the Purchaser has acquired the Property shall be construed as having been contingent upon Closing having occurred.

ARTICLE 2 PURCHASE AND SALE

2.1 Agreement of Purchase and Sale

The Purchaser hereby offers to purchase from the Vendor all of the Vendor's Interest in and to the Property, in each case free and clear of all Encumbrances (other than Permitted Encumbrances) subject to the terms and conditions of this Agreement, and in consideration of the Purchase Price and the assumption of the Assumed Liabilities.

2.2 Acceptance

The execution of this Offer (the **Acceptance Date**) by the Vendor will convert this Offer into a binding agreement (this **Agreement**) for the purchase and sale of the Vendor's Interest in and to the Property.

2.3 Transfer of Property and Assumption of Liabilities

Provided that Closing occurs and subject to the terms and conditions of this Agreement, possession, risk, and legal and beneficial ownership of the Property shall transfer from the Vendor

to the Purchaser on the Closing Date, and the Purchaser agrees to assume, discharge, perform and fulfil all obligations and liabilities, known or unknown, of the Vendor with respect to the Property (including the Assumed Liabilities), from and after the Closing Date.

2.4 Unassignable Contracts

In the event that there are any Assumed Contracts which are not assignable by the Vendor to the Purchaser in whole or in part without the consent, approval or waiver of any party or parties to them, and if any such consents, approvals or waivers with respect thereto have not yet been obtained as of the Closing Date (any such Assumed Contracts, collectively, the **Unassignable Contracts**), then each such Unassignable Contract, in the Vendor's sole discretion, shall be deemed an Excluded Contract under this Agreement, without any adjustment of any kind whatsoever to the Purchase Price.

2.5 Assumed Liabilities and Assumed Obligations

Following Closing, the Purchaser shall assume, perform, discharge and pay when due all of the Assumed Liabilities, including the obligations and liabilities of the Vendor related to the development of the Property arising pursuant to the Assumed Contracts (collectively, the **Assumed Obligations**). For greater certainty, the Purchaser acknowledges and agrees that the Assumed Obligations and the Assumed Environmental Liabilities are inextricably linked to the Property.

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price

The consideration payable by the Purchaser for the Property shall be the sum of _____ **DOLLARS** (\$_____) (the **Purchase Price**) and the assumption of the Assumed Liabilities. The Purchase Price shall be satisfied in accordance with Section 3.3, and subject to adjustment only as set forth in Article 4.

3.2 Deposit

- (a) The sum of \$_____ (being ten (10%) percent of the Purchase Price) shall be paid by wire transfer to the Vendor's Solicitors by the Purchaser upon execution of this Offer by the Purchaser (the **Deposit**).
- (b) If Closing occurs in accordance with the terms and conditions of this Agreement, the Deposit shall be credited against the Purchase Price, in partial satisfaction of the Purchaser's obligation to pay the Purchase Price at Closing.
- (c) If the Vendor does not accept this Offer, then the Deposit shall be returned to the Purchaser without interest or deduction, within five (5) Business Days.
- (d) If this Agreement is terminated:
 - (i) (A) pursuant to Section 14.1(a) by mutual agreement of the Parties, or (B) pursuant to Sections 14.1(b) by the Purchaser, then the Deposit, without interest, shall be returned to the Purchaser, within five (5) Business Days of such termination; or
 - (ii) (A) pursuant to Section 14.1(c) by the Vendor or (B) for any other reason, the full amount of the Deposit shall be forfeited to the Vendor, and, subject to Section 14.2, each Party shall be released from all obligations and liabilities under or in connection with this Agreement. In the event of termination of this Agreement

under this Section 3.2(d)(ii) pursuant to which the Vendor shall be entitled to retain the Deposit, the Parties agree that the amount of the Deposit constitutes a genuine pre-estimate of liquidated damages representing the Vendor's Losses and Liabilities as a result of Closing not occurring, without prejudice to any other rights or remedies that the Vendor may have against the Purchaser pursuant to this Agreement, in law or in equity. The Purchaser hereby waives any claim or defence that the amount of the Deposit is a penalty or is otherwise not a genuine pre-estimate of the Vendor's damages.

3.3 Satisfaction of the Purchase Price

At Closing, the Purchase Price shall be paid and satisfied as follows:

- (a) as to the amount of the Deposit, by crediting and set-off of the Deposit against the amount of the Purchase Price by an amount equal to the Deposit; and
- (b) as to the balance of the Purchase Price (as adjusted pursuant to Article 4, the **Closing Cash Payment**), the Purchaser shall pay to the Vendor or the Vendor's Solicitors (in trust for and on behalf of the Vendor) such amount by wire transfer.

3.4 Allocation of Purchase Price

The Purchase Price shall be allocated in the manner provided in Schedule C. The Purchaser shall indemnify and save harmless the Vendor from and against any and all Claims, liabilities, penalties, interest, costs and legal and other expenses incurred, directly or indirectly, in connection with the filing of its Tax Returns and making any inconsistent statements or taking any inconsistent positions on any Tax Returns with respect to such allocation.

ARTICLE 4 ADJUSTMENTS

4.1 Statement of Adjustments

The Vendor shall prepare and deliver to the Purchaser at least three (3) Business Days prior to Closing a statement setting forth the Vendor's calculation of the adjustments to the Purchase Price contemplated by this Article 4 (the **Statement of Adjustments**). The Statement of Adjustments shall be used to calculate the Purchase Price payable at Closing, and shall be deemed final and binding for all purposes in connection with the adjustments contemplated by this Article 4.

4.2 Pro Rata Adjustments

Items of revenue and expense, including, but not limited to, Taxes, utilities, interest and rents with respect to the Lands, as would customarily be adjusted for in a similar transaction in Manitoba, shall be adjusted between the Purchaser and the Vendor as of the Closing Date, with the Purchaser paying all expenses and receiving all income related to the Property from and including the Closing Date. For clarity, to the extent that there are any outstanding municipal property taxes with respect to the Lands (inclusive of penalties and interest thereon) as at the Closing Date in respect of the period up to but not including the Closing Date, then such outstanding amount shall be a credit to the Purchaser, and the Purchaser shall be responsible to remit payment thereof to the City/Town of _____.

