

ARRANGEMENT AGREEMENT

THIS ARRANGEMENT AGREEMENT is made as of the 11th day of July, 2006.

AMONG:

NAV ENERGY TRUST, a trust formed under the laws of the Province of Alberta (the “**Trust**”)

- and -

NAVIGO ENERGY INC., a corporation incorporated under the laws of the Province of Alberta (“**Navigo**”)

- and

CLEAR ENERGY INC., a corporation amalgamated under the laws of the Province of Alberta (“**Clear**”)

- and -

SURE ENERGY INC., a corporation incorporated under the laws of the Province of Alberta (“**Sure**”)

WHEREAS the Parties hereto intend to carry out the transactions contemplated herein by way of an arrangement under the provisions of the Business Corporations Act (Alberta); and,

WHEREAS the Parties hereto have entered into this Agreement to provide for the matters referred to in the foregoing recital and for other matters relating to such arrangement.

NOW THEREFORE, in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereto do hereby covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, unless there is something in the context or subject matter inconsistent therewith, the following defined terms have the meanings hereinafter set forth:

- (a) “**ABCA**” means the *Business Corporations Act*, R.S.A. 2000, c. B-9, as amended, including the regulations promulgated thereunder;
- (b) “**Acquisition Proposal**” means with respect to Clear or the Trust, any inquiry or the making of any proposal to such Party or its securityholders from any person which constitutes, or may reasonably be expected to lead to (in either case whether in one transaction or a series of transactions): (i) an acquisition from such Party or its securityholders of any securities of such Party or its subsidiaries; (ii) any acquisition of a substantial amount of the assets of such Party or its subsidiaries; (iii) an

amalgamation, arrangement, merger, or consolidation involving such Party or its subsidiaries; or (iv) any take-over bid, issuer bid, exchange offer, recapitalization, liquidation, dissolution, reorganization into a royalty trust or income fund or similar transaction involving such Party or its subsidiaries or any other transaction, the consummation of which would or could reasonably be expected to impede, interfere with, prevent or delay the transactions contemplated by this Agreement or the Arrangement or which would or could reasonably be expected to materially reduce the benefits to the other party under this Agreement or the Arrangement;

- (c) “**affiliate**” or “**associate**” when used to indicate a relationship with a person has the same meaning as set forth in the *Securities Act* (Alberta);
- (d) “**Agreement**”, “**herein**”, “**hereof**”, “**hereto**”, “**hereunder**” and similar expressions mean and refer to this arrangement agreement (including the exhibits hereto) as from time to time amended, supplemented or restated, and not to any particular article, section, Exhibit or other portion hereof’
- (e) “**Applicable Laws**” means all applicable securities laws, regulations, rules and policies thereunder, all rules of applicable stock exchanges and applicable corporate laws;
- (f) “**Arrangement**” means the proposed arrangement pursuant to Section 193 of the ABCA on the terms and conditions set forth in the Plan of Arrangement;
- (g) “**Articles of Arrangement**” means the articles of arrangement in respect of the Arrangement required under Subsection 193(10) of the ABCA to be filed with the Registrar after the Final Order has been made giving effect to the Arrangement;
- (h) “**Business Day**” means a day, other than a Saturday, Sunday or statutory holiday, when banks are generally open in the City of Calgary, in the Province of Alberta, for the transaction of banking business;
- (i) “**Clear**” means Clear Energy Inc., a corporation amalgamated under the ABCA;
- (j) “**Clear Arrangement Resolution**” means the special resolution in respect of, among other things, the Arrangement to be voted upon by Clear Shareholders at the Clear Meeting;
- (k) “**Clear Board**” means the board of directors of Clear;
- (l) “**Clear Counsel**” means Border Ladner Gervais LLP, or such other legal counsel as may be designated by Clear;
- (m) “**Clear Damages Event**” has the meaning ascribed thereto in **Section 6.2** hereof;
- (n) “**Clear Debt**” means the total indebtedness of Clear, including long term debt, bank debt and working capital deficiency but shall exclude the effect of the exercise of Clear Options, Clear PIRs, Clear Officer Obligations and Clear’s costs and expenses associated with the Arrangement;
- (o) “**Clear Disclosure Letter**” means that disclosure letter dated May 22, 2006 delivered by Clear to the Trust pursuant to the provisions of the Letter Agreement;
- (p) “**Clear Fairness Opinion**” means the opinion of Tristone Capital Inc. with respect to the Arrangement;
- (q) “**Clear Financial Statements**” means the audited consolidated financial statements of Clear as at and for the years ended December 31, 2005 and 2004 and the unaudited consolidated financial statements for the period ended March 31, 2006, together with the notes thereto and the report of the auditors thereon;

- (r) **“Clear Information”** means the information included in the Information Circular describing the Clear Parties and their business, operations and affairs and the Clear Securities;
- (s) **“Clear Meeting”** means the special meeting of Clear Shareholders to be held on August 10, 2006, and any adjournments(s) thereof, to consider and vote on the Clear Arrangement Resolution and related matters;
- (t) **“Clear Officer Obligations”** means any obligations or liabilities of Clear or any of its subsidiaries to pay any amount to its officers (other than for salary and fees in the ordinary course, in amounts consistent with historic practices) arising out of or in connection with the Arrangement, this Agreement and the transactions contemplated hereby and, without limiting the generality of the foregoing, Clear Officer Obligations shall include the obligations of Clear or its subsidiaries to its officers: (i) for severance or termination payments on a change of control pursuant to any agreement or severance policy or otherwise at common law; (ii) any retention or pay to stay arrangements or policies; (iii) accrued but unpaid bonuses; and (iv) any other payments related to any Clear incentive plan;
- (u) **“Clear Option”** means an option, and **“Clear Options”** means, collectively, all outstanding options, to purchase Clear Shares pursuant to Clear’ existing stock option plan;
- (v) **“Clear Parties”** means, collectively, Clear and its subsidiaries;
- (w) **“Clear PIRs”** means the 2,722,700 outstanding performance incentive rights in the capital of Clear as at July 10, 2006;
- (x) **“Clear Securities”** means the outstanding Clear Shares, Clear Options and Clear PIR’s, as the case may be;
- (y) **“Clear Shareholders”** means the holders from time to time of Clear Shares;
- (z) **“Clear Shares”** means common shares in the capital of Clear;
- (aa) **“Clear Termination Fee”** has the meaning ascribed thereto in **Section 6.2** hereof;
- (bb) **“Competition Act”** means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- (cc) **“Confidentiality Agreement”** means the confidentiality agreement among the Trust and Clear dated April 10, 2006 entered into in connection with the transactions contemplated herein;
- (dd) **“Court”** means the Court of Queen’s Bench of Alberta;
- (ee) **“Effective Date”** means the date on which the Arrangement is effective under the ABCA;
- (ff) **“Effective Time”** means the time at which the Articles of Arrangement are filed with the Registrar on the Effective Date;
- (gg) **“Encumbrance”** includes, without limitation, any mortgage, pledge, assignment, charge, lien, security interest, claim, trust, royalty or carried, participation, net profits or other third party interest and any agreement, option, right of first refusal, right or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing;
- (hh) **“Environmental Laws”** means all applicable federal, provincial, municipal or local laws, regulations, orders, government decrees or ordinances with respect to environmental, hazardous substance or public and occupational health and safety matters;

- (ii) **“Final Order”** means the final order of the Court approving the Arrangement to be applied for following the Meetings and to be granted pursuant to Subsection 193(9) of the ABCA, as such order may be affirmed, amended or modified by any court of competent jurisdiction;
- (jj) **“GAAP”** means generally accepted accounting principles in Canada, consistently applied;
- (kk) **“Governmental Authority”** includes any federal, provincial, municipal or other political subdivision, government department, court, tribunal, commission, board, bureau, agency or instrumentality, domestic or foreign;
- (ll) **“Information Circular”** means the joint information circular and proxy statement of Clear and the Trust together with all appendices thereto and documents incorporated by reference therein, to be distributed to the Clear Shareholders in connection with the Clear Meeting and the Trust Securityholders in connection with the Trust Meeting;
- (mm) **“Interim Order”** means the interim order of the Court made under Subsection 193(4) of the ABCA containing declarations and directions with respect to the Arrangement and the holding of the Trust Meeting and the Clear Meeting, as such order may be affirmed, amended or modified by any court of competent jurisdiction;
- (nn) **“Letter Agreement”** means the letter agreement dated May 22, 2006 among the Trust and Clear in respect of the Arrangement;
- (oo) **“Material Adverse Change”** means any change (or any condition, event or development involving a prospective change) in the affairs, business, operations, prospects, results of operations, assets, capitalization, financial condition, licenses, permits, concessions, rights, liabilities or privileges, whether contractual or otherwise, of the Trust or Clear, each on a consolidated basis, that is, or could reasonably be expected to have, a Material Adverse Effect;
- (pp) **“Material Adverse Effect”** in relation to any event or change, means an effect that is, or would reasonably be expected to be, materially adverse to the affairs, business, operations, prospects, results of operations, assets, capitalization, financial condition, licenses, permits, concessions, rights, liabilities or privileges, whether contractual or otherwise, of the Trust or Clear, each on a consolidated basis, provided that a Material Adverse Effect shall not include an adverse effect (or any condition, event or development involving a prospective effect) in the affairs, business, operations, prospects, results of operations, assets, capitalization, financial condition, licenses, permits, concessions, rights, liabilities or privileges, whether contractual or otherwise, of the Trust or Clear, each on a consolidated basis, that arises or results from or is in any way connected with, either directly or indirectly: (i) any matter or prospective matter, either alone or in combination with other matters or prospective matters, of which the Trust or Clear, as the case may be, has been advised of in writing prior to the date of this Agreement or has otherwise consented to in writing; (ii) any matter or prospective matter, either alone or in combination with other matters or prospective matters, that relate to or arise out of a matter that has been publicly disclosed prior to the date of this Agreement; (iii) the announcement of the transactions contemplated by the Arrangement or this Agreement; (iv) conditions affecting the oil and gas service industry (or other service industries in which the Trust operates) generally in jurisdictions in which the Trust or Clear, as the case may be, carries on business, including changes in commodity prices or taxes; (v) general economic, financial, currency exchange, securities or commodity market conditions in Canada or elsewhere; (vi) any change in the market price of crude oil, natural gas or related hydrocarbons; or (vii) any action or inaction taken by either Clear or the Trust to which the Trust or Clear, as the case may be, consented to in writing;
- (qq) **“Meetings”** means the Trust Meeting and the Clear Meeting;
- (rr) **“Navigo”** means Navigo Energy Inc., a corporation incorporated pursuant to the ABCA a wholly-owned subsidiary of the Trust and the administrator of the Trust;

- (ss) **“Trust Board”** means the board of directors of Navigo;
- (tt) **“Navigo Series D Exchangeable Shares”** means the Series D exchangeable shares in the capital of Navigo which are non-transferable and are exchangeable into Trust Units on a one for one basis.
- (uu) **“misrepresentation”** has the meaning ascribed thereto under the *Securities Act* (Alberta);
- (vv) **“Outside Date”** means August 30, 2006;
- (ww) **“Parties”** means, collectively, the Trust, Navigo and Clear; and **“Party”** means any one of them;
- (xx) **“Permitted Encumbrances”** means the following items: (i) easements, rights of way, servitudes or other similar rights, including, without limitation, rights of way for highways, railways, sewers, drains, gas or oil pipelines, gas or water mains, electric light, power, telephone or cable television towers, poles, and wires; (ii) all statutes, laws, rules, orders, directives and regulations in effect from time to time and made by governments or governmental agencies having jurisdiction over Clear’s assets; (iii) any rights reserved to or vested in any municipality or governmental, statutory or public authority to levy taxes or to control or regulate any of Clear’s assets in any manner; (iv) undetermined or inchoate mechanics’ liens and similar liens for which payment for services rendered or goods supplied is not delinquent as of the Effective Time; and (v) liens granted in the ordinary course of business to a public utility or Governmental Authority respecting operations pertaining to any of Clear’s assets;
- (yy) **“Plan of Arrangement”** means the plan of arrangement set forth in Exhibit A to this Agreement as from time to time amended, supplemented or restated in accordance with **Article 7** hereof and thereof;
- (zz) **“Public Record”** means all information filed by either the Trust, Navigo or Clear, as the case may be, after December 31, 2005 with any securities commission or similar regulatory authority in compliance, or intended compliance, with any applicable securities laws;
- (aaa) **“Registrar”** means the Registrar appointed under Section 263 of the ABCA;
- (bbb) **“Returns”** means all reports, estimates, elections, designations, forms, declarations of estimated tax, information statements and returns relating to, or required to be filed in connection with, any Taxes;
- (ccc) **“Securityholders”** means the Trust Securityholders and/or the Clear Shareholders, as applicable;
- (ddd) **“Special Voting Unit”** means the special voting unit of the Trust issued by the Trust and deposited with the Voting and Exchange Trustee which entitles the holders to that number of votes at meetings of Unitholders as equals the number of Trust Units issuable from time to time upon the redemption, retraction or exchange of the Trust Exchangeable Shares;
- (eee) **“subsidiary”** has the same meaning as set forth in the *Securities Act* (Alberta);
- (fff) **“Superior Proposal”** has the meaning set forth in **Section 3.3(b)(v)(A)**;
- (ggg) **“Sure”** means Sure Energy Inc., a corporation incorporated under the ABCA;
- (hhh) **“Sure Arrangement Warrants”** means common share purchase warrants of Sure to be issued to Trust Securityholders and Clear Shareholders pursuant to the Arrangement, each whole Sure Arrangement Warrant entitling the holder to acquire one (1) Sure Share at a price of Cdn. \$1.00 for a term of 30 days from the Effective Date;
- (iii) **“Sure Information”** means the information to be included in the Information Circular describing Sure and its subsidiaries, if any, and their business, operations and affairs and the Sure Securities;