ARTICLE 5 TRANSFER TAXES

5.1 Transfer Taxes

The Parties agree that:

- (a) the Purchase Price does not include Transfer Taxes and the Purchaser shall be liable for and shall pay, and be solely responsible for, any and all Transfer Taxes pertaining to the Purchaser's acquisition of the Property; and
- (b) the Purchaser shall indemnify the Vendor for, from and against any Transfer Taxes (including any interest or penalties imposed by a Governmental Authority) that the Vendor is required to pay or for which the Vendor may become liable as a result of any failure by the Purchaser to pay or remit such Transfer Taxes (including GST pursuant to Section 5.2).

5.2 GST

Notwithstanding the generality of Section 5.1, the Parties agree that:

- (a) unless the Purchaser is registered under the GST Legislation, the Purchaser shall pay to the Vendor or the Vendor's Solicitors by electronic wire transfer on Closing all GST payable in respect of the Transaction in accordance with the GST Legislation and similar provincial legislation, and the Vendor shall remit such GST to the CRA when and to the extent required by the GST Legislation and similar provincial legislation; and
- (b) if the Purchaser is registered under the GST Legislation and represents and warrants to the Vendor the fact that the Purchaser is a registrant as at the Closing Date, without limiting the Purchaser's liability for Transfer Taxes in any way under Section 5.1, the Vendor or the Vendor's Solicitors shall not collect GST from the Purchaser in respect of the Transaction and the Purchaser shall self-assess and file returns and remit GST to the CRA in respect of the Transaction when and to the extent required by the GST Legislation and similar provincial legislation, and the Purchaser shall deliver on Closing a GST declaration, undertaking and indemnity to the Vendor indemnifying the Vendor in respect of any amounts, demands or claims owing or which may become owing in respect of any GST exigible on the completion of the Transaction including, without limitation, interest, penalties and legal costs on a solicitor and own client fully indemnity basis.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Vendor's Representations

The Vendor hereby represents and warrants to the Purchaser that:

- (a) it is not a non-resident of Canada within the meaning of such term under the *Income Tax Act* (Canada) and is not an agent or trustee for anyone with an interest in the Property who is a non-resident of Canada within the meaning of such term under the *Income Tax Act* (Canada);
- (b) it will have, after obtaining Court Approval, all necessary authority to execute and deliver this Agreement and all other documents and instruments contemplated herein or therein to which it is or will be party and to perform its obligations hereunder and thereunder; and

- (c) this Agreement, and each of the other agreements, documents and instruments to be executed by the Vendor on or before the Closing, have been or will be duly executed and delivered by the Vendor, and, subject to obtaining Court Approval constitute the valid and binding obligations of the Vendor.

6.2 Purchaser's Representations

The Purchaser hereby represents and warrants to the Vendor that:

- (a) it is, as applicable, a corporation duly incorporated or a limited partnership duly formed and validly subsisting under the laws of the jurisdiction of its incorporation or formation and has the requisite power and authority to enter into this Agreement and to complete the Transaction;
- (b) it has taken all necessary corporate or other acts to authorize the execution, delivery and performance of its obligations under this Agreement;
- (c) neither the execution of this Agreement nor its performance by the Purchaser will result in a breach of any term or provision or constitute a default under any indenture, mortgage, deed of trust or any other agreement to which the Purchaser is a party or by which it is bound which breach could materially affect the ability of the Purchaser to perform its obligations hereunder;
- (d) the execution, delivery and performance of this Agreement by it does not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any Governmental Authority, except where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not prevent or delay the consummation by the Purchaser of the Transaction;
- (e) this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of the Purchaser and is enforceable against the Purchaser in accordance with its terms;
- (f) the Vendor will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the Transaction because of any action taken by, or agreement or understanding reached by, the Purchaser;
- (g) on the Closing Date, the Purchaser will have met all requirements of Governmental Authorities to purchase and accept a transfer of the Property, including, without limitation, the requirements set forth in *The Farm Lands Ownership Act* (Manitoba);
- (h) the Purchaser will have the financial resources necessary to pay, as and when due from the Purchaser, the Purchase Price (including the Deposit), the Transfer Taxes, its legal fees and expenses, and any other amounts payable by the Purchaser pursuant hereto; and
- (i) the Purchaser has the financial resources necessary to post or satisfy all necessary security, deposits, letters of credit, guarantees or other financial assurances necessary to take possession of the Property and to satisfy the security required by the Assumed Contracts.

6.3 Enforcement of Representations and Warranties

- (a) The representations and warranties of the Vendor contained in this Agreement shall merge on Closing and shall thereafter be of no further force and effect.

- (b) Effective upon the occurrence of Closing, the Purchaser hereby releases and forever discharges the Vendor from any breach of any representations and warranties set forth in this Agreement. For greater certainty, none of representations and warranties contained in Section 6.1 shall survive Closing and, the Purchaser's sole recourse for any breach of representation or warranty by the Vendor shall be for the Purchaser to not complete the Transaction in accordance with this Agreement.
- (c) The representations and warranties of the Vendor made herein or pursuant hereto are made for the exclusive benefit of the Purchaser, and the representations and warranties of the Purchaser made herein or pursuant hereto are made for the exclusive benefit of the Vendor, as the case may be, and are not transferable and may not be made the subject of any right of subrogation in favour of any other Person.
- (d) The Parties expressly acknowledge and agree that the provisions of this Section 6.3 and the limit on each Party's liability set out in this Section 6.3 are intended by the Parties as a limitation of liability that represents a fair and equitable allocation of the risks and liabilities that each Party has agreed to assume in connection with the subject matter hereof and is not an agreement to shorten a limitation period within the provision of section 24 of *The Limitations Act* (Manitoba).