- (jjj) “**Sure Private Placement**” means the private placement of 5,000,000 units at a price of Cdn. \$1.00 per unit, each unit consisting of one (1) Sure Preferred A Share and one (1) Sure PIR made to certain directors, officers and employees of Sure and the Trust;
- (kkk) “**Sure Private Placement Resolution**” means the ordinary resolution to approve the Sure Private Placement to be voted upon by the Trust Securityholders at the Trust Meeting and the Clear Shareholders and the Clear Meeting, as described under the heading “*Other Matters to be Considered at the Meetings*”;
- (lll) “**Sure Securities**” means the outstanding Sure Shares and Sure Arrangement Warrants in the capital of Sure, as the case may be;
- (mmm) “**Sure Shares**” means the common shares in the capital of Sure;
- (nnn) “**Sure Stock Option Plan**” or “**Stock Option Plan**” means the stock option plan of Sure to be approved at the Clear Meeting;
- (ooo) “**Swaps**” means any transaction which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, forward sale, exchange traded futures contract or any other similar transaction (including any option with respect to any of these transactions or any combination of these transactions);
- (ppp) “**Tax Act**” means the *Income Tax Act* R.S.C. 1985, c.1 (5th Supp.), as amended from time to time, including the regulations from time to time promulgated thereunder;
- (qqq) “**Taxes**” means all taxes, however denominated, including any interest, penalties or other additions that may become payable in respect thereof, imposed by any federal, territorial, state, local or foreign government or any agency or political subdivision of any such government, which taxes shall include, without limiting the generality of the foregoing, all income or profits taxes (including, but not limited to, federal income taxes and provincial income taxes), payroll and employee withholding taxes, unemployment insurance, social insurance taxes, sales and use taxes, ad valorem taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real and personal property taxes, stamp taxes, environmental taxes, transfer taxes, workers compensation and other governmental charges, and other obligations of the same or of a similar nature to any of the foregoing, which Clear (or any of its subsidiaries) is required to pay, withhold, remit or collect;
- (rrr) “**Trust**” means NAV Energy Trust, an unincorporated open-ended investment trust established under the laws of Alberta and where used in conjunction with business or operations, includes all operating subsidiaries of the Trust;
- (sss) “**Trust Arrangement Resolution**” means the special resolution in respect of; among other things, the Arrangement to be voted upon by Trust Securityholders at the Trust Meeting;
- (ttt) “**Trust Board**” means the Navigo Board as it may be comprised from time to time;
- (uuu) “**Trust Convertible Debentures**” means the 8.75% convertible unsecured subordinated debentures of the Trust;
- (vvv) “**Trust Counsel**” means Burnet, Duckworth & Palmer LLP, or such other legal counsel as may be designated by the Trust;
- (www) “**Trust Debt**” means the total indebtedness of the Trust, including long term debt, bank debt, working capital deficiency and outstanding Trust Convertible Debentures but excluding the effect of the exercise

of Trust Unit Incentive Rights, Trust Officer Obligations, and the Trust's costs and expenses of the Arrangement;

- (xxx) **“Trust Damages Event”** has the meaning ascribed thereto in **Section 6.1** hereof;
- (yyy) **“Trust Disclosure Letter”** means that disclosure letter dated May 22, 2006 delivered by the Trust to Clear pursuant to the provisions of the Letter Agreement;
- (zzz) **“Trust Exchangeable Shares”** means the exchangeable shares in the capital of the Trust and where the context so requires, includes the Navigo Series D Exchangeable Shares;
- (aaaa) **“Trust Fairness Opinion”** means the opinion of TD Securities Inc. with respect to the Arrangement;
- (bbbb) **“Trust Financial Statements”** means the audited consolidated financial statements of the Trust as at and for the years ended December 31, 2005 and 2004 and the unaudited consolidated financial statements for the period ended March 31, 2006, together with the notes thereto and the report of the auditors thereon;
- (cccc) **“Trust Indenture”** means the trust indenture of the Trust dated as of November 12, 2003 between Navigo Energy Inc. and Computershare Trust Company of Canada, as it may be from time to time amended, supplemented or restated;
- (dddd) **“Trust Information”** means the information included in the Information Circular describing the Trust Parties and their business, operations and affairs and the Trust Securities;
- (eeee) **“Trust Meeting”** means the annual and special meeting of Trust Securityholders to be held on August 10, 2006, and any adjournment(s) thereof; to consider and to vote on the Trust Arrangement Resolution and related matters;
- (ffff) **“Trust Officer Obligations”** means any obligations or liabilities of the Trust or any of its subsidiaries to pay any amount to its officers and directors (other than for salary and directors' fees in the ordinary course, in each case in amounts consistent with historic practices) arising out of or in connection with the Arrangement, this Agreement and the transactions contemplated thereby and, without limiting the generality of the foregoing, Trust Officer Obligations shall include the obligations of the Trust or its subsidiaries to its officers and directors: (i) for severance or termination payments on a change of control pursuant to any agreement or severance policy or otherwise at common law; (ii) any retention or pay to stay arrangements or policies; (iii) accrued but unpaid bonuses; and (iv) any other payments related to any Trust incentive plan;
- (gggg) **“Trust Parties”** means, collectively, the Trust and its subsidiaries;
- (hhhh) **“Trust Securities”** means collectively the outstanding Trust Units, Trust Options, Special Voting Units and Trust Exchangeable Shares;
- (iiii) **“Trust Securityholders”** means Unitholders and the holders from time to time of Navigo Series D Exchangeable Shares, as the case may be;
- (jjjj) **“Trust Termination Fee”** has the meaning ascribed thereto in **Section 6.1** hereof;
- (kkkk) **“Trust Unit”** means a trust unit of the Trust;
- (llll) **“Trust Unit Incentive Rights Plan”** means the trust unit incentive rights plan of the Trust pursuant to which the Trust grants rights to purchase Trust Units to directors, officers, employees, consultants and other personnel of the Trust and its subsidiaries;

- (mmmm) **“Trust Unit Incentive Rights”** means the rights to acquire Trust Units granted under the Trust Unit Incentive Rights Plan;
- (nnnn) **“Trustee”** means Computershare Trust Company of Canada;
- (oooo) **“TSX”** means the Toronto Stock Exchange;
- (pppp) **“Unitholders”** means the holders from time to time of Trust Units and/or Special Voting Units, as the case may be;
- (qqqq) **“Voting and Exchange Trust Agreement”** means the voting and exchange trust agreement to be entered into on the Effective Date among the Trust and the Voting and Exchange Trustee with respect to the Navigo Series D Exchangeable Shares, as from time to time amended, supplemented or restated; and
- (rrrr) **“Voting and Exchange Trustee”** means Computershare Trust Company of Canada, or such other person as becomes the trustee under the Voting and Exchange Trust Agreement in accordance with such agreement.

1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into articles, Sections and Subsections is for convenience of reference only and does not affect the construction or interpretation of this Agreement. The terms **“this Agreement”**, **“hereof”**, **“herein”** and **“hereunder”** and similar expressions refer to this Agreement (including the exhibits attached hereto) and not to any particular article, section or other portion hereof and include any agreement or Instrument supplementary or ancillary hereto.

1.3 Number, Etc.

Words importing the singular number include the plural and vice versa, words importing the use of any gender include all genders, and words importing persons include firms and corporations and vice versa.

1.4 Date for Any Action

If any date on which any action is required to be taken hereunder by any of the Parties is not a Business Day in the place where an action is required to be taken, such action is required to be taken on the next succeeding day which is a Business Day in such place.

1.5 Entire Agreement

This Agreement and the Confidentiality Agreement, together with the agreements and documents herein and therein referred to, constitute the entire agreement among the Parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, among the Parties with respect to the subject matter hereof including, without limitation, the Letter Agreement. To the extent there is any inconsistency between this Agreement and the Confidentiality Agreement, this Agreement shall supersede the Confidentiality Agreement.

1.6 Currency

All sums of money which are referred to in this Agreement are expressed in lawful money of Canada.

1.7 Accounting Matters

Unless otherwise stated, all accounting terms used in this Agreement shall have the meanings attributable thereto under Canadian generally accepted accounting principles and all determinations of an accounting nature that

are required to be made shall be made in a manner consistent with Canadian generally accepted accounting principles.

1.8 Disclosure in Writing

Reference to disclosure in writing herein shall, in the case of the Trust, Navigo and Sure, include disclosure to any of the Trust, Navigo or Sure or any of their representatives, or in the case of Clear, include disclosure to Clear or its representatives.

1.9 Attornment

Each of the Parties hereto hereby irrevocably and unconditionally consents to and submits to the jurisdiction of the courts of the Province of Alberta in respect of all actions, suits or proceedings arising out of or relating to this Agreement or the matters contemplated hereby (and agrees not to commence any action, suit or proceeding relating thereto except in such courts) and further agrees that service of any process, summons, notice or document by single registered mail to the addresses of the Parties set forth in this Agreement shall be effective service of process for any action, suit or proceeding brought against such Party in such court. The Parties hereby irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the matters contemplated hereby in the courts of the Province of Alberta and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding so brought has been brought in an inconvenient forum.

1.10 Inclusive Terminology

Whenever used in this Agreement, the words “includes” and “including” and similar terms of inclusion shall not, unless expressly modified by the words “only” or “solely”, be construed as terms of limitation, but rather shall mean “includes but is not limited to” and “including but not limited to”, so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive.

1.11 Exhibits

The following exhibits attached hereto are incorporated into and form an integral part of this Agreement:

A - Plan of Arrangement

ARTICLE 2 THE ARRANGEMENT

2.1 Plan of Arrangement

As soon as reasonably practicable, each of the Trust, Navigo and Clear will file, proceed with and diligently pursue an application for an Interim Order providing for, among other things, the calling and holding of the Trust Meeting and the Clear Meeting, which shall be held concurrently and on the same day, if practicable, for the purpose of considering and, if deemed advisable, approving the Clear Arrangement Resolution, the Trust Arrangement Resolution, the Sure Private Placement Resolution, the Sure Stock Option Plan, the Trust Unit Award Incentive Plan and related matters. Provided all necessary approvals for the Clear Arrangement Resolution, the Trust Arrangement Resolution, the Sure Private Placement Resolution, the Sure Stock Option Plan, the Trust Unit Award Incentive Plan and related matters are obtained from the Trust Securityholders and the Clear Shareholders, the Trust, Navigo and Clear shall submit the Arrangement to the Court and jointly apply for the Final Order. Upon issuance of the Final Order and subject to fulfillment of the conditions precedent in **Article 5**, each of the Trust, Navigo and Clear shall as soon as reasonably practicable proceed to file the Articles of Arrangement, the Final Order and such other documents as may be required to give effect to the Arrangement with the Registrar pursuant to Subsection 193(9) of the ABCA, whereupon the transactions comprising the Arrangement shall occur and shall be deemed to have occurred in the order set out therein without any act or formality.

2.2 Interim Order

The Interim Order shall provide that: (i) the majority required to pass the Trust Arrangement Resolution shall be not less than two-thirds of the votes cast by the Trust Securityholders; (ii) the majority required to pass the Clear Arrangement Resolution shall be not less than two-thirds of the votes cast by the Clear Shareholders; (iii) the Sure Private Placement Resolution must be approved by a majority of the Securityholders excluding votes by Securityholders who will participate in the Sure Private Placement; and (iv) the Trust Securityholders shall vote in respect of the Trust Arrangement Resolution and Sure Private Placement Resolution and Sure Private Placement Resolution together as a single class of securities.

2.3 Information Circular and Meetings

As promptly as practicable following the execution of this Agreement and in compliance with the Interim Order and Applicable Laws:

- (a) the Trust and Navigo shall prepare the Information Circular and Clear will assist the Trust and Navigo in the preparation of the Information Circular and will provide to the Trust and Navigo, in a timely and expeditious manner, the Clear Information for inclusion in the Information Circular and all other information as may be reasonably requested by the Trust and Navigo or as is required by the Interim Order or Applicable Law with respect to Clear and its subsidiaries for inclusion in the Information Circular and any amendments or supplements thereto, in each case complying in all material respects with all applicable legal requirements on the date of issue thereof and each of the Trust, Navigo and Clear will ensure that the Information Circular provides Trust Securityholders and Clear Shareholders with information in sufficient detail to permit them to form a reasoned judgment concerning the matters before them;
- (b) the Information Circular shall be in the form approved by the Trust, Navigo and Clear, acting reasonably and shall include, by incorporation by reference or otherwise, without limitation: (i) all information as is required by the Interim Order or Applicable Law for inclusion in the Information Circular and any amendments or supplements thereto, in each case complying in all material respects with all applicable legal requirements on the date of issue thereof; (ii) the unanimous determination of the members of the Trust Board that the Arrangement is in the best interest of the Trust and the Trust Securityholders, and based on the Trust Fairness Opinion, the Arrangement is fair, from a financial point of view, to Trust Securityholders, and the unanimous recommendation of the Trust Board that the Trust Securityholders vote in favour of the Trust Arrangement Resolution and the transactions contemplated thereby, provided that notwithstanding the covenants of the Trust in this subsection, prior to the completion of the Arrangement, the Trust Board may withdraw, modify or change the recommendation regarding the Arrangement in accordance with **Section 3.3**; (iii) the Trust Fairness Opinion; (iv) the unanimous determination of the Clear Board that the Arrangement is in the best interest of Clear and the Clear Shareholders, and based on the Clear Fairness Opinion, the Arrangement is fair, from a financial point of view, to Clear Shareholders, and the unanimous recommendation of the Clear Board that the Clear Shareholders vote in favour of the Clear Arrangement Resolution and the transactions contemplated thereby, provided that notwithstanding the covenants of Clear in this subsection, prior to the completion of the Arrangement, the Clear Board may withdraw, modify or change the recommendation regarding the Arrangement in accordance with **Section 3.3**; (v) the Clear Fairness Opinion; and (vi) all financial statements which may be required to be disclosed in the Information Circular or in other documents required under Applicable Law;
- (c) each of the Trust, Navigo and Clear consents to the use of all financial statements which may be required to be disclosed in the Information Circular or in other documents required under Applicable Law in connection with the Arrangement and each agrees to use its reasonable commercial best efforts to cause its auditors, to the extent required under Applicable Law, to provide their consent to use of their report and use of their name in connection with any disclosure of such financial statements;
- (d) each of the Trust and Navigo shall, jointly and severally, indemnify and save harmless each of the Clear Parties and their respective directors, officers and agents from and against any and all liabilities, claims,

demands, losses, costs, damages and expenses (excluding any loss of profits or consequential damages) to which any of the Clear Parties, or any director, officer or agent thereof; may be subject or which the Clear Parties, or any director, officer or agent thereof may suffer, whether under the provisions of any statute or otherwise, in any way caused by, or arising, directly or indirectly, from or in consequence of:

- (i) any misrepresentation or alleged misrepresentation in the Information Circular or in any material filed by or on behalf of the Trust or Navigo in compliance or intended compliance with any Applicable Laws in connection with the Arrangement and the transactions contemplated in this Agreement;
 - (ii) any order made or any inquiry, investigation or proceeding by any securities commission or other competent authority based upon any untrue statement or omission or alleged untrue statement or omission of a material fact or any misrepresentation or any alleged misrepresentation in the Information Circular or in any material filed by or on behalf of the Trust or Navigo in compliance or intended compliance with Applicable Laws in connection with the Arrangement and the transactions contemplated in this Agreement, which prevents or restricts trading in the Trust Units; and
 - (iii) the Trust or Navigo not complying with any requirement of Applicable Laws in connection with the Arrangement and the transactions contemplated in this Agreement; except that the Trust and Navigo shall not be liable in any such case to the extent that any such liabilities, claims, demands, losses, costs, damages and expenses arise out of or are based upon any misrepresentation or alleged misrepresentation of a material fact based solely on the Clear Information or Sure Information included in the Information Circular or the negligence of Clear;
- (e) Clear shall indemnify and save harmless each of the Trust Parties and their respective trustees, directors, officers and agents from and against any and all liabilities, claims, demands, losses, costs, damages and expenses (excluding any loss of profits or consequential damages) to which any of the Trust Parties or any trustee, director, officer or agent thereof; may be subject or which the Trust Parties or any trustee, director, officer or agent thereof may suffer, whether under the provisions of any statute or otherwise, in any way caused by, or arising, directly or indirectly, from or in consequence of:
- (i) any misrepresentation or alleged misrepresentation in the Information Circular or in any material filed by or on behalf of Clear or Sure in compliance or intended compliance with any Applicable Laws in connection with the Arrangement and the transactions contemplated in this Agreement;
 - (ii) any order made or any inquiry, investigation or proceeding by any securities commission or other competent authority based upon any untrue statement or omission or alleged untrue statement or omission of a material fact or any misrepresentation or any alleged misrepresentation in the Information Circular or in any material filed by or on behalf of Clear or Sure in compliance or intended compliance with Applicable Laws in connection with the Arrangement and the transactions contemplated in this Agreement, which prevents or restricts trading in the Clear Shares; and
 - (iii) Clear not complying with any requirement of Applicable Laws in connection with the Arrangement and the transactions contemplated in this Agreement;

except that Clear shall not be liable in any such case to the extent that any such liabilities, claims, demands, losses, costs, damages and expenses arise out of or are based upon any misrepresentation or alleged misrepresentation of a material fact based solely on the Trust Information included in the Information Circular or the negligence of the Trust or Navigo;

- (f) the Trust, Navigo and Clear shall cause the Information Circular to be mailed to the Trust Securityholders and the Clear Shareholders and filed with applicable regulatory authorities and other governmental authorities in all jurisdictions where the same are required to be mailed and filed; and
- (g) the Trust, Navigo and Clear shall convene the Trust Meeting and the Clear Meeting, as applicable.

2.4 Effective Time

The Arrangement shall become effective at the Effective Time.

2.5 The Trust

- (a) The first directors of the Trust Board and the first officers of the corporation formed on the amalgamation of Navigo and Clear pursuant to the Arrangement shall be as set forth in the Plan of Arrangement.

2.6 Sure

- (a) Prior to the Effective Time, Clear shall, subject to the consent of such persons, name W. Peter Comber, Larry Macdonald, Thomas P. Stan, Charles W. Berard and Jeffrey S. Boyce in the Information Circular for election to the board of directors of Sure. Jeffrey S. Boyce shall act as Chairman of such Board. Jeffrey S. Boyce, Rob Sheedy, Chris Baker and C. Tom Banks shall manage the affairs of Sure.
- (b) Prior to the Effective Time, the Trust and Clear shall not cause or permit Sure to:
 - (i) issue any securities or enter into any agreements to issue or grant options, warrants or rights to purchase any of its securities; or
 - (ii) carry on any business, enter into any transaction or effect any corporate act whatsoever;

other than as contemplated herein or as reasonably necessary to carry out the transactions contemplated by the Plan of Arrangement and the Information Circular or as otherwise agreed to by the Trust and Clear.

2.7 Completion of Transactions

Each of Clear and the Trust shall cause such of their subsidiaries as are necessary to participate in the Arrangement to complete the transactions contemplated herein and in the Arrangement.

ARTICLE 3 COVENANTS

3.1 Covenants of the Trust and Navigo

From the date hereof until the Effective Date or termination of this Agreement, except with the prior written consent of Clear and except as otherwise expressly permitted or specifically contemplated by this Agreement:

- (a) each of the Trust and Navigo shall not take any action that would render, or may reasonably be expected to render, any representation or warranty made by it in this Agreement untrue in any material respect at any time prior to completion of the Arrangement or termination of this Agreement, whichever first occurs;
- (b) the Trust and Navigo shall promptly notify Clear in writing of any material change (actual, anticipated, contemplated or, to the knowledge of the Trust or Navigo, threatened, financial or otherwise) in the business, operations, affairs, assets, capitalization, financial condition, prospects, licences, permits,

rights, privileges or liabilities (contingent or otherwise), whether contractual or otherwise, of the Trust, any change in the factual basis for any representation or warranty set forth in this Agreement, where such a change is or may be of such a nature as to render any such representation or warranty misleading or untrue in a material respect and any material fact in respect of the Trust or Navigo which arises and which would have been required to be stated herein had the fact arisen on or prior to the date of this Agreement and the Trust and Navigo shall, in good faith, discuss with Clear any change in circumstances (actual, anticipated, contemplated or, to the knowledge of the Trust, threatened, financial or otherwise) which is of such a nature that there may be a reasonable question as to whether notice need to be given to Clear pursuant to this **Section 3.1(b)**;

- (c) each of the Trust and Navigo shall use their reasonable commercial efforts to satisfy or cause satisfaction of the conditions set forth in **Sections 5.1** and **5.3** as soon as reasonably possible to the extent that the satisfaction of the same is within the control of the Trust, Navigo, and Sure;
- (d) the Trust shall ensure that it has available funds under its lines of credit or other bank facilities to permit the payment of the amount which may be required by **Section 6.2** and shall take all such actions as may be necessary to ensure that it maintains such availability to ensure that it is able to pay such amount when required;
- (e) the Trust shall provide notice to Clear of the Trust Meeting and allow Clear's representatives to attend such meeting;
- (f) except for proxies or non-substantive communications, the Trust and Navigo will furnish promptly to Clear or Clear's Counsel, a copy of each notice, report, schedule or other document delivered, filed or received by the Trust or Navigo from securityholders or regulatory agencies in connection with: (i) the Arrangement; (ii) the Trust Meeting; (iii) any filings under Applicable Laws in connection with the transactions contemplated hereby; and (iii) any dealings with regulatory agencies in connection with the transactions contemplated hereby;
- (g) the Trust and Navigo shall solicit proxies to be voted at the Trust Meeting in favour of matters to be considered at the Trust Meeting, including the Trust Arrangement Resolution;
- (h) the Trust and Navigo shall conduct the Trust Meeting in accordance with the Interim Order and any Instrument governing the Trust Meeting, as applicable, and as otherwise required by law;
- (i) each of the Trust and Navigo shall forthwith carry out the terms of the Interim Order and the Final Order to the extent applicable to it provided that nothing shall require it to consent to any material modification to this Agreement, the Arrangement or its obligations hereunder and thereunder;
- (j) the Trust and Navigo will make all necessary filings and applications under Canadian federal and provincial and U.S. federal and state laws and regulations required to be made on the part of the Trust and Navigo in connection with the transactions contemplated herein and shall take all reasonable action necessary to be in compliance with such laws and regulations;
- (k) each of the Trust and Navigo will use its reasonable commercial efforts to obtain the conditional listing approval of the TSX for the Trust Units issuable pursuant to the Arrangement (including the Trust Units issuable on conversion of the Navigo Series D Exchangeable Shares issuable pursuant to the Arrangement), on terms which the Trust and Navigo are capable of satisfying after giving effect to the Arrangement; and
- (l) subject to the specific provisions of this Agreement, the Trust and Navigo shall take all necessary actions to give effect to the transactions contemplated by this Agreement and the Arrangement.

3.2 Covenants of Clear

From the date hereof until the Effective Date or termination of this Agreement, except with the prior written consent of Navigo on behalf of the Trust, and except as otherwise expressly permitted or specifically contemplated by this Agreement:

- (a) Clear shall not take any action that would render, or may reasonably be expected to render, any representation or warranty made by it in this Agreement untrue in any material respect at any time prior to completion of the Arrangement or termination of this Agreement, whichever first occurs;
- (b) Clear shall ensure that it has available funds under its lines of credit or other bank facilities to permit the payment of the amount which may be required by **Section 6.1** and shall take all such actions as may be necessary to ensure that it maintains such availability to ensure that it is able to pay such amount when required;
- (c) Clear shall promptly notify Navigo in writing of any material change (actual, anticipated, contemplated or, to the knowledge of Clear, threatened, financial or otherwise) in the business, operations, affairs, assets, capitalization, financial condition, prospects, licences, permits, rights, privileges or liabilities (contingent or otherwise), whether contractual or otherwise, of Clear, any change in the factual basis for any representation or warranty set forth in this Agreement, where such a change is or may be of such a nature as to render any such representation or warranty misleading or untrue in a material respect and any material fact in respect of Clear which arises and which would have been required to be stated herein had the fact arisen on or prior to the date of this Agreement and Clear shall, in good faith, discuss with Navigo any change in circumstances (actual, anticipated, contemplated or, to the knowledge of Clear, threatened, financial or otherwise) which is of such a nature that there may be a reasonable question as to whether notice need to be given to Navigo pursuant to this **Section 3.2(c)**;
- (d) Clear shall use its reasonable commercial efforts to satisfy or cause satisfaction of the conditions set forth in **Sections 5.1** and **5.2** as soon as reasonably possible to the extent that the satisfaction of the same is within the control of Clear;
- (e) Clear shall provide notice to the Trust and Navigo of the Clear Meeting and allow the Trust's and Navigo's representatives to attend such meeting;
- (f) Clear shall use its commercially reasonable efforts to cause all holders of Clear Options and Clear PIRs to (i) exercise all of their rights thereunder prior to the Effective Time, (ii) enter into termination agreements on terms satisfactory to the Trust and Navigo on or prior to the Effective Time providing for the termination of all outstanding Clear Options and Clear PIRs;
- (g) Clear shall not make any amendment to outstanding Clear Options or Clear PIRs without the prior written consent of Navigo, other than as disclosed in the Information Circular;
- (h) except for proxies or non-substantive communications, Clear will furnish promptly to the Trust, Navigo or Trust Counsel, a copy of each notice, report, schedule or other document delivered, filed or received by Clear from securityholders or regulatory agencies in connection with: (i) the Arrangement; (ii) the Clear Meeting; (iii) any filings under Applicable Laws in connection with the transactions contemplated hereby; and (iv) any dealings with regulatory agencies in connection with the transactions contemplated hereby;
- (i) Clear shall solicit proxies to be voted at the Clear Meeting in favour of matters to be considered at the Clear Meeting, including the Clear Arrangement Resolution;
- (j) Clear shall conduct the Clear Meeting in accordance with the Interim Order and any Instrument governing the Clear Meeting, as applicable, and as otherwise required by law;

- (k) Clear shall forthwith carry out the terms of the Interim Order and the Final Order to the extent applicable to it provided that nothing shall require it to consent to any material modification to this Agreement, the Arrangement or its obligations hereunder and thereunder;
- (l) Clear will make all necessary filings and applications under Canadian federal and provincial and U.S. federal and state laws and regulations required to be made on the part of Clear in connection with the transactions contemplated herein and shall take all reasonable action necessary to be in compliance with such laws and regulations;
- (m) Clear will take all actions necessary to obtain the conditional listing approval of the TSX of the Sure Shares (including the Sure Shares issuable on exercise of the Sure Arrangement Warrants) and Sure Arrangement Warrants issuable pursuant to the Arrangement prior to the Effective Date;
- (n) Clear shall promptly advise Navigo of the number of Clear Shares for which Clear receives notices of dissent or written objections to the Arrangement and provide the Trust with copies of such notices and written objections; and
- (o) subject to the specific provisions of this Agreement, Clear shall take all necessary actions to give effect to the transactions contemplated by this Agreement and the Arrangement.