ARTICLE 7

"AS IS, WHERE IS" AND NO ADDITIONAL REPRESENTATIONS AND WARRANTIES

7.1 Due Diligence Acknowledgement

The Purchaser acknowledges and agrees that:

- (a) it is and was solely responsible to perform any inspections it deemed pertinent to the purchase of the Property and to be satisfied as to the condition of the Property prior to entering into this Agreement with the Vendor;
- (b) notwithstanding the fact that it was permitted to review any diligence materials and disclosures provided by the Vendor, including the Data Room Information, the Vendor assumes no liability for errors or omissions in such diligence materials and disclosure or any other property listings or advertising, promotional or publicity statements and materials, and makes no representations or warranties in respect thereof;
- (c) by entering into this Agreement with the Vendor, the Purchaser shall be deemed to represent, warrant and agree with respect to the Property that:
 - (i) the Purchaser has inspected the Property and is familiar and satisfied with the physical condition thereof and has conducted such investigation of the Property as the Purchaser has determined appropriate;
 - (ii) none of the Vendor, its Affiliates or their respective Representatives have made any oral or written representation, warranty, promise or guarantee whatsoever to the Purchaser, expressed or implied, and in particular, that no such representations, warranties, guarantees, or promises have been made with respect to the physical condition, operation, or any other matter or thing affecting or related to the Property and/or the offering or sale of the Property;
 - (iii) the Purchaser has not relied upon any representation, warranty, guarantee or promise or upon any statement made or any information provided concerning the Property, whether oral or written, express or implied (by operation of law or

otherwise), including the Data Room Information made available to the Purchaser by the Vendor, its Affiliates or their respective Representatives;

- (iv) the Purchaser has entered into this Agreement after having relied solely on its own independent investigation, inspection, analysis, appraisal and evaluation of the Property and the facts and circumstances related thereto;
- (v) any information provided or to be provided by or on behalf of the Vendor with respect to the Property, including all Data Room Information, was obtained from information provided to the Vendor and the Vendor has not made any independent investigation or verification of such information, and makes no representations as to the accuracy or completeness of such information;
- (vi) without limiting the generality of the foregoing, the Vendor was not under any obligation to disclose to the Purchaser, and shall have no liability for its failure to disclose to the Purchaser, any information known to it relating to the Property except as may be required by any Applicable Law; and
- (vii) none of the Vendor, its Affiliates or their respective Representatives are liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property, or the operation thereof, made or furnished by any real estate broker, agent, employee, representative or other Person.

7.2 "As Is, Where Is", No Additional Representations

- (a) Without limiting any other provision of this Agreement, the Purchaser acknowledges and agrees that it is acquiring the Property on an "as is, where is" and "without recourse" basis with all defects, both patent and latent, and with all faults, whether known or unknown, presently existing or that may hereafter arise. The Purchaser acknowledges and agrees that the Vendor, its Affiliates and their respective Representatives have not made, do not make and specifically negate and disclaim any representation, warranty, promise, covenant, agreement or guaranty of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Property. The Vendor makes no representation as to any defaults under the Leases and Assumed Contracts. For greater certainty, but without limitation, except as expressly set forth in this Agreement, none of the Vendor, its Affiliates or their respective Representatives make any condition, representation or warranty whatsoever, express or implied, with respect to:
 - (i) the value, nature, quality or condition of the Property, including, without limitation, the water, soil and geology;
 - (ii) the income to be derived from the Property, if any;
 - (iii) the suitability of the Property for any and all purposes, activities and uses which the Purchaser may desire to conduct thereon;
 - (iv) the compliance of or by the Property or its operation with any Applicable Law (including Environmental Laws);
 - (v) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property;
 - (vi) the validity or enforceability of the Leases, the Assumed Contracts or the ability to assign any Unassignable Contracts;

- (vii) any regulatory approvals, permits and licenses, consents or authorizations that may be needed to complete the purchase of the Property contemplated by this Agreement;
 - (viii) the manner or quality of the construction or materials, if any, incorporated into the Property;
 - (ix) the manner, quality, state of repair or lack of repair of the Property;
 - (x) the existence of any view from the Property or that any existing view will not be obstructed in the future;
 - (xi) the conformity of any plans or specifications for the Property that may be provided to the Purchaser;
 - (xii) the conformity of the Property to applicable zoning by-law or building code requirements and whether the Property complies with any existing land use or zoning by-laws or regulations, or municipal development agreements or plans;
 - (xiii) the existence of soil instability, past soil repairs, susceptibility to landslides, sufficiency of under-shoring, sufficiency of drainage, or any other matter affecting the stability or integrity of the Property or any buildings or improvements situated thereon;
 - (xiv) whether the Property is located in a seismic hazards zone or a flood hazard zone;
 - (xv) the presence of termites or other pests and any damage to the Property and/or its improvements that may have occurred as a result;
 - (xvi) the condition of any improvements included in this Agreement;
 - (xvii) the size and dimensions of the Property, including the aggregate net developable acres;
 - (xviii) the nature and quantum of the Assumed Liabilities; and
 - (xix) any other matter with respect to the Property.
- (b) The Purchaser acknowledges that the release and disclaimer described in this Article 7 is intended to be very broad and the Purchaser expressly waives and relinquishes any rights or benefits it may have under any Applicable Law designed to invalidate releases of unknown or unsuspected claims.
- (c) Except for its express rights under this Agreement, the Purchaser hereby waives all rights and remedies (whether now existing or hereinafter arising and including all common law, tort, contractual and statutory rights and remedies) against the Vendor, its Affiliates and their respective Representatives in respect of the Property and any representations or statements made or information or data furnished to the Purchaser or its Representatives in connection herewith (whether made or furnished orally or by electronic, faxed, written or other means). Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties contained in *The Sale of Goods Act* (Manitoba) (or similar applicable statutes, all as may be amended, repealed or replaced), warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and claims of every kind and type, including claims regarding defects, whether or not discoverable or latent, product liability claims, or similar

claims, and all other claims that may be later created or conceived in strict liability or as strict liability type claims and rights.

ARTICLE 8 RISK, INSURANCE AND EXPROPRIATION

8.1 Risk

The Property will be at the sole risk and responsibility of the Vendor until the Closing Date, and thereafter at the sole risk and responsibility of the Purchaser.

8.2 Insurance

Any property, liability and other insurance maintained by the Vendor shall not be transferred at Closing, but shall remain the responsibility of the Vendor until the Closing Date. The Purchaser shall be responsible for placing its own property, liability and other insurance coverage with respect to the Property in respect of the period from and after 12:01 a.m. on the Closing Date.