3.3 Mutual Covenants Regarding Non-Solicitation

- (a) Each of the Trust, Navigo and Clear shall immediately cease and cause to be terminated all existing discussions and negotiations (including, without limitation, through any advisors or other parties on its behalf), if any, with any parties conducted before the date of this Agreement with respect to any Acquisition Proposal and shall immediately request the return or destruction of all information provided to any third parties who have entered into a confidentiality agreement with such party relating to an Acquisition Proposal and shall use all reasonable commercial efforts to ensure that such requests are honoured.
- (b) Neither the Trust nor Clear shall, directly or indirectly, do or authorize or permit any of its officers, directors or employees or any financial advisor, expert or other representative retained by it to do, any of the following:
 - (i) solicit, facilitate, initiate or encourage any Acquisition Proposal;
 - (ii) enter into or participate in any discussions or negotiations regarding an Acquisition Proposal, or furnish to any other person any information with respect to its businesses, properties, operations, prospects or conditions (financial or otherwise) in connection with an Acquisition Proposal or otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt of any other person to do or seek to do any of the foregoing;
 - (iii) waive, or otherwise forbear in the enforcement of; or enter into or participate in any discussions, negotiations or agreements to waive or otherwise forbear in respect of; any rights or other benefits under confidentiality information agreements, including, without limitation, any “standstill provisions” thereunder; or
 - (iv) accept, recommend, approve or enter into an agreement to implement an Acquisition Proposal;

provided, however, that notwithstanding any other provision hereof; each of the Trust and Clear and their respective officers, directors and advisers may:

- (v) enter into or participate in any discussions or negotiations with a third party who (without any solicitation, initiation or encouragement, directly or indirectly, after the date of this Agreement, by such Party or any of its officers, directors or employees or any financial advisor, expert or other representative retained by it) seeks to initiate such discussions or negotiations and, subject to execution of a confidentiality and standstill agreement substantially similar to the Confidentiality Agreement (provided that such confidentiality agreement shall provide for disclosure thereof (along with all information provided thereunder) to the other party as set out below), may furnish to such third party information concerning such party and its business, properties and assets, in each case if, and only to the extent that:
- (A) the third party has first made a written *bona fide* Acquisition Proposal which the board of directors of such party determines in good faith: (1) that funds or other consideration necessary for the Acquisition Proposal are or are likely to be available; (2) (after consultation with its financial advisor) would, if consummated in accordance with its terms, result in a transaction financially superior for securityholders of the Receiving Party (as defined below) than the transaction contemplated by this Agreement; and (3) after receiving the advice of outside counsel as reflected in minutes of the board of directors of such party, that the taking of such action is advisable for the board of directors in discharge of its fiduciary duties under Applicable Laws (a “**Superior Proposal**”); and
 - (B) prior to furnishing such information to or entering into or participating in any such discussions or negotiations with such third party, such party provides prompt notice to the other party to the effect that it is furnishing information to or entering into or participating in discussions or negotiations with such person or entity together with a copy of the confidentiality agreement referenced above and if not previously provided to the other party, copies of all information provided to such third party concurrently with the provision of such information to such third party, and provided further that such party shall notify the other party orally and in writing of any inquiries, offers or proposals with respect to a Superior Proposal (which written notice shall include, without limitation, a copy of any such proposal (and any amendments or supplements thereto), the identity of the person making it, if not previously provided to the other party, copies of all information provided to such party and all other information reasonably requested by the other party), within 24 hours of the receipt thereof; shall keep the other party informed of the status and details of any such inquiry, offer or proposal and answer the other party’s questions with respect thereto; or
- (vi) comply with Section 172 of the *Securities Act* (Alberta) and similar provisions under applicable Canadian securities laws relating to the provision of directors’ circulars and make appropriate disclosure with respect thereto to its securityholders; and
- (vii) accept, recommend, approve or enter into an agreement to implement a Superior Proposal from a third party, but only if prior to such acceptance, recommendation, approval or implementation, the board of directors shall have concluded in good faith, after considering all proposals to adjust the terms and conditions of this Agreement as contemplated by **Section 3.3(c)** and after receiving the advice of outside counsel as reflected in minutes of the board of directors of such party, that the taking of such action is advisable for the board of directors in discharge of its fiduciary duties under Applicable Laws and such party complies with its obligations set forth in **Section 3.3(c)** and terminates this Agreement in accordance with **Section 8.1(e)** or **8.1(f)**, as applicable, and concurrently therewith pays the amount required by **Section 6.1** or **6.2**, as applicable, to the other Party.

- (c) In the event either of the Trust or Clear is in receipt of a Superior Proposal (a “**Receiving Party**”), it shall give the other Party (the “**Responding Party**”), orally and in writing, at least 72 hours advance notice of any decision by its board of directors to accept, recommend, approve or enter into an agreement to implement a Superior Proposal, which notice shall confirm that the board of directors of the Receiving Party has determined that such Acquisition Proposal constitutes a Superior Proposal, shall identify the third party making the Superior Proposal and shall provide a true and complete copy thereof and any amendments thereto. During such 72 hour period, the Receiving Party agrees not to accept, recommend, approve or enter into any agreement to implement such Superior Proposal and not to release the party making the Superior Proposal from any standstill provisions and shall not withdraw, redefine, modify or change its recommendation in respect of the Arrangement. In addition, during such 72 hour period the Receiving Party shall and shall cause its financial and legal advisors to, negotiate in good faith with the Responding Party and its financial and legal advisors to make such adjustments in the terms and conditions of this Agreement and the Arrangement as would enable the Receiving Party to proceed with the Arrangement as amended rather than the Superior Proposal. In the event the Responding Party proposes to amend this Agreement and the Arrangement to provide that the Clear Shareholders or Trust Securityholders, as applicable (the “**Receiving Party Securities**”) shall receive a value per Receiving Party Security equal to or having a value greater than the value per Receiving Party Security provided in the Superior Proposal and so advises the board of directors of the Receiving Party prior to the expiry of such 72 hour period, the board of directors of the Receiving Party shall not accept, recommend, approve or enter into any agreement to implement such Superior Proposal and shall not release the party making the Superior Proposal from any standstill provisions and shall not withdraw, redefine, modify or change its recommendation in respect of the Arrangement.
- (d) Each of the Trust and Clear agrees that all information that may be provided to it by the other Party with respect to any Superior Proposal pursuant to this **Section 3.3** shall be treated as if it were “**Evaluation Material**” as that term is defined in the Confidentiality Agreement and shall not be disclosed or used except in accordance with the provisions of the Confidentiality Agreement or in order to enforce its rights under this Agreement in legal proceedings.
- (e) Each of the Trust and Clear shall ensure that its officers, directors and employees and any investment bankers or other advisers or representatives retained by it are aware of the provisions of this **Section 3.3**. Clear shall be responsible for any breach of this **Section 3.3** by its officers, directors, employees, investment bankers, advisers or representatives, and the Trust shall be responsible for any breach of this **Section 3.3** by its officers, directors, employees, investment bankers, advisers or representatives.

3.4 Mutual Covenants Regarding the Arrangement

From the date hereof until the Effective Date, each of the Trust, Navigo and Clear will use its reasonable commercial efforts to satisfy (or cause the satisfaction of) the conditions precedent to its obligations hereunder and to take, or cause to be taken, all other actions and to do, or cause to be done, all other things necessary, proper or advisable under Applicable Laws to complete the Arrangement, including using reasonable efforts:

- (a) to obtain all necessary waivers, consents and approvals required to be obtained by it from other parties to loan agreements, leases and other contracts;
- (b) to obtain all necessary consents, assignments, waivers and amendments to or terminations of any instruments and take such measures as may be appropriate to fulfill its obligations hereunder and to carry out the transactions contemplated hereby;
- (c) effect all necessary registrations and filings and submissions of information requested by governmental authorities required to be effected by it in connection with the Arrangement;
- (d) to cooperate with the other in connection with the performance by the other of their obligations under this **Section 3.4** including, without limitation, continuing to provide reasonable access to information

and to maintain ongoing communications as between representatives of the Trust, Navigo and Clear and their respective subsidiaries subject in all cases to the Confidentiality Agreement; and

- (e) to ensure that all requisite domestic and foreign regulatory approvals and consents, including, without limitation, those of any stock exchanges, securities regulatory authorities or antitrust authorities, shall have been obtained on terms and conditions satisfactory to each of the Trust, Navigo and Clear, acting reasonably, and all applicable domestic and foreign statutory or regulatory waiting periods, including the waiting period under the United States *Hart-Scott-Rodino Antitrust Improvements Act of 1976*, as amended, if applicable to the transactions contemplated under the Arrangement, shall have expired or been terminated, and no objection or opposition shall have been filed, initiated or made during any applicable statutory or regulatory period.

3.5 Mutual Covenants Regarding Business Activities

Clear, the Trust and Navigo each agree that during the period from the date of execution of this Agreement and ending on the earlier of the Effective Date or the termination of this Agreement, except as required by law or as agreed to by the Parties or as otherwise expressly permitted or specifically contemplated by this Agreement, it;

- (a) shall conduct its business only in the usual and ordinary course of business and consistent with past practice, and it shall use all reasonable commercial efforts to maintain and preserve its business, assets and advantageous business relationships, provided that it shall be entitled and authorized to comply with all pre-emptive rights, first purchase rights or rights of first refusal that are applicable to its assets and become operative by virtue of this Agreement or any of the transactions contemplated by this Agreement;
- (b) shall not except in connection with an internal reorganization of Clear or the Trust or one or more of their respective subsidiaries, as applicable, implemented in conjunction with the Arrangement: (i) amend its constating documents; (ii) declare, set aside or pay any dividend or make any other distribution or payment (whether in cash, shares, trust units or property) in respect of its outstanding securities other than regular monthly cash distributions by the Trust of an amount equal to approximately \$0.10 per Trust Unit; (iii) issue or agree to issue any shares or trust units, or securities convertible into or exchangeable or exercisable for, or otherwise evidencing a right to acquire, shares or trust units, other than the issuance of shares or trust units pursuant to the exercise of currently outstanding rights to acquire shares or trust units or to employees hired after the date hereof in a manner consistent with past practice, and other than Trust Securities issued by the Trust or its subsidiaries as full or partial consideration in connection with one or more acquisitions; (iv) redeem, purchase or otherwise acquire any of its outstanding shares or trust units or other securities (other than redemptions required pursuant to its constating documents); (v) split, combine or reclassify any of its securities; (vi) adopt a plan of liquidation or resolutions providing for its liquidation, dissolution, merger, consolidation or reorganization; or (vii) enter into or modify any contract, agreement, commitment or arrangement with respect to any of the foregoing;
- (c) shall not, except as previously disclosed in writing or otherwise, without prior consultation with and the consent of the other Party, such consent not to be unreasonably withheld, directly or indirectly: (i) sell, pledge, dispose of or encumber any assets having an individual value in excess of \$100,000 other than production in the ordinary course of business; (ii) expend or commit to expend more than \$100,000 individually or \$5 million in the aggregate with respect to any capital expenditures except to the extent such expenditures are set forth in the capital budgets disclosed to the other party; (iii) expend or commit to expend any amounts with respect to any operating expenses other than in the ordinary course of business or pursuant to the Arrangement; (iv) acquire (by merger, amalgamation, consolidation or acquisition of shares or trust units or assets) any corporation, trust, partnership or other business organization or division thereof which is not a subsidiary or affiliate of such Party, or make any investment therein either by purchase of shares or securities, contributions of capital or property transfer except to the extent such amounts are set out in the budget disclosed to the other party; (v) acquire any assets with an acquisition cost in excess of \$100,000 individually or \$250,000 in the aggregate; (vi) incur any indebtedness for borrowed money in excess of existing credit facilities, or any other

material liability or obligation or issue any debt securities or assume, guarantee, endorse or otherwise become responsible for, the obligations of any other individual or entity, or make any loans or advances, other than in respect of fees payable to legal, financial and other advisors in the ordinary course of business or in respect of the Arrangement, and other than as disclosed by the Trust to Clear prior to the date hereof; (vii) authorize, recommend or propose any release or relinquishment of any material contract right; (viii) waive, release, grant or transfer any material rights of value or modify or change in any material respect any existing material license, lease, contract or other material document; (ix) enter into or terminate any hedges, swaps or other financial instruments or like transactions; or (x) authorize or propose any of the foregoing, or enter into or modify any contract, agreement, commitment or arrangement to do any of the foregoing;

- (d) shall not make any payment to any employee, officer or director outside of their ordinary and usual compensation for services provided, except to the extent that any such entitlement to payment to a former employee or officer has accrued prior to the date hereof except as permitted under the Letter Agreement;
- (e) shall not: (i) grant any officer, director or employee a material increase in compensation in any form; (ii) grant any general salary increase; (iii) take any action with respect to the amendment or grant of any severance or termination pay policies or arrangement for any directors, officers or employees; (iv) amend any stock option plan or trust unit incentive plan or the terms of any outstanding options or rights thereunder (other than the acceleration of the vesting periods of certain Clear Options in the manner disclosed in the Information Circular); nor (v) advance any loan to any officer, director or any other party not at arm's length; other than as may be agreed to by the Parties;
- (f) shall not adopt or amend or make any contribution to any bonus, employee benefit plan, profit sharing, share or trust unit, deferred compensation, insurance, incentive compensation, other compensation or other similar plan, agreement, share or trust unit incentive or purchase plan, fund or arrangement for the benefit of employees, except as is necessary to comply with the law or with respect to existing provisions of any such plans, programs, arrangement or agreements;
- (g) shall use reasonable commercial efforts to maintain in force its current policies of insurance and will pay all premiums in respect of such insurance policies that become due after the date hereof;
- (h) the Trust or Navigo shall secure director and officer insurance coverage for the current directors and officers of Clear on a per occurrence coverage amount to be agreed by the Parties, acting reasonably, on a trailing liability basis and for a period (not exceeding three years) to be agreed by the Parties, acting reasonably; and
- (i) shall not take any action, refrain from taking any action, permit any action to be taken or not taken, inconsistent with this Agreement, which might directly or indirectly interfere or affect the consummation of the Arrangement.

3.6 Access to Information and Transition

From and after the date hereof; each Party shall provide the other Party and its representatives access, during normal business hours and at such other time or times as the Trust or Clear may reasonably request, to its premises (including field offices and sites), books, contracts, records, computer systems, properties, employees and management personnel and shall furnish promptly to the Trust or Clear all information concerning its business, properties and personnel as the Trust or Clear may reasonably request, which information shall remain subject to the Confidentiality Agreement, in order to permit the Trust and Clear to be in a position to expeditiously and efficiently integrate the business and operations of each of the Trust and Clear immediately upon but not prior to the Effective Date. Without limitation, representatives of each Party will be permitted to attend the other's weekly operations meetings. Each Party agrees to keep the other fully apprised in a timely manner of every circumstance, action, occurrence or event occurring or arising after the date hereof that would be relevant and material to a prudent operator of the business and operations of the Trust and Clear. Each Party shall confer with and obtain the other's

approval (not to be unreasonably withheld or delayed), prior to taking action (other than in emergency situations) with respect to any material operational matters involved in its business.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Trust and Navigo

Each of the Trust and Navigo hereby make the representations and warranties set forth in this **Section 4.1** to and in favour of Clear and each acknowledges that Clear is relying upon such representations and warranties in connection with the matters contemplated by this Agreement.

- (a) The Trust is an unincorporated open-ended investment trust duly created and validly existing under the laws of the Province of Alberta.
- (b) The Trust is a “mutual fund trust” within the meaning of the Tax Act.
- (c) Navigo is a corporation duly incorporated and validly subsisting under the laws of the Province of Alberta.
- (d) Each of the Trust and Navigo has the requisite power and authority to carry on its business as it is now being conducted.
- (e) Each of the Trust and Navigo is duly registered to do business and is in good standing in each jurisdiction in which the character of its properties, owned or leased, or the nature of its activities makes such registration necessary, except where the failure to be so registered or in good standing would not have a Material Adverse Effect on the Trust and its subsidiaries taken as a whole.
- (f) Each of the Trust and Navigo have the requisite power and authority to enter into this Agreement and to carry out their obligations hereunder. The execution and delivery of this Agreement and the consummation by the Trust and Navigo of the transactions contemplated hereby have been duly authorized by their respective board of directors, and, subject to obtaining Trust Securityholder approval, no other trust, partnership or corporate proceedings on the part of the Trust, Navigo or their respective subsidiaries are or will be necessary to authorize this Agreement and the transactions contemplated hereby other than as specifically contemplated herein. This Agreement has been duly executed and delivered by the Trust and Navigo and constitutes legal, valid and binding obligations of the Trust and Navigo enforceable against each in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws relating to or affecting creditors’ rights generally and to general principles of equity.
- (g) Neither the execution and delivery of this Agreement by the Trust and Navigo, the consummation by the Trust and Navigo of the transactions contemplated hereby nor compliance by the Trust and Navigo with any of the provisions hereof will: (i) violate, conflict with, or result in a breach of any provision of; require any consent, approval or notice under, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) or result in a right of termination or acceleration under, or result in a creation of any lien, security interest, charge or Encumbrance upon any of the properties or assets of the Trust, Navigo or any of their subsidiaries under, any of the terms, conditions or provisions of the articles or bylaws or other constating documents of Navigo, or their subsidiaries, or any note, bond, mortgage, indenture, loan agreement, declaration of trust, agreement, lien, contract or other instrument or obligation to which the Trust, Navigo or their subsidiaries is a party or to which they, or their properties or assets, may be subject or by which the Trust, Navigo or any of their subsidiaries is bound; or (ii) subject to compliance with Applicable Laws, violate any judgment, ruling, order, writ, injunction, determination, award, decree, statute, ordinance, rule or regulation applicable to the Trust, Navigo or any of their subsidiaries (except, in the case of each of clauses (i) and (ii) above, for such violations, conflicts, breaches, defaults or terminations which, or any consents, approvals or

notices which, if not given or received, would not have any Material Adverse Effect on the business, operations or financial condition of the Trust and its subsidiaries taken as a whole, or on the ability of the Trust or their subsidiaries to consummate the transactions contemplated hereby); or (iii) cause a suspension or revocation of any authorization for the consent, approval or license currently in effect which would have a Material Adverse Effect on the business, operations or financial condition of the Trust, Navigo or their subsidiaries taken as a whole.

- (h) Other than in connection with or in compliance with the provisions of Applicable Laws:
- (i) there is no legal impediment to the Trust's, or Navigo's consummation of the transactions contemplated by this Agreement; and
 - (ii) no filing or registration with, or authorization, consent or approval of; any domestic or foreign public body or authority is necessary by the Trust, Navigo or Sure in connection with the consummation of the Arrangement, except for such filings or registrations which, if not made, or for such authorizations, consents or approvals, which, if not received, would not have any Material Adverse Effect on the ability of the Trust or Navigo or Sure to consummate the transactions contemplated hereby.
- (i) The Trust is authorized to issue an unlimited number of Trust Units and an unlimited number of Special Voting Units, of which as at May 22, 2006, the Trust has issued and outstanding: (i) 28,448,725 Trust Units; (ii) two Special Voting Units; and (iii) Trust Unit Incentive Rights to acquire 917,751 Trust Units pursuant to the Trust Unit Incentive Rights Plan. Other than 269,992 issued and outstanding Trust Exchangeable Shares at May 22, 2006, which are exchangeable for an aggregate of 387,111 Trust Units, the Trust is the legal and beneficial owner (direct or indirect) of all of the issued and outstanding securities of Navigo. Except as aforesaid (and except for the Trust Units to be issued in connection with the Trust's acquisition of Clear), as at May 22, 2006, there are no other outstanding Trust Units or options, warrants, rights or conversion or exchange privileges or other securities entitling anyone to acquire any Trust Units or any other rights, agreements or commitments of any character whatsoever requiring the issuance, sale or transfer by the Trust of any Trust Units or any securities convertible into, exchangeable or exercisable for, or otherwise evidencing a right to acquire, any Trust Units. All outstanding Trust Units have been duly authorized and validly issued pursuant to the Declaration of Trust and are not subject to, nor have they been issued in violation of; any pre-emptive rights, and all Trust Units issuable upon exercise or conversion of outstanding rights to purchase Trust Units in accordance with their respective terms, will be duly authorized and validly issued pursuant to the Declaration of Trust and will not be subject to any pre-emptive rights.
- (j) Since December 31, 2005, except as disclosed in the Public Record:
- (i) there has been no Material Adverse Change (or any condition, event or development involving a prospective change that could be materially adverse to the Trust and its subsidiaries on a consolidated basis) in the business, affairs, operations, assets, capitalization, financial condition, prospect, licenses, permits, rights, privileges or liabilities, whether contractual or otherwise, of the Trust and its subsidiaries on a consolidated basis;
 - (ii) each of the Trust and its subsidiaries has conducted its business only in the ordinary and normal course; and
 - (iii) no liability or obligation of any nature (whether absolute, accrued, contingent or otherwise) material to the Trust or any of its subsidiaries (on a consolidated basis) has been incurred other than in the ordinary and normal course of business.
- (k) The data and information in respect of the Trust and its subsidiaries and their assets, liabilities, business and operations provided by the Trust or its advisors to Clear or its advisors was and is accurate and

correct in all material respects as at the respective dates thereof and, in respect of any information provided or requested, did not knowingly omit any material data or information necessary to make any data or information provided not misleading as at the respective dates thereof. The Trust has no knowledge of any Material Adverse Change to the business of the Trust from that disclosed in such data and information.

- (l) The information and statements set forth in the Public Record of the Trust, as it relates to the Trust, are true, correct, and complete in all material respects and did not contain any misrepresentation, as of the respective dates of such information or statements, and no material change has occurred in relation to the Trust which is not disclosed in the Public Record of the Trust, and the Trust has not filed any confidential material change reports which continue to be confidential.
- (m) The Trust Financial Statements were prepared in accordance with GAAP (except as otherwise indicated in such financial statements and the notes thereto or in the related report of the Trust's independent auditors), and fairly in accordance with GAAP present the consolidated financial position, results of operations and changes in financial position of the Trust as of the dates thereof and for the periods indicated therein and reflect appropriate and adequate reserves in respect of contingent liabilities, if any, of the Trust on a consolidated basis. There has been no change in the Trust's accounting policies, except as described in the notes to the Trust Financial Statements, since January 1, 2005.
- (n) Neither the Trust nor its subsidiaries has any material liabilities of any nature (matured or unmatured, fixed or contingent), other than:
 - (i) those set forth or adequately provided for in the most recent balance sheet and associated notes thereto included in the Trust Financial Statements (the "**Trust Balance Sheet**");
 - (ii) those incurred in the ordinary course of business and not required to be set forth in the Trust Balance Sheet under GAAP;
 - (iii) those incurred in the ordinary course of business since the date of the Trust Balance Sheet and consistent with past practice; and
 - (iv) those incurred in connection with the execution of this Agreement.
- (o) Other than as set forth in the Public Record of the Trust, there have not occurred any material spills, emissions or pollution on any property of the Trust Parties, nor have any of the Trust Parties been subject to any stop orders, control orders, clean-up orders or reclamation orders under applicable Environmental Laws any of which might reasonably be expected to cause a Material Adverse Change in respect of the Trust. All operations of the Trust Parties have been and are now being conducted in compliance with all applicable Environmental Laws, except where the failure to be in compliance would not reasonably be expected to cause a Material Adverse Change.
- (p) Other than as set forth in the Public Record of the Trust, none of the Trust Parties is subject to or aware of:
 - (i) any proceeding, application, order or directive which relates to environmental, health or safety matters, and which may require any material work, repairs, construction, or expenditures; or
 - (ii) any demand or notice with respect to the breach of any Environmental Laws applicable to the Trust Parties, including, without limitation, any regulations respecting the use, storage, treatment, transportation, or disposition of any hazardous substances which would reasonably be expected to cause a Material Adverse Change in respect of the Trust.

- (q) Other than as set forth in the Public Record of the Trust, there are no actions, suits or proceedings in existence or pending or, to the knowledge of the Trust or Navigo, threatened or for which there is a reasonable basis, affecting or that would reasonably be expected to affect the Trust Parties or affecting or that would reasonably be expected to affect any of their property or assets at law or equity or before or by any Governmental Authority which action, suit or proceeding involves a possibility of any judgment against or liability of the Trust Parties which, if successful, would reasonably be expected to cause a Material Adverse Change in respect of the Trust or its subsidiaries, or would significantly impede the ability of the Trust or its subsidiaries to consummate the Arrangement.
- (r) To the knowledge of the Trust, the Trust has not withheld from Clear any material information or documents concerning the Trust or any of its subsidiaries or their respective assets or liabilities during the course of Clear' review of the Trust and its assets.
- (s) Neither the Trust, Navigo nor their respective subsidiaries has received notice of any material violation of or investigation relating to any federal, provincial or local law, regulation or ordinance with respect to its assets, business or operations and each of the Trust and its subsidiaries holds all permits, licenses and other authorizations which are required under federal, provincial or local laws to be held by it relating to its assets, business or operations except where the failure to hold such permits, licenses or authorizations will not have a Material Adverse Effect on the Trust and its subsidiaries, taken as a whole. The assets of the Trust and its subsidiaries, taken as a whole, are operated and maintained by it in compliance with all terms and conditions of such laws, permits, licenses and authorizations in all material respects and are also in compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in such laws or contained in any regulation, code, plan, order, decree, judgment, notice or demand letter issued, entered, promulgated or approved thereunder relating to the assets operated by the Trust, Navigo or any of their subsidiaries in all material respects.
- (t) No securities commission or similar regulatory authority, or stock exchange in Canada or the United States, has issued any order which is currently outstanding preventing or suspending trading in any securities of the Trust, no such proceeding is, to the knowledge of the Trust or Navigo, pending, contemplated or threatened and the Trust is not, to its knowledge, in default of any requirement of any securities laws, rules or policies applicable to the Trust or its securities.
- (u) The Trust directly or indirectly beneficially owns all of the outstanding shares and other securities or interests of Navigo, (other than the outstanding Trust Exchangeable Shares) and directly or indirectly beneficially owns all of the outstanding shares and other securities or interests of each of its subsidiaries. Other than the outstanding Trust Exchangeable Shares, no person, firm, corporation or other entity holds any securities convertible or exchangeable into securities of such subsidiaries or has any agreement, warrant, option, right or privilege (whether pre-emptive or contractual) being or capable of becoming an agreement for the purchase or issuance of any shares or other securities of such subsidiaries.
- (v) The trust and corporate records and minute books, books of account and other records of the Trust Parties (whether of a financial or accounting nature or otherwise) have been maintained in accordance with, in all material respects, all applicable statutory requirements and prudent business practice and are complete and accurate in all material respects.
- (w) Policies of insurance in force as of the date hereof; naming the Trust as an insured, adequately cover all risks reasonably and prudently foreseeable in the operation and conduct of the business of the Trust and the Trust Parties. All such policies of insurance shall remain in force and effect and shall not be cancelled or otherwise terminated as a result of the transactions contemplated hereby or by the Arrangement.
- (x) The Trust is a "reporting issuer" or equivalent in all of the provinces of Canada and the outstanding Trust Units are listed and posted for trading on the TSX and the Trust is in material compliance with the by-laws, policies and rules of such exchange.