8.3 Expropriation

If before the Closing Date:

- (a) all or substantially all of the Property is expropriated or seized by any Governmental Authority or any other Person in accordance with Applicable Law or if notice of any such expropriation or seizure shall have been given in accordance with Applicable Law, the Purchaser, in its discretion, acting reasonably, shall have the option, exercisable by notice to the Vendor given prior to the Closing Date to either: (i) complete the Transaction; or (ii) terminate this Agreement as provided in Section 14.1(b); or
- (b) if less than all or substantially all of the Property is expropriated or seized by any Governmental Authority or any other Person in accordance with Applicable Law or if notice of any such expropriation or seizure shall have been given in accordance with Applicable Law, the Purchaser shall be required to complete the Transaction, without any reduction or adjustment to the Purchase Price.

ARTICLE 9 INDEMNIFICATION

9.1 Indemnification Given by Purchaser

If Closing occurs, the Purchaser shall:

- (a) be liable to the Vendor, its Affiliates and their respective Representatives for; and
- (b) as a separate covenant, indemnify and save harmless the Vendor, its Affiliates and their respective Representatives from and against,

all Losses and Liabilities suffered, sustained, paid or incurred by the Vendor, its Affiliates or their respective Representatives related to or in connection with the Property and the Assumed Liabilities, whether arising or accruing before, on or after the Closing Date; including: (i) all Losses and Liabilities attributable to the ownership, operation, use, construction or maintenance of the Property following the Closing Date; (ii) all Losses and Liabilities related to any Assumed Contracts or Leases; and (iii) any other Losses and Liabilities for which the Purchaser has agreed to indemnify the Vendor pursuant to this Agreement.

9.2 Third Party Claims

- (a) If the Vendor receives written notice of the commencement or assertion of any Third Party Claim for which the Purchaser is liable (or has otherwise agreed to indemnify the Vendor, its Affiliates or their respective Representatives against) pursuant to this Agreement, the Vendor shall give the Purchaser reasonably prompt notice thereof, but in any event no later than ten (10) days after receipt of such notice of such Third Party Claim. Such notice to the Purchaser shall describe the Third Party Claim in reasonable detail and shall indicate, if reasonably practicable, the estimated amount (or the method of computation of the amount) of the Losses and Liabilities that has been or may be sustained by the Vendor, and a reference to the provisions of this Agreement upon which such claim is based.
- (b) The Purchaser may participate in the defence of any Third Party Claim by giving notice to that effect to the Vendor not later than ten (10) days after receiving notice of that Third Party Claim (the **Notice Period**) so long as: (i) the Purchaser first acknowledges to the Vendor, in writing, liability to the Vendor under this Agreement with respect to such Third Party Claim and that the outcome of such Third Party Claim does not alter or diminish the Purchaser's obligation to indemnify the Vendor pursuant to this Agreement, subject to the Purchaser's right to contest in good faith the Third Party Claim; (ii) the Purchaser has the financial resources to defend against the Third Party Claim and fulfill any indemnification obligations and has provided the Vendor with evidence thereof; (iii) the Third Party Claim involves monetary damages; and (iv) the Purchaser participates in the defence of the Third Party Claim actively and diligently. The Purchaser's right to do so shall be subject to the rights of any insurer or other third party who has potential liability in respect of that Third Party Claim. The Purchaser shall pay all of its own expenses of participating in or assuming such defence. In the event that the Purchaser elects to participate in the defence of a Third Party Claim pursuant to this Section 9.2(b), then the Vendor shall cooperate in good faith in the defence of each Third Party Claim and may participate in such defence assisted by counsel of its own choice at its own expense.
- (c) If the Vendor has not received notice within the Notice Period that the Purchaser has elected to participate in the defence of such Third Party Claim in accordance with Section 9.2(b), or if the Purchaser has given such notice but thereafter fails or is unable to participate in the defence of such Third Party Claim actively and diligently, the Vendor may, at its option, elect to settle or compromise the Third Party Claim on terms of its choosing, or assume such defence assisted by counsel of its own choosing, and the Purchaser shall be liable for all reasonable costs and expenses paid or incurred in connection therewith and any Losses and Liabilities suffered or incurred by the Vendor with respect to such Third Party Claim.

9.3 Failure to Give Timely Notice

Notwithstanding that time is of the essence, a failure to give timely notice as provided in this Article 9 shall not affect the rights or obligations of any Party except and only to the extent that, as a result of such failure, any Party which was entitled to receive such notice was deprived of its right to recover any payment under any applicable insurance coverage or was otherwise prejudiced as a result of such failure.

9.4 No Merger

There shall not be any merger of any liability or indemnity hereunder in any assignment, conveyance, transfer or document delivered pursuant hereto notwithstanding any rule of law, equity or statute to the contrary and all such rules are hereby waived.

ARTICLE 10 ENVIRONMENTAL MATTERS

10.1 Defined Terms

For the purpose of this Agreement:

- (a) **Assumed Environmental Liabilities** means all Environmental Liabilities arising or accruing before, on or after the Closing Date and related to or in connection with the Property;
- (b) **Environmental Laws** means all statutes, regulations, ordinances, by-laws, and codes, now or hereafter in existence in Canada (whether federal, provincial or municipal) relating to the protection and preservation of the environment, occupational health and safety, transportation of dangerous goods or hazardous substances, including, without limitation, *The Contaminated Sites Remediation Act* (Manitoba), *The Environment Act* (Manitoba), *The Dangerous Goods Transportation and Handling Act* (Manitoba), *The Water Rights Act* (Manitoba), *The Water Protection Act* (Manitoba), and *The Wildlife Protection Act* (Manitoba) as each may be amended, replaced, or restated from time to time;
- (c) **Environmental Liabilities** means all claims, Losses and Liabilities, damages or expenses (whether accrued, actual, contingent, latent or otherwise), whenever arising, which relate to the Property, or arise from or in connection with past, present or future operations in respect thereof or which relate to or are associated with the environment, including, without limitation, Losses and Liabilities related to or arising from:
 - (i) the non-compliance with, the breach of or any liability under the applicable Environmental Laws;
 - (ii) presence, transportation, storage, use or disposal of toxic or hazardous substances;
 - (iii) release, spill, escape, emission, leak, discharge, migration or dispersal of toxic or hazardous substances;
 - (iv) removal, assessment, monitoring, sampling, response, abatement, clean-up, investigation, reporting of pollution or contamination of, or damage or other adverse effects to the environment; and
 - (v) Remediation and Reclamation Obligations,including, without limitation, liabilities to compensate Third Parties for damages and Losses and Liabilities resulting from the items described in items (i) through (v) above and, for purposes of this Agreement, "the environment" includes, without limitation, the air, the surface and subsurface of the earth, bodies of water (including, without limitation, rivers, streams, lakes, aquifers, groundwater) and plant and animal life (including humans); and
- (d) **Remediation and Reclamation Obligations** means all obligations to dismantle, decommission, abandon, remediate, restore and reclaim the surface or subsurface of lands associated with the Property, all as may be required in accordance with all applicable Environmental Laws.

10.2 Assumption of Environmental Liabilities

The Purchaser acknowledges that insofar as the environmental condition of the Property is concerned, and without limiting the generality of Section 7.2, it will acquire the Property on an "as is, where is" and "without recourse" basis. The Purchaser acknowledges that it has had the opportunity to inspect and assess the environmental condition of the Property and that it is not relying upon any representation or warranty of the Vendor, its Affiliates or their respective Representatives as to the environmental condition of the Property, Environmental Liabilities or Remediation and Reclamation Obligations. The Purchaser further agrees that, it shall be solely liable and responsible for any and all Losses and Liabilities which the Vendor, its Affiliates or their respective Representatives may suffer, sustain, pay or incur, as a result of any matter or thing arising out of, resulting from, attributable to or connected with any Assumed Environmental Liabilities. Once Closing has occurred and without limiting the foregoing, the Purchaser shall be solely responsible for all Assumed Environmental Liabilities, hereby releases the Vendor from any claims the Purchaser may have against the Vendor with respect to all such Assumed Environmental Liabilities, and acknowledges its indemnification obligations described in Article 9.

ARTICLE 11 COVENANTS

11.1 Court Approval

- (a) The Vendor shall prepare all materials, and shall as soon as reasonably practicable after the Acceptance Date: (i) bring an application for the issuance of the Approval and Vesting Order in the Court; and (ii) serve such parties as the CCAA Proceedings, the Court and the Purchaser, acting reasonably, may require for applications and motions seeking the entry of the Approval and Vesting Order. The Purchaser, at its own expense, shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably request to obtain the Approval and Vesting Order, including such information as may be required to reasonably evaluate the Purchaser's financial ability to perform its obligations hereunder. The application for the Approval and Vesting Order may be adjourned or rescheduled by the Vendor or their Representatives upon notice to the Purchaser.
- (b) In the event an appeal is taken, or a stay pending appeal is requested, from the Court Orders, the Vendor shall promptly notify the Purchaser of such appeal or stay request and shall provide to the Purchaser a copy of the related notice of appeal or order of stay. The Vendor shall also provide the Purchaser with notice of any motion or application filed in connection with any appeal from either of such orders.

11.2 Court Filings

- (a) From and after the Acceptance Date and until the Closing Date, the Vendor shall use commercially reasonable efforts to deliver to the Purchaser copies of all pleadings, motions, notices, statements, schedules, applications, reports and other papers that relate, in whole or in part, to this Agreement, or to the Purchaser or its Representatives, that are to be filed by the Vendor in connection with the Court Approval in advance of their filing, before the filing of such papers, and shall provide the Purchaser with a reasonable opportunity to review and comment thereon.
- (b) The Vendor shall act reasonably in considering any comments provided by the Purchaser to such papers; provided, however that, the Vendor shall have no obligation to accept and incorporate the Purchaser's comments to such papers and neither the Vendor's inadvertent failure to comply with this Section 11.2, nor the Vendor's failure to comply with this Section 11.2 due to emergency circumstances, shall constitute a breach under this Agreement.

11.3 Leases

- (a) Subject to section 11.3(b), the Purchaser acknowledges that it is purchasing the Property subject to any Leases provided the assignment of such Lease has been approved by the Court on or before the Court Approval Date (herein referred to as the **Approved Lease(s)**), each of which shall be a Permitted Encumbrance, and which shall constitute an Assumed Contract, and in accordance with such acknowledgement, the Purchaser agrees that it is purchasing the Lands subject to the rights of any Tenant pursuant to an Approved Lease.
- (b) For greater clarity, nothing in this Agreement shall be construed as an assignment of, or an attempt to assign to the Purchaser any Lease without the prior approval of the Court. The Vendor shall, at its sole cost and expense, apply for and use commercially reasonable efforts to obtain approval of the Court to the assignment of the Leases on or before the Court Approval Date. In the event any such consent is not obtained as of the Court Approval Date, then each such Lease shall be deemed an Excluded Contract under this Agreement, without any adjustment of any kind to the Purchase Price. The failure to obtain the consent of the Court to the assignment of any Lease shall not be a breach of this Agreement by the Vendor and shall not entitle the Purchaser to terminate this Agreement or to any other right or remedy whatsoever. This Section 11.3(b) shall survive Closing.

11.4 Possession

The Purchaser will have vacant possession of the Property on the Closing Date, free from all Encumbrances, except for the Permitted Encumbrances. The Vendor shall deliver to the Purchaser on the Closing Date any keys, combinations, codes and other similar such items and information relating to the Property, if any.

11.5 Purchaser's Title Insurance

The Purchaser shall obtain title insurance coverage with a reputable title insurance provider in order to allow for the unconditional release of the Purchase Price on the Closing Date notwithstanding that the Approval and Vesting Order may not be registered against title to the Lands as at such date. The Vendor shall use commercially reasonable efforts to assist the Purchaser in obtaining such title insurance coverage. The cost of obtaining any title insurance in connection with the purchase of the Property shall be for the sole cost of the Purchaser.

ARTICLE 12 CONDITIONS

12.1 Court Approval Condition

The respective obligations of the Parties to complete the purchase and sale of the Property are subject to the condition that on or before the Court Approval Date, the Vendor shall have obtained the Approval and Vesting Order and the Approval and Vesting Order shall be a Final Order and shall be in registerable form for all jurisdictions in which the Property is located. The Vendor may, in its sole discretion, extend the Court Approval Date one (1) or more times up to a total of thirty (30) Business Days by providing notice thereof to the Purchaser and the Closing Date shall be extended by the same period, provided that in no event shall the Vendor have any liability to the Purchaser in connection with any extension of any such dates.