- (y) Computershare Trust Company of Canada at its principal offices in the cities of Calgary, Alberta and Toronto, Ontario is the duly appointed registrar and transfer agent of the Trust with respect to the Trust Units.
- (z) Any and all operations of the Trust and each of its subsidiaries and, to the best of the Trust's knowledge, any and all operations by third parties, on or in respect of the assets and properties of the Trust and its subsidiaries, have been conducted in accordance with good industry practices, and in material compliance with applicable laws, rules, regulations, orders and directions of government and other competent authorities, except where the failure to so conduct the operations would not have a Material Adverse Effect on the Trust and its subsidiaries (taken as a whole).
- (aa) Completion of the Arrangement will not result in a Material Adverse Change in respect of the Trust or its subsidiaries pursuant to or as a result of the provisions of any agreement or arrangement to which the Trust or any of its subsidiaries is a party.
- (bb) Except: (a) as disclosed or reflected in the Trust Financial Statements; and (b) for liabilities and obligations: (i) incurred in the ordinary course of business; or (ii) pursuant to the terms of this Agreement, neither the Trust or its subsidiaries has incurred any liabilities of any nature, whether accrued, contingent or otherwise (or which would be required by GAAP to be reflected on the consolidated balance sheet of the Trust) that have constituted or would be reasonably likely to constitute a Material Adverse Change.
- (cc) The Trust Board has unanimously approved this Agreement, has unanimously determined that the Arrangement is in the best interests of the Trust and the Trust Securityholders and has, based on the opinion of TD Securities Inc., unanimously determined that the Arrangement is fair, from a financial point of view, to the Trust Securityholders and has resolved unanimously to recommend approval of the Arrangement and the transaction contemplated thereby by Trust Securityholders.
- (dd) To the knowledge of the Trust and Navigo no representation or warranty contained herein and no statement contained in any schedule or other disclosure document provided or to be provided to Clear by the Trust or Navigo pursuant to this agreement contains or will contain any untrue statement of a material fact or omits to state a material fact which is necessary in order to make the statements herein or therein not misleading.
- (ee) The Trust has no material subsidiaries and is not affiliated with, nor is it a holding corporation of any other body corporate, nor is the Trust or Navigo a partner in any partnership, other than as set out in the Public Record.
- (ff) Neither the Trust nor Navigo has retained and will not retain any financial advisor, broker, agent or finder or paid or agreed to pay any financial advisor, broker, agent or finder on account of this Agreement, any transaction contemplated hereby or any transaction presently ongoing or contemplated, except that TD Securities Inc. and those parties as set out in the Trust Disclosure Letter have been retained as the Trust's financial advisors in connection with certain matters including the transactions contemplated hereby. Neither the Trust nor Navigo shall retain additional financial advisors except with the consent of Clear.
- (gg) All Returns required to be filed by or on behalf of the Trust and each of its subsidiaries have been duly filed on a timely basis and such Returns were complete and correct in all material respects. All Taxes shown to be payable on the Returns or on subsequent assessments with respect thereto have been paid in full on a timely basis, or have been accrued for in the Trust Financial Statements and no other Taxes are payable by the Trust and each of its subsidiaries with respect to items or periods covered by such Returns.
- (hh) For all periods covered by the filed Returns disclosed to the Clear, the Trust has made available to the Clear, true and complete copies of: (i) material portions of income tax audit reports, statements of

deficiencies, closing or other agreements received by the Trust and each of its subsidiaries, or on behalf of the Trust and each of its subsidiaries, relating to Taxes; and (ii) all material federal, provincial, state, local or foreign income or franchise tax returns for the Trust and each of its subsidiaries.

4.2 Representations and Warranties of Clear

Clear hereby makes the representations and warranties set forth in this **Section 4.2** to and in favour of the Trust and Navigo and acknowledges that the Trust and Navigo are relying upon such representations and warranties in connection with the matters contemplated by this Agreement.

- (a) Clear is a corporation duly amalgamated under the laws of the Province of Alberta and it and each of its subsidiaries is a corporation or partnership duly incorporated, amalgamated or created and validly subsisting under the laws of the jurisdiction of its incorporation, amalgamation or creation and has the requisite corporate or partnership power and authority to carry on its business as it is now being conducted. Clear and each of its subsidiaries is duly registered to do business and is in good standing in each jurisdiction in which the character of its properties, owned or leased, or the nature of its activities make such registration necessary, except where the failure to be so registered or in good standing would not have a Material Adverse Effect on Clear and its subsidiaries taken as a whole.
- (b) Clear has no subsidiaries other than Geodyme Energy Production Inc. is not affiliated with, nor is it a holding corporation of any other body corporate, nor is Clear a partner in any partnership, other than Clear Energy Production Partnership.
- (c) Each of Clear and Sure has the requisite corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation by Clear and Sure of the transactions contemplated hereby have been duly authorized by the Clear Board and the board of directors of Sure and, subject to obtaining Clear Securityholder approval, no other corporate proceedings on the part of Clear and Sure are or will be necessary to authorize this Agreement and the transactions contemplated hereby other than as specifically contemplated herein. This Agreement has been duly executed and delivered by Clear and Sure and constitutes a legal, valid and binding obligation of Clear and Sure enforceable against Clear and Sure in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and to general principles of equity.
- (d) Neither the execution and delivery of this Agreement by Clear, the consummation by Clear of the transactions contemplated hereby nor compliance by Clear with any of the provisions hereof will: (i) violate, conflict with, or result in breach of any provision of, require any consent, approval or notice under, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) or result in a right of termination or acceleration under, or result in a creation of any lien, security interest, charge or Encumbrance upon any of the properties or assets of Clear or any of its subsidiaries under, any of the terms, conditions or provisions of (A) the articles, bylaws or other constating documents of Clear or any of its subsidiaries, or (B) any note, bond, mortgage, indenture, loan agreement, deed of trust, agreement, lien, contract or other Instrument or obligation to which Clear is a party or to which it, or its properties or assets, may be subject or by which Clear or any of its subsidiaries is bound; or (ii) subject to compliance with Applicable Laws, violate any judgment, ruling, order, writ, injunction, determination, award, decree, statute, ordinance, rule or regulation applicable to Clear or any of its subsidiaries (except, in the case of each of clauses (i) and (ii) above, for such violations, conflicts, breaches, defaults or terminations which, or any consents, approvals or notices which, if not given or received, would not have any Material Adverse Effect on the business, operations or financial condition of Clear and its subsidiaries taken as a whole or on the ability of Clear and any of its subsidiaries to consummate the transactions contemplated hereby); or (iii) cause a suspension or revocation of any authorization for the consent, approval or license currently in effect which would have a Material Adverse Effect on the business, operations or financial condition of Clear and its subsidiaries taken as a whole.

- (e) Other than in connection with or in compliance with the provisions of Applicable Laws:
- (i) there is no legal impediment to Clear's or Sure's consummation of the transactions contemplated by this Agreement; and
 - (ii) no filing or registration with, or authorization, consent or approval of; any domestic or foreign public body or authority is necessary by Clear or Sure in connection with the consummation of the Arrangement, except for such filings or registrations which, if not made, or for such authorizations, consents or approvals, which, if not received, would not have any Material Adverse Effect on the ability of Clear or Sure to consummate the transactions contemplated hereby.
- (f) Clear is authorized to issue an unlimited number of Clear Shares and an unlimited number of preferred shares issuable in series, of which, as of May 22, 2006 53,277,090 Clear Shares were issued and outstanding and no preferred shares were issued and outstanding. In addition, as at May 22, 2006 Clear had issued and outstanding 4,604,000 Clear Options to acquire 4,604,000 Clear Shares and 2,722,700 Clear PIRs to acquire 2,722,700 Clear Shares. Except as aforesaid, there are no outstanding shares of Clear or options, warrants, rights or conversion or exchange privileges or other securities entitling anyone to acquire any shares of Clear or any other rights, agreements or commitments of any character whatsoever requiring the issuance, sale or transfer by Clear of any shares of Clear (including Clear Shares) or any securities convertible into, exchangeable or exercisable for, or otherwise evidencing a right to acquire, any shares of Clear. All outstanding Clear Shares have been duly authorized and validly issued, and are fully paid and non-assessable and are not subject to, nor have they been issued in violation of; any pre-emptive rights, and all Clear Shares issuable upon exercise or conversion of outstanding Clear Options and Clear PIRs in accordance with their respective terms, will be duly authorized and validly issued, fully paid and non-assessable and will not be subject to any pre-emptive rights.
- (g) Since December 31, 2005, except as disclosed in the Public Record:
- (i) there has been no Material Adverse Change (or any condition, event or development involving a prospective change that could be materially adverse to Clear and its subsidiaries on a consolidated basis) in the business, affairs, operations, assets, capitalization, financial condition, prospect, licenses, permits, rights, privileges or liabilities, whether contractual or otherwise, of Clear and its subsidiaries on a consolidated basis;
 - (ii) Clear and each of its subsidiaries has conducted its business only in the ordinary and normal course; and
 - (iii) no liability or obligation of any nature (whether absolute, accrued, contingent or otherwise) material to Clear or any of its subsidiaries (on a consolidated basis) has been incurred other than in the ordinary and normal course of business.
- (h) The data and information in respect of Clear and its subsidiaries and their assets, liabilities, business and operations provided by Clear or its advisors to the Trust or Navigo or their advisors was and is accurate and correct in all material respects as at the respective dates thereof and, in respect of any information provided or requested, did not knowingly omit any material data or information necessary to make any data or information provided not misleading as at the respective dates thereof. Clear has no knowledge of any Material Adverse Change to the business of Clear from that disclosed in such data and information.
- (i) The information and statements set forth in the Public Record of Clear, as it relates to Clear, are true, correct, and complete in all material respects and did not contain any misrepresentation, as of the respective dates of such information or statements, and no material change has occurred in relation to

Clear which is not disclosed in the Public Record of Clear, and Clear has not filed any confidential material change reports which continue to be confidential.

- (j) The Clear Financial Statements were prepared in accordance with GAAP (except as otherwise indicated in such financial statements and the notes thereto or in the related report of Clear's independent auditors), and fairly in accordance with GAAP present the consolidated financial position, results of operations and changes in financial position of Clear as of the dates thereof and for the periods indicated therein and reflect appropriate and adequate reserves in respect of contingent liabilities, if any, of Clear on a consolidated basis. There has been no change in Clear's accounting policies, except as described in the notes to the Clear Financial Statements, since January 1, 2005.
- (k) None of Clear or its subsidiaries has any material liabilities of any nature (matured or unmatured, fixed or contingent), other than:
 - (i) those set forth or adequately provided for in the most recent balance sheet and associated notes thereto included in the Clear Financial Statements (the "**Clear Balance Sheet**");
 - (ii) those incurred in the ordinary course of business and not required to be set forth in the Clear Balance Sheet under GAAP;
 - (iii) those incurred in the ordinary course of business since the date of the Clear Balance Sheet and consistent with past practice; and
 - (iv) those incurred in connection with the execution of this Agreement and the transactions to be undertaken in connection with the Arrangement.
- (l) Other than as set forth in the Public Record of Clear, there have not occurred any material spills, emissions or pollution on any property of the Clear Parties, nor have any of the Clear Parties been subject to any stop orders, control orders, clean-up orders or reclamation orders under applicable Environmental Laws any of which might reasonably be expected to cause a Material Adverse Change in respect of Clear. All operations of the Clear Parties have been and are now being conducted in compliance with all applicable Environmental Laws, except where the failure to be in compliance would not reasonably be expected to cause a Material Adverse Change.
- (m) Other than as set forth in the Public Record of Clear, none of the Clear Parties is subject to or aware of:
 - (i) any proceeding, application, order or directive which relates to environmental, health or safety matters, and which may require any material work, repairs, construction, or expenditures; or
 - (ii) any demand or notice with respect to the breach of any Environmental Laws applicable to the Clear Parties, including, without limitation, any regulations respecting the use, storage, treatment, transportation, or disposition of any hazardous substances which would reasonably be expected to cause a Material Adverse Change in respect of Clear.
- (n) Other than as set forth in the Public Record of Clear, there are no actions, suits or proceedings in existence or pending or, to the knowledge of Clear, threatened or for which there is a reasonable basis, affecting or that would reasonably be expected to affect the Clear Parties or that would reasonably be expected to affect any of their property or assets at law or equity or before or by any Governmental Authority which action, suit or proceeding involves a possibility of any judgment against or liability of the Clear Parties which, if successful, would reasonably be expected to cause a Material Adverse Change in respect of Clear, or would significantly impede the ability of Clear to consummate the Arrangement.

- (o) To the knowledge of Clear, Clear has not withheld from the Trust or Navigo any material information or documents concerning Clear or any of its subsidiaries or their respective assets or liabilities during the course of the Trust's review of Clear and its assets.
- (p) Neither Clear nor its subsidiaries have received notice of any material violation of or investigation relating to any federal, provincial or local law, regulation or ordinance with respect to its assets, business or operations and each of Clear and its subsidiaries holds all permits, licenses and other authorizations which are required under federal, provincial or local laws to be held by it relating to its assets, business or operations except where the failure to hold such permits, licenses or authorizations will not have a Material Adverse Effect on Clear and its subsidiaries, taken as a whole. The assets of Clear, taken as a whole, are operated and maintained by it in compliance with all terms and conditions of such laws, permits, licenses and authorizations in all material respects and are also in compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in such laws or contained in any regulation, code, plan, order, decree, judgment, notice or demand letter issued, entered, promulgated or approved thereunder relating to the assets operated by Clear or any of its subsidiaries in all material respects.
- (q) No securities commission or similar regulatory authority, or stock exchange in Canada or the United States, has issued any order which is currently outstanding preventing or suspending trading in any securities of Clear, no such proceeding is, to the knowledge of Clear, pending, contemplated or threatened and Clear is not, to its knowledge, in default of any requirement of any securities laws, rules or policies applicable to Clear or its securities.
- (r) Clear has not retained nor will it retain any financial advisor, broker, agent or finder or paid or agreed to pay any financial advisor, broker, agent or finder on account of this Agreement, any transaction contemplated hereby or any transaction presently ongoing or contemplated, except that Tristone Capital and those parties set out in the Clear Disclosure Letter have been retained as Clear's financial advisors in connection with certain matters including the transactions contemplated hereby. Clear shall not retain additional financial advisors except with the consent of the Trust and Navigo.
- (s) The Clear Board has unanimously approved this Agreement, has unanimously determined that the Arrangement is in the best interests of Clear and the Clear Shareholders and has, based on the opinion of Tristone Capital, unanimously determined that the Arrangement is fair, from a financial point of view, to Clear Shareholders and has resolved unanimously to recommend approval of the Arrangement and the transactions contemplated thereby by Clear Shareholders.
- (t) Clear is not a party to and, prior to the Effective Date, Clear will not implement, a shareholder rights plan or any other form of plan, agreement, contract or Instrument that will trigger any rights to acquire Clear Shares or other securities of Clear or rights, entitlements or privileges in favour of any person upon the entering into of this Agreement or the Arrangement.
- (u) To the knowledge of Clear, none of the Clear Shares are the subject of any voting trust or other similar agreement.
- (v) Clear directly or indirectly beneficially owns all of the outstanding shares and other securities or interests of each of its subsidiaries (other than as set forth in Exhibit B hereto) and no person, firm, corporation or other entity holds any securities convertible or exchangeable into securities of such subsidiaries or has any agreement, warrant, option, right or privilege (whether pre-emptive or contractual) being or capable of becoming an agreement for the purchase or issuance of any shares or other securities of such subsidiary.
- (w) The corporate and partnership records and minute books, books of account and other records of the Clear Parties (whether of a financial or accounting nature or otherwise) have been maintained in accordance with, in all material respects, all applicable statutory requirements and prudent business practice and are complete and accurate in all material respects.