12.2 Mutual Conditions

The respective obligations of the Parties to complete the purchase and sale of the Property are subject to the following conditions being fulfilled or performed as at or prior to the Closing Date:

- (a) no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable order or Applicable Law which has the effect of: (i) making any of the transactions contemplated by this Agreement illegal; or (ii) otherwise prohibiting, preventing or restraining the Vendor from the sale of the Property; and
- (b) the Closing is not otherwise prohibited by Applicable Law.

The foregoing conditions are for the mutual benefit of the Vendor and the Purchaser and may be asserted by the Vendor or the Purchaser regardless of the circumstances and may be waived only with the agreement of both the Vendor and the Purchaser.

12.3 Conditions for the Benefit of the Purchaser

The obligation of the Purchaser to complete the purchase of the Property is subject to the following conditions being fulfilled or performed as at or prior to the Closing Date:

- (a) all representations and warranties of the Vendor contained in Section 6.1 of this Agreement shall be true and correct in all material respects as at the Closing Date with the same force and effect as if made at and as of such time, and the Vendor shall have delivered to the Purchaser a certificate to that effect;
- (b) the Vendor shall have complied with and performed, in all material respects, all of its covenants and obligations contained in this Agreement; and
- (c) the Vendor shall have executed and delivered or caused to have been executed and delivered to the Purchaser at or before the Closing all the documents contemplated in Section 13.2.

The foregoing conditions are for the exclusive benefit of the Purchaser and may be waived by it in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the Purchaser may have.

12.4 Conditions for the Benefit of the Vendor

The obligation of the Vendor to complete the sale of the Property is subject to the following conditions being fulfilled or performed as at or prior to the Closing Date:

- (a) all representations and warranties of the Purchaser contained in Section 6.2 of this Agreement shall be true and correct in all material respects as at the Closing Date with the same force and effect as if made at and as of such time, and the Purchaser shall have delivered to the Vendor a certificate to that effect;
- (b) the Purchaser shall have complied with and performed in all material respects all of its covenants and obligations contained in this Agreement;
- (c) the Purchaser shall have executed and delivered or caused to have been executed and delivered to the Vendor at or before the Closing all the documents contemplated in Section 13.3; and
- (d) the Vendor has not lost its ability to convey the Property due to an order of the Court or otherwise pursuant to the CCAA Proceedings, provided such order or other action pursuant to the CCAA Proceedings or is not at the voluntary initiative of the Vendor.

The foregoing conditions are for the exclusive benefit of the Vendor and may be waived by it in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the Vendor may have.

12.5 Satisfaction of Conditions

Each of the Parties shall proceed diligently and in good faith and use all commercially reasonable efforts to fulfill and assist in the fulfillment of the conditions set forth in Sections 12.1, 12.2, 12.3 and 12.4. In addition, each of the Parties agrees not to take any action that could reasonably be expected to preclude, delay or have an adverse effect on the Transaction or would render, or may reasonably be expected to render, any representation or warranty made by it in this Agreement untrue in any material respect.

12.6 Monitor's Certificate

When the conditions to Closing set out in Sections 12.1, 12.2, 12.3 and 12.4 have been satisfied and/or waived by the each of the Vendor and the Purchaser, as applicable, the Purchaser will deliver to the Monitor written confirmation that such conditions of Closing, as applicable, have been satisfied and/or waived (the **Conditions Certificate**). Upon receipt by the Vendor of: (i) payment in full of the Purchase Price to be paid on Closing; (ii) the applicable Transfer Taxes to be paid on Closing (or evidence of payment of, or agreement to pay, all Transfer Taxes by the Purchaser to any relevant Governmental Authorities or counterparty); and (iii) the Conditions Certificate, the Monitor shall, if required by the Court Approval: (A) issue forthwith its Monitor's Certificate to the Purchaser, at which time the Closing will be deemed to have occurred; and (B) file as soon as practicable a copy of the Monitor's Certificate with the Court, if necessary (and shall provide a true copy of such filed certificate to the Purchaser).

ARTICLE 13 CLOSING

13.1 Closing Date and Place of Closing

Subject to the conditions set out in this Agreement, the Transaction shall close and be completed on the Closing Date, or at such earlier date as may be mutually agreed upon in writing between the Vendor and the Purchaser.

13.2 Deliveries on Closing by the Vendor

The Vendor shall deliver (or cause to be delivered) to the Purchaser's Solicitor on or before the Closing Date:

- (a) a Court certified copy of the Approval and Vesting Order;
- (b) a bill of sale for the Chattels;
- (c) the Assignment and Assumption Agreement duly executed by the Vendor, if applicable;
- (d) all documents listed in Section 13.3 which contemplate execution by the Vendor;
- (e) the Monitor's Certificate referred to in Article 12; and
- (f) any other documents, resolutions and certificates as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

13.3 Deliveries on Closing by the Purchaser

The Purchaser shall deliver (or cause to be delivered) to the Vendor's Solicitor on or before the Closing Date:

- (a) the Closing Cash Payment in accordance with Section 3.3(b);
- (b) a GST declaration, undertaking and indemnity executed by the Purchaser, in a form approved by the Vendor, acting reasonably;
- (c) the Assignment and Assumption Agreement duly executed by the Purchaser, if applicable;
- (d) all documents listed in Section 13.2 which contemplate execution by the Purchaser;
- (e) a copy of the Commitment to Title Insure confirming gap coverage obtained by the Purchaser;
- (f) the certificate of the Purchaser referred to in Article 12; and
- (g) any other documents, resolutions and certificates as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

ARTICLE 14 TERMINATION

14.1 Grounds for Termination

This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written agreement of the Vendor and the Purchaser, provided however that if this Agreement has been approved by the Court, any such termination shall require approval of the Court;
- (b) by written notice from the Purchaser to the Vendor in accordance with Section 8.3(a);
- (c) by the Vendor, upon written notice to the Purchaser, if there has been a material breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Vendor, and: (i) such breach is not curable and has rendered the satisfaction of any condition in Section 12.4 impossible by the Closing Date; or (ii) if such breach is curable, the Vendor has provided prior written notice of such breach to the Purchaser, and such breach has not been cured within ten (10) days (or, if not curable within ten (10) days, such longer period as is reasonable under the circumstances, not to exceed thirty (30) days) following the date upon which the Purchaser received such notice.

14.2 Effect of Termination

Notwithstanding any termination of this Agreement by the Vendor or the Purchaser as permitted under Section 14.1, the provisions of Sections 3.2 (Deposit), 11.3(b) (Leases) 15.1 (Public Announcements), 15.4 (Governing Law), 15.5 (Consequential Damages), 15.11 (Costs and Expenses) and 15.15 (Third Party Beneficiaries) shall remain in full force and effect following any such permitted termination, and the Deposit shall be governed by Section 3.2.

ARTICLE 15 GENERAL

15.1 Public Announcements

- (a) Subject to Section 15.1(b), if a Party intends to issue a press release or other public disclosure of this Agreement, the terms hereof or the Transaction, the disclosing Party shall provide the other Parties with an advance copy of any such press release or public disclosure with sufficient time to enable the other Parties to review such press release or other public disclosure and provide any comments. The disclosing Party shall not issue such press release or other public disclosure without the prior written consent of the other Parties, such consent not to be unreasonably withheld.
- (b) Notwithstanding Section 15.1(a): (i) this Agreement may be filed by the Vendor with the Court; and (ii) the Transaction may be disclosed by the Vendor to the Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. The Parties further agree that:
 - (i) the Monitor may prepare and file reports and other documents with the Court containing references to the Transaction and the terms of such Transaction; and
 - (ii) the Vendor and its professional advisors may prepare and file such reports and other documents with the Court containing references to the Transaction contemplated by this Agreement and the terms of such Transaction as may reasonably be necessary to obtain the Court Approvals and to complete the Transaction contemplated by this Agreement or to comply with their obligations to the Court.

15.2 Dissolution of Vendor

The Purchaser acknowledges and agrees that nothing in this Agreement shall operate to prohibit or diminish in any way the right of the Vendor or any of its Affiliates to dissolve, wind-up or otherwise cease operations in any manner or at any time subsequent to the Closing Date as they may determine in their sole discretion, which may be exercised without regard to the impact any such action may have on the Vendor's ability to fulfil its obligations under this Agreement that survive Closing.

15.3 Survival

Upon Closing, the obligations, covenants, representations and warranties of the Parties set out in this Agreement shall expire, be terminated and extinguished and of no further force or effect, provided that notwithstanding the Closing contemplated hereunder or the delivery of documents pursuant to this Agreement, the obligations and covenants of the Parties set out in Sections 6.3 (Enforcement of Representations and Warranties), 9.1 (Indemnification Given by Purchaser) 11.3 (Leases) and 11.4 (Possession), and Article 5 (Transfer Taxes), Article 7 ("As Is, Where Is" and No Additional Representations and Warranties), Article 9 (Indemnification), Article 10 (Environmental Matters) and Article 15 (General), shall survive Closing, shall remain in full force and effect, shall not merge as a result of Closing and shall be binding on the Purchaser indefinitely thereafter except as expressly stated to the contrary therein.

15.4 Governing Law

- (a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Manitoba and the federal laws of Canada applicable therein (excluding any conflict of law rule or principle of such laws that might refer such interpretation or

enforcement to the laws of another jurisdiction). The Parties attorn to the exclusive jurisdiction of the Manitoba's Court of King's Bench. All actions or proceedings arising out of or relating to this Agreement shall be litigated in such court and the Parties unconditionally accept the exclusive jurisdiction of the said court and waive any defense of *forum non-conveniens*.

- (b) Notwithstanding Section 15.4(a), any and all documents or orders that may be filed, made or entered in the CCAA Proceedings, and the rights and obligations of the Parties thereunder, including all matters of construction, validity and performance thereunder, shall in all respects be governed by, and interpreted, construed and determined in accordance with the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the Court, as applicable, for the resolution of any such disputes, regardless of whether such disputes arose under this Agreement. Each Party agrees that service of process on such Party as provided in Section 15.13 shall be deemed effective service of process on such Party.

15.5 Consequential Damages

Under no circumstance shall any of the Parties, their Representatives or their respective directors, officers, employees or agents be liable for any punitive, exemplary, consequential or indirect damages (including for greater certainty, any loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the Transaction.

15.6 Further Assurances

Each of the Parties from and after the date hereof shall, from time to time, and at the request and expense of the Party requesting the same, do all such further acts and things and execute and deliver such further instruments, documents, matters, papers and assurances as may be reasonably requested to complete the Transaction and for more effectually carrying out the true intent and meaning of this Agreement.

15.7 Assignment

The Purchaser shall not, without the Vendor's prior written consent, assign any right or interest in this Agreement, which consent may be withheld in the Vendor's sole and absolute discretion, except that the Purchaser shall have the right to assign any or all of its rights, interests or obligations hereunder to one or more Affiliates of the Purchaser, provided that: (a) such Affiliate agrees to be bound by the terms of this Agreement; (b) the Purchaser shall remain liable hereunder for any breach of the terms of this Agreement by such Affiliate; (c) such assignment shall not release the Purchaser from any obligation or liability hereunder in favour of the Vendor; and (d) the Purchaser shall acknowledge and confirm its continuing obligations in favour of the Vendor in an assignment and assumption agreement in form and substance satisfactory to the Vendor.

15.8 Waiver

No failure on the part of any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any right or remedy in law or in equity or by statute or otherwise conferred. No waiver by any Party of any breach (whether actual or anticipated) of any of the terms, conditions, representations or warranties contained herein shall take effect or be binding upon that Party unless the waiver is expressed in writing under the authority of that Party. Any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other or future breach.

15.9 Amendment

This Agreement shall not be varied in its terms or amended by oral agreement or by representations or otherwise other than by an instrument in writing dated subsequent to the date hereof, executed by a duly authorized representative of each Party.

15.10 Time of the Essence

Time is of the essence in this Agreement.