- (x) Policies of insurance in force as of the date hereof naming Clear as an insured adequately cover all risks reasonably and prudently foreseeable in the operation and conduct of the business of Clear and its subsidiaries. All such policies of insurance shall remain in force and effect and shall not be cancelled or otherwise terminated as a result of the transactions contemplated hereby or by the Arrangement.
- (y) All documentation pertaining to Clear's interests in lands and facilities have been made available for review by the Trust and Navigo.
- (z) Clear does not currently have outstanding any Swaps other than a collar transaction in respect of 5000 GJ's/day for the period from November 2006 to March 31, 2007 at a price of \$8.00 to \$9.17 per GJ based on the AECO "C" monthly index.
- (aa) Clear is not a party to or bound or affected by any commitment, agreement or document containing any covenant expressly limiting its freedom to compete in any line of business, compete in any geographic region, transfer or move any of its assets or operations, where such covenant would have a Material Adverse Effect on the business of Clear and its subsidiaries (taken as a whole).
- (bb) All management recommendation letters relating to Clear and maintained in its files and which have been received from Clear's current auditor or any previous auditor, have been provided to the Trust and Navigo.
- (cc) Other than Permitted Encumbrances, Clear and its subsidiaries' material properties and assets are free and clear of all mortgages, pledges, liens, charges and Encumbrances and it has done no act or suffered or permitted any action to be done whereby any person has acquired or may acquire an interest in or to its material properties or assets, nor has it done any act, omitted to do any act or permitted any act to be done that may adversely affect or defeat its title to any of its material properties or assets.
- (dd) Although it does not warrant title, other than Permitted Encumbrances, Clear is not aware of any defects, failures or impairments in the titles to its or any of its subsidiaries' properties, lands or facilities, whether or not an action, suit, proceeding or inquiry is pending or threatened and whether or not discovered by any third party, which in the aggregate could have a Material Adverse Effect on Clear (taken as a whole) or its anticipated cash flow.
- (ee) Clear is a "reporting issuer" or equivalent in the provinces of British Columbia, Alberta, Saskatchewan, Ontario and Quebec and the outstanding Clear Shares are listed and posted for trading on the TSX and Clear is in material compliance with the by-laws, policies and rules of such exchange.
- (ff) Valiant Trust Company at its principal offices in Calgary, Alberta and Toronto, Ontario, is the duly appointed registrar and transfer agent of Clear with respect to the Clear Shares.
- (gg) No officer, director, employee or consultant of Clear, any associate or affiliate of any such person or any party not at arm's length to Clear owns, has or is entitled to any royalty, net profits interest, carried interest or other Encumbrances material in nature which are based on revenue derived from Clear' properties or assets.
- (hh) Any and all operations of Clear and each of its subsidiaries, and to the best of Clear' knowledge, any and all operations by third parties on or in respect of the assets and properties of Clear and each of its subsidiaries, have been conducted in accordance with good oil and gas services industry practice, and in material compliance with applicable laws, rules, regulations, orders and directions of government and other competent authorities, except where the failure to so conduct the operations would not have a Material Adverse Effect on Clear and its subsidiaries (taken as a whole).
- (ii) All Returns required to be filed by or on behalf of Clear and each of its subsidiaries have been duly filed on a timely basis and such Returns were complete and correct in all material respects. All Taxes shown to be payable on the Returns or on subsequent assessments with respect thereto have been paid

in full on a timely basis, or have been accrued for in the Clear Financial Statements and no other Taxes are payable by Clear and each of its subsidiaries with respect to items or periods covered by such Returns.

- (jj) Clear has paid or provided adequate accruals for Taxes in the Clear Financial Statements, in conformity with GAAP applied on a basis consistent with those of prior years.
- (kk) For all periods covered by the filed Returns disclosed to the Trust and Navigo, Clear has made available to the Trust and Navigo, true and complete copies of: (i) material portions of income tax audit reports, statements of deficiencies, closing or other agreements received by Clear and each of its subsidiaries, or on behalf of Clear and each of its subsidiaries, relating to Taxes; and (ii) all material federal, provincial, state, local or foreign income or franchise tax returns for Clear and each of its subsidiaries.
- (ll) No material deficiencies exist or have been asserted with respect to Taxes paid by Clear and each of its subsidiaries. Clear and each of its subsidiaries is not a party to any action or proceeding for assessment or collection of Taxes, nor has such event been asserted or, to Clear's knowledge, threatened against Clear and each of its subsidiaries or any of their assets. No waiver or extension of any statute of limitations is in effect with respect to Taxes or Returns of Clear and each of its subsidiaries. There is no audit in process, pending or, to the knowledge of Clear, threatened by a governmental or taxing authority relating to the Returns of Clear and each of its subsidiaries for the last three (3) years.
- (mm) Clear and each of its subsidiaries has withheld from each payment made to any of its present or former employees, officers and directors, and to all persons who are non-residents of Canada for the purposes of the *Tax Act*, all amounts required by law and will continue to do so until the Effective Time and has remitted such withheld amounts within the prescribed periods to the appropriate governmental authority. Clear and each of its subsidiaries has remitted all Canada Pension Plan contributions, employment insurance premiums, employer health taxes and other Taxes payable by it in respect of its employees and has or will have remitted such amounts to the proper governmental authority within the time required by applicable law. Clear and each of its subsidiaries has charged, collected and remitted on a timely basis all Taxes as required by applicable law on any sale, supply or delivery whatsoever, made by Clear and each of its subsidiaries.
- (nn) Completion of the Arrangement will not result in a Material Adverse Change in respect of Clear pursuant to or as a result of the provisions of any agreement or arrangement to which Clear or any of its subsidiaries is a party.
- (oo) Except: (a) as disclosed or reflected in the Clear Financial Statements; and (b) for liabilities and obligations: (i) incurred in the ordinary course of business; or (ii) pursuant to the terms of this Agreement, Clear has not incurred any liabilities of any nature, whether accrued, contingent or otherwise (or which would be required by GAAP to be reflected on the balance sheet of Clear) that have constituted or would be reasonably likely to constitute a Material Adverse Change.
- (pp) Except as set out in the Public Record, there are no material contracts or agreements which have, or which might have, or create any material obligation to Clear or any of its subsidiaries or from which they derive or could derive any material benefit or which are required by Clear or any of its subsidiaries to carry on the business as now conducted by Clear and its subsidiaries or as is now proposed to be carried on by Clear and its subsidiaries.
- (qq) To the knowledge of Clear, no representation or warranty contained herein and no statement contained in any schedule or other disclosure document provided or to be provided to the Trust or Navigo by Clear pursuant hereto contains or will contain any untrue statement of a material fact or omits to state a material fact which is necessary in order to make the statements herein or therein not misleading.

4.3 Privacy Issues

- (a) For the purposes of this **Section 4.3**, the following definitions shall apply:
- (i) **“applicable law”** means, in relation to any person, transaction or event, all applicable provisions of laws, statutes, rules, regulations, official directives and orders of and the terms of all judgements, orders and decrees issued by any authorized authority by which such person is bound or having application to the transaction or event in question, including applicable privacy laws;
 - (ii) **“applicable privacy laws”** means any and all applicable laws relating to privacy and the collection, use and disclosure of Personal Information in all applicable jurisdictions, including but not limited to the Personal Information Protection and Electronic Documents Act (Canada) and/or any comparable provincial law including the *Personal Information Protection Act* (Alberta);
 - (iii) **“authorized authority”** means, in relation to any person, transaction or event, any (a) federal, provincial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), both domestic and foreign, (b) agency, authority, commission, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions, and (d) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such person, transaction or event; and
 - (iv) **“Personal Information”** means information about an individual.
- (b) The Parties hereto acknowledge that they are responsible for compliance at all times with applicable privacy laws which govern the collection, use and disclosure of Personal Information acquired by or disclosed to the Parties pursuant to or in connection with this Agreement (the **“Disclosed Personal Information”**).
- (c) None of the Parties shall use the Disclosed Personal Information for any purposes other than those related to the performance of this Agreement and the completion of the Arrangement.
- (d) Each Party acknowledges and confirms that the disclosure of the Disclosed Personal Information is necessary for the purposes of determining if the Parties shall proceed with the Arrangement, and that the disclosure of the Disclosed Personal Information relates solely to the carrying on of the business and the completion of the Arrangement.
- (e) Each Party acknowledges and confirms that it has and shall continue to employ appropriate technology and procedures in accordance with applicable law to prevent accidental loss or corruption of the Disclosed Personal Information, unauthorized input or access to the Disclosed Personal Information, or unauthorized or unlawful collection, storage, disclosure, recording, copying, alteration, removal, deletion, use or other processing of such Disclosed Personal Information.
- (f) Each Party shall at all times keep strictly confidential all Disclosed Personal Information provided to it, and shall instruct those employees or advisors responsible for processing such Disclosed Personal Information to protect the confidentiality of such information in a manner consistent with the Parties’ obligations hereunder. Each Party shall ensure that access to the Disclosed Personal Information shall be restricted to those employees or advisors of the respective party who have a *bona fide* need to access such information in order to complete the Arrangement.

- (g) Each Party shall promptly notify the other Party to this Agreement of all inquiries, complaints, requests for access, and claims of which the Party is made aware in connection with the Disclosed Personal Information. The Parties shall fully co-operate with one another, with the persons to whom the Personal Information relates, and any authorized authority charged with enforcement of applicable privacy laws, in responding to such inquiries, complaints, requests for access, and claims.
- (h) Upon the expiry or termination of this Agreement, or otherwise upon the reasonable request of either Party, the other Party shall forthwith cease all use of the Personal Information acquired by such Party in connection with this Agreement and will return to the other Party or, at such Party's request, destroy in a secure manner, the Disclosed Personal Information (and any copies).

ARTICLE 5 CONDITIONS PRECEDENT

5.1 Mutual Conditions Precedent

The respective obligations of the Parties to consummate the transactions contemplated hereby, and in particular the Arrangement, are subject to the satisfaction, on or before the Effective Date or such other time specified, of the following conditions, any of which may be waived by the mutual consent of the Parties without prejudice to their right to rely on any other of such conditions:

- (a) the Trust, Navigo and Clear shall have mailed the Information Circular and other documentation required in connection with the Clear Meeting and the Trust Meeting on or before July 14, 2006;
- (b) on or prior to July 14, 2006, the Interim Order shall have been granted in form and substance satisfactory to each of the Trust, Navigo and Clear, acting reasonably, and such order shall not have been set aside or modified in a manner unacceptable to the Trust, Navigo and Clear, acting reasonably, on appeal or otherwise;
- (c) the Clear Arrangement Resolution shall have been passed by the Clear Shareholders, on or prior to the Outside Date in accordance with the Interim Order and in form and substance satisfactory to each of the Trust, Navigo and Clear, acting reasonably;
- (d) the Trust Arrangement Resolution shall have been passed by the holders of Trust Securities, on or prior to the Outside Date in accordance with the Interim Order and in form and substance satisfactory to each of the Trust, Navigo and Clear, acting reasonably;
- (e) holders of not greater than 5% of the issued and outstanding Clear Shares, in the aggregate, shall have exercised rights of dissent in respect of the Arrangement that have not been withdrawn as of the Effective Date;
- (f) on or prior to the Outside Date, the Final Order shall have been granted in form and substance satisfactory to the Trust, Navigo and Clear, acting reasonably;
- (g) the Articles of Arrangement to be filed with the Registrar in accordance with the Arrangement shall be in form and substance satisfactory to each of the Trust, Navigo and Clear, acting reasonably;
- (h) the Arrangement shall have become effective on or prior to the Outside Date;
- (i) the TSX shall have conditionally listed all of the Trust Units issuable pursuant to the Arrangement on terms which the Trust and Navigo are capable of satisfying after giving effect to the Arrangement;
- (j) either: (i) (A) the relevant waiting period in Section 123 of the *Competition Act* shall have expired; or (B) an advance ruling certificate (“**ARC**”) pursuant to Section 102 of the *Competition Act* shall have been issued by the Commissioner of the Competition Bureau (“**Commissioner**”) appointed under the

Competition Act; or (B) a “no action letter” satisfactory to each of the Trust and Clear, acting reasonably, indicating that the Commissioner has determined not to make an application for an order under Section 92 of the *Competition Act*, shall have been received from the Commissioner, and any terms and conditions attached to any such letter shall be acceptable to each of the Trust and Clear, acting reasonably; and (ii) in any case, there shall be no threatened or actual application by the Commissioner for an order under Section 92 or 100 of the *Competition Act*;

- (k) all requisite domestic and foreign regulatory approvals and consents and third party approvals required for completion of the Arrangement shall have been obtained on terms and conditions satisfactory to the Trust, Navigo and Clear, acting reasonably (including, without limitation, all approvals required to be obtained from the TSX or other securities regulatory authorities), and all applicable domestic and foreign statutory or regulatory waiting periods to the transactions contemplated by the Arrangement shall have expired or been terminated, and no objection or opposition shall have been filed, initiated or made by any regulatory authority during any applicable statutory or regulatory waiting period; and
- (l) no act, action, suit, proceeding, objection or opposition shall have been threatened or taken before or by any Governmental Authority by any elected or appointed public official or private person in Canada or elsewhere, whether or not having the force of law and no law, regulation, policy, judgment, decision, order, ruling or directive (whether or not having the force of law) shall have been proposed, enacted, promulgated, amended or applied, which in the sole judgment of either Clear or Navigo, acting reasonably, in either case has had or, if the Arrangement was consummated, would result in a Material Adverse Change in the affairs, operations or business of the Trust or Clear or would have a Material Adverse Effect on the ability of the Parties to complete the Arrangement.

The foregoing conditions are for the mutual benefit of the Parties and may be asserted by any of the Parties regardless of the circumstances and may be waived by the Parties in their sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the Parties may have.

5.2 Additional Conditions to Obligations of the Trust and Navigo

The obligation of the Trust, Navigo and Sure to consummate the transactions contemplated hereby, and in particular the Arrangement, is subject to the satisfaction, on or before the Effective Date or such other time specified, of the following conditions:

- (a) each of the acts and undertakings of Clear to be performed on or before the Effective Date pursuant to the terms of this Agreement shall have been duly performed by Clear;
- (b) Clear shall have furnished the Trust and Navigo with:
 - (i) certified copies of the resolutions duly passed by the Clear Board approving this Agreement and the consummation of the transactions contemplated hereby; and
 - (ii) certified copies of the resolutions of the Clear Shareholders, duly passed at the Clear Meeting, approving the Clear Arrangement Resolution and all other matters proposed to be approved by the Clear Shareholders at the Clear Meeting;
- (c) except as affected by the transactions contemplated by this Agreement, the representations and warranties of Clear contained in **Section 4.2** shall be true and correct in all material respects as at the Effective Date with the same effect as though such representations and warranties had been made at and as of such date (except for representations and warranties which refer to another date, which shall be true as of that date) and Clear shall have complied in all material respects with its covenants in this Agreement and the Trust and Navigo shall have received a certificate to that effect dated the Effective Date from the Chief Executive Officer of Clear and another senior officer thereof acceptable to the Trust and Navigo, acting reasonably, acting solely on behalf of Clear and not in their personal capacity,

to the best of his or her information and belief having made reasonable inquiry and the Trust and Navigo will have no knowledge to the contrary;

- (d) there shall have been no Material Adverse Change (or any condition, event or development involving a prospective Material Adverse Change) in respect of Clear subsequent to December 31, 2005;
- (e) immediately prior to the Effective Time: (i) the aggregate number of Clear Shares issued and outstanding (excluding those which may be issued pursuant to the exercise of Clear Options) does not exceed 53,277,090; (ii) there are no other shares of Clear outstanding; (iii) the aggregate number of Clear Options outstanding does not exceed 4,604,000 and the aggregate number of Clear PIRs outstanding does not exceed 2,722,700; and (iv) other than pursuant to the issued and outstanding Clear Options and Clear PIR's, no person has any agreement or option or any right or privilege (whether by law, pre-emptive right, by contract or otherwise) capable of becoming an agreement or option for the purchase, subscription, allotment or issuance of any unissued Clear securities; and Clear shall provide to the Trust a certificate from Clear' registrar and transfer agent as to the issued and outstanding Clear Shares and a certificate from two executive officers of Clear acceptable to the Trust, acting reasonably, as to the issued and outstanding Clear Options, in each case immediately prior to the Effective Date;
- (f) as at the Effective Date, the Clear Debt shall not exceed \$50 million;
- (g) the Clear Board shall have made, and shall not have changed, withdrawn or modified, its unanimous endorsement of the Arrangement and approved this Agreement, its unanimous determination that the Arrangement and this Agreement are in the best interests of Clear and the Clear Shareholders, and based on the opinion of its financial advisor, unanimously determined that the Arrangement is fair, from a financial point of view, to Clear Shareholders and resolved unanimously to recommend approval of the Arrangement by Clear Shareholders;
- (h) each of the members of the Clear Board and each of the officers of Clear shall have provided their written resignations as directors and officers effective on or before the Effective Date together with a mutual release (satisfactory to the parties acting reasonably) in favour of each party (subject, in each case, to ongoing rights of indemnity in favour of such directors and officers) and the Clear Board shall have been reconstituted with nominees of the Trust and Navigo as at the Effective Date;
- (i) there shall be no action taken under any existing law, regulation, rule or order, nor any statute, rule, regulation or order which is enacted, enforced, promulgated or issued by any court, department, commission, board, regulatory body, government or regulatory authority or similar agency, domestic or foreign, that imposes any material limitations on the ability of the Trust or its subsidiaries to effectively exercise full rights of ownership of the Clear Shares, including, without limitation, the right to vote any such shares, or the ability of the Trust or its subsidiaries to use and enjoy the business of Clear acquired by the Trust;
- (j) there shall not have occurred any actual or threatened change (including a proposal by the Minister of Finance of Canada to amend the Tax Act or any announcement, governmental or regulatory initiative, condition, event or development involving a change or a prospective change) that, in the judgment of the Trust, acting reasonably, directly or indirectly, has or may have a Material Adverse Effect with respect to Clear and its subsidiaries (on a consolidated basis), with respect to the regulatory regime applicable to their business and operations or with respect to consummating the Arrangement;
- (k) Clear's aggregate Clear Officer Obligations shall not exceed \$1,281,061; and
- (l) any director, officer, insider or other non-arm's length party that is indebted to Clear or any of its subsidiaries shall have repaid such indebtedness on or prior to the completion of the Arrangement.

The conditions in this **Section 5.2** are for the exclusive benefit of the Trust and Navigo and may be asserted by any of them regardless of the circumstances or may be waived by them in their sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which they may have.

5.3 Additional Conditions to Obligations of Clear

The obligation of Clear to consummate the transactions contemplated hereby, and in particular the Arrangement, is subject to the satisfaction, on or before the Effective Date or such other time specified, of the following conditions:

- (a) each of the acts and undertakings of the Trust and Navigo to be performed on or before the Effective Date pursuant to the terms of this Agreement shall have been duly performed by the Trust and Navigo, as the case may be;
- (b) the Trust and Navigo shall have furnished Clear with:
 - (i) certified copies of the resolutions duly passed by the Trust Board approving this Agreement and the consummation of the transactions contemplated hereby; and
 - (ii) certified copies of the resolutions of the Trust Securityholders, duly passed at the Trust Meeting, approving the Trust Arrangement Resolution and all other matters proposed to be approved by the Trust Securityholders at the Trust Meeting;
- (c) except as affected by the transactions contemplated by this Agreement, the representations and warranties of each of the Trust and Navigo contained in **Section 4.1** shall be true and correct in all material respects as at the Effective Date with the same effect as though such representations and warranties had been made at and as of such date (except for representations and warranties which refer to another date, which shall be true as of that date) and each of the Trust and Navigo shall have complied in all material respects with its covenants in this Agreement and Clear shall have received a certificate to that effect dated the Effective Date from the President of the Trust and Navigo and another senior officer of each acceptable to Clear, acting reasonably, acting solely on behalf the Trust and of Navigo and not in their personal capacity, to the best of his or her information and belief having made reasonable inquiry and Clear will have no knowledge to the contrary;
- (d) as at the Effective Date, the Trust Debt shall not exceed \$165 million; and
- (e) the Trust Board shall have made, and shall not have changed, withdrawn or modified, its unanimous endorsement of the Arrangement and approved this Agreement, its unanimous determination that the Arrangement and this Agreement are in the best interests of the Trust and the Trust Securityholders, and based on the opinion of its financial advisor, unanimously determined that the Arrangement is fair, from a financial point of view, to the Trust Securityholders and resolved unanimously to recommend approval of the Arrangement by the Trust Securityholders;
- (f) the Trust's aggregate Trust Officer Obligations shall not exceed \$3.5 million;
- (g) there shall have been no Material Adverse Change (or any condition, event or development involving a prospective Material Adverse Change) in respect of the Trust (on a consolidated basis) subsequent to December 31, 2005;
- (h) there shall not have occurred any actual or threatened change (including a proposal by the Minister of Finance of Canada to amend the *Tax Act* or any announcement, governmental or regulatory initiative, condition, event or development involving a change or a prospective change) that, in the judgment of Clear, acting reasonably, directly or indirectly, has or may have a Material Adverse Effect with respect to the Trust and its subsidiaries (on a consolidated basis) with respect to the regulatory regime applicable to their business and operations or with respect to consummating the Arrangement; and

- (i) immediately prior to the Effective Time (i) the aggregate number of Trust Units issued and outstanding does not exceed 28,467,355 (excluding those Trust Units to be acquired pursuant to the exercise of Trust Unit Incentive Rights, pursuant to the Trust DRIP, or upon exchange or conversion of the Trust Exchangeable Shares or Trust Convertible Debentures); (ii) the aggregate number of Trust Unit Incentive Rights does not exceed 917,751; and (iii) the aggregate number of Trust Exchangeable Shares outstanding does not exceed 268,480 (exchangeable for 394,633 Trust Units).

The conditions in this **Section 5.3** are for the exclusive benefit of Clear and may be asserted by Clear regardless of the circumstances or may be waived by Clear in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which Clear may have.

5.4 Notice and Effect of Failure to Comply with Conditions

- (a) Each of the Trust, Navigo and Clear shall give prompt notice to the others of the occurrence, or failure to occur, at any time from the date hereof to the Effective Date of any event or state of facts which occurrence or failure would, or would be likely to, (i) cause any of the representations or warranties of any Party contained herein to be untrue or inaccurate in any material respect, or (ii) result in the failure to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by any Party hereunder; provided, however, that no such notification will affect the representations or warranties of the Parties or the conditions to the obligations of the Parties hereunder.
- (b) If a Party intends to rely on a breach of a representation, warranty or covenant of the other Party to rescind or terminate this Agreement, such Party intending to rely thereon shall deliver a written notice to the other Party, specifying in reasonable detail all breaches of covenants, representations and warranties which the Party delivering such notice is asserting and provide the other Party 48 hours to rectify the breaches before the effective date of rescission of termination. More than one such notice may be delivered by a Party.

5.5 Satisfaction of Conditions

The conditions set out in this **Article 5** are conclusively deemed to have been satisfied, waived or released when, with the agreement of the Parties, Articles of Arrangement are filed under the ABCA to give effect to the Arrangement.

ARTICLE 6 TERMINATION FEES

6.1 Trust Termination Fee

If at any time after the execution of this Agreement and prior to its termination:

- (a) the Clear Board has withdrawn or changed any of its recommendations or determinations referred to in **Sections 2.3(b)** and **4.2(s)** in a manner adverse to the Trust or shall have resolved to do so prior to the Effective Date;
- (b) a *bona fide* Acquisition Proposal is publicly announced, proposed, offered or made to the Clear Shareholders or to Clear and the Clear Shareholders do not approve the Arrangement or the Arrangement is not submitted for their approval;
- (c) Clear accepts, recommends, approves or enters into an agreement to implement a Superior Proposal;
- (d) Clear is in breach of any of its covenants made in this Agreement which breach individually or in the aggregate causes or would reasonably be expected to cause a Material Adverse Change in respect of Clear or materially impedes the completion of the Arrangement, and Clear fails to cure such breach within five business days after receipt of written notice thereof from the Trust (except that no cure

period shall be provided for a breach which by its nature cannot be cured and, in no event, shall any cure period extend beyond the Outside Date); or

- (e) Clear is in breach of any of its representations or warranties made in this Agreement (without giving effect to any materiality qualifiers contained herein) which breach individually or in the aggregate causes or would reasonably be expected to cause a Material Adverse Change in respect of Clear or materially impedes the completion of the Arrangement, and Clear fails to cure such breach within five Business Days after receipt of written notice thereof from the Trust (except that no cure period shall be provided for a breach which by its nature cannot be cured and, in no event, shall any cure period extend beyond the Outside Date);

(each of the above being a “**Trust Damages Event**”), then in the event of the termination of this Agreement pursuant to **Section 8.1(d)**, Clear shall pay to the Trust \$5 million (the “**Trust Termination Fee**”) as liquidated damages in immediately available funds to an account designated by the Trust at the time stipulated therefore in the Letter Agreement. Following a Trust Damages Event but prior to payment of the applicable Trust Termination Fee, Clear shall be deemed to hold such applicable Trust Termination Fee in trust for the Trust. Clear shall only be obligated to pay one Trust Termination Fee pursuant to this **Section 6.1**.

6.2 Clear Termination Fee

If at any time after the execution of this Agreement and prior to its termination:

- (a) the Trust has withdrawn or changed any of its recommendations or determinations referred to in **Sections 2.3(b)** and **4.1(cc)** in a manner adverse to Clear or shall have resolved to do so prior to the Effective Date;
- (b) a *bona fide* Acquisition Proposal is publicly announced, proposed, offered or made to the Trust Securityholders or to the Trust and the Trust Securityholders do not approve the Arrangement or the Arrangement is not submitted for their approval;
- (c) the Trust accepts, recommends, approves or enters into an agreement to implement a Superior Proposal; or
- (d) the Trust is in breach of any of its covenants made in this Agreement which breach individually or in the aggregate causes or would reasonably be expected to cause a Material Adverse Change in respect of the Trust or materially impedes the completion of the Arrangement, and the Trust fails to cure such breach within five Business Days after receipt of written notice thereof from Clear (except that no cure period shall be provided for a breach which by its nature cannot be cured and, in no event, shall any cure period extend beyond the Outside Date); or
- (e) the Trust is in breach of any of its representations or warranties made in this Agreement (without giving effect to any materiality qualifiers contained herein) which breach individually or in the aggregate causes or would reasonably be expected to cause a Material Adverse Change in respect of the Trust or materially impedes the completion of the Arrangement, and the Trust fails to cure such breach within five Business Days after receipt of written notice thereof from Clear (except that no cure period shall be provided for a breach which by its nature cannot be cured and, in no event, shall any cure period extend beyond the Outside Date);

(each of the above being a “**Clear Damages Event**”), then in the event of the termination of this Agreement pursuant to **Section 8.1(c)**, the Trust shall pay to Clear \$5 million (the “**Clear Termination Fee**”) as liquidated damages in immediately available funds to an account designated by Clear at the time stipulated therefore in the Letter Agreement. Following a Clear Damages Event but prior to payment of the applicable Clear Termination Fee, the Trust shall be deemed to hold such applicable Clear Termination Fee in trust for Clear. The Trust