15.11 Costs and Expenses

Unless otherwise provided for in this Agreement, each Party shall be responsible for all costs and expenses (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisors) incurred by it in connection with this Agreement and the Transaction. Notwithstanding any other provision of this Agreement, the Purchaser shall pay the cost of all surveys, title insurance policies and title reports ordered by the Purchaser and be responsible for GST and for registration fees payable in connection with the Transaction.

15.12 Entire Agreement

This Agreement and the Confidentiality Agreement (the terms and conditions of which are incorporated by reference into this Agreement, and binding upon the Parties, as if such agreement were signed directly by the Parties) constitute the entire agreement between the Parties with respect to the subject matter hereof and cancel and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, between the Parties with respect to the subject matter hereof. There are no conditions, covenants, agreements, representations, warranties or other provisions, whether oral or written, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof other than those contained in this Agreement or in the Confidentiality Agreement.

15.13 Notices

Any notice, direction or other communication given regarding the matters contemplated by this Agreement must be in writing, sent by personal delivery, courier or electronic mail and addressed:

(a) in the case of the Vendor:

Ernst & Young Inc.
Calgary City Centre
2200, 215 - 2nd Street SW
Calgary, Alberta T2P 1M4

Attention: Neil Narfason / Christopher Keliher
Telephone: 403-206-5067 / 403-206-5661
Fax: 403-206-5075
Email: neil.narfason@parthenon.ey.com
christopher.keliher@parthenon.ey.com

with a copy to the Vendor's Solicitors:

Norton Rose Fulbright Canada LLP
3700, 400 – 3rd Avenue SW
Calgary, AB T2P 4H2

Attention: Howard Gorman
Email: howard.gorman@nortonrosefulbright.com

(b) In the case of the Purchaser:

[●]

Attention: [●]
Email: [●]

with a copy to the Purchaser's Solicitors:

[●]

Attention: [●]
Email: [●]

A notice is deemed to be given and received if: (i) sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day; or (ii) email, on the date of transmission if it is a Business Day and the transmission was made prior to 4:00 p.m. (local time in place of receipt), and otherwise on the next Business Day. A Party may change its address for service from time to time by providing a notice in accordance with the foregoing. Any subsequent notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a notice will be assumed not to be changed. **Sending a copy of a notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice to that Party. The failure to send a copy of a notice to legal counsel does not invalidate delivery of that notice to a Party.**

15.14 Enurement

The terms of this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

15.15 Third Party Beneficiaries

Except as otherwise provided for in Article 9 (Indemnification), each Party intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties and their successors and permitted assigns, and, except for the Representatives indemnified by the Purchaser pursuant to Article 9 (Indemnification), no Person, other than the Parties and their successors and permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum. Despite the foregoing, the Purchaser acknowledges to each of the Vendor's Representatives its direct rights against them under Article 9 (Indemnification) of this Agreement. To the extent required by Applicable Law to give full effect to these direct rights, the Purchaser agrees and acknowledges that the Vendor is acting as agent and/or as trustee of its Representatives.

15.16 Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision validity or enforceability in any other jurisdiction.

15.17 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or other electronic means of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

[the signature page is next]

The Purchaser agrees that its offer created by its execution of this Offer and delivery to the Vendor shall be irrevocable by the Purchaser until 4:00 p.m. on the forty-fifth (45th) day after the date of execution of this Offer by the Purchaser, after which time, if not accepted in the manner hereinafter set forth, this Offer shall be null and void and the Deposit shall be returned in accordance with Section 3.2.

IN WITNESS WHEREOF, the Purchaser has executed this Offer by the hands of its authorized officer in that behalf as of _____ day of _____, 20__.

[PURCHASER]

WITNESS (if Purchaser is an individual)

Name:

Per: _____

Name: _____

Title: _____

Name:

Per: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Vendor accepts this Offer this ____ day of _____, 20__.

ERNST & YOUNG INC. in its capacity as Court appointed Monitor in respect of North American Lamb Company Ltd., Canada Sheep and Lamb Farms Ltd., Canada Sheep Holdings Ltd., Lamb Club Marketing Limited., Canada Lamb Growers Ltd., Canada Lamb Processors Ltd., and Canine Fare Ltd., and not in its personal or corporate capacity

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

SCHEDULE A
Lands

SCHEDULE B
Permitted Encumbrances

1. The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown, including, without limitation, the reservation of any mines and minerals in the Crown or in any other person and any implied conditions set out in s.58(1) of *The Real Property Act* (Manitoba) as amended, replaced or restated from time to time.
2. All exceptions to title identified in s.58(1) of *The Real Property Act* (Manitoba) as amended, replaced or restated from time to time.
3. Encumbrances given as security to a public utility or any Governmental Authority when required in the ordinary course of business but only insofar as they relate to any obligations or amounts not due as at the Closing Date.
4. All rights reserved to or vested in any Governmental Authority pursuant to Applicable Law to control or regulate the Property in any manner, including any unregistered, undetermined or inchoate liens, levies or claims in favour of the Crown, any province or municipality or any Governmental Authority.
5. Rights of expropriation, access or use or any similar right conferred or reserved by or in any statute of Manitoba or Canada.
6. Applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements, servicing or industrial agreements, utility agreements, airport zoning regulations, cost sharing reciprocal agreements and building and other zoning restrictions and other similar agreements with Governmental Authorities or private or public utilities affecting the development or use of the Property.
7. Any easements, servitudes, rights-of-way, licenses, agreements, restrictions that run with the land and other Encumbrances (including easements, rights-of-way and agreements for railways, sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables).
8. Encumbrances respecting minor encroachments by the Property over neighbouring lands and/or permitted under agreements with the owners of such other lands and minor encroachments over the Property by improvements of abutting land owners.
9. Any privilege in favour of any lessor, licensor or permitter for rent to become due or for other obligations or acts, the performance of which is required under contracts of the Vendor so long as the payment or the performance of such other obligation or act is not delinquent and provided that such Encumbrances or privileges do not materially affect the use or the operation of the assets affected thereby.
10. Encumbrances which will be vested out or otherwise discharged at Closing pursuant to the Approval and Vesting Order.
11. Any Approved Leases and any caveats or notices registered in respect thereof.

SCHEDULE C
Allocation of Purchase Price

The Purchase Price shall be allocated as follows:

Lands: \$ _____

Building: \$ _____

Chattels: \$ _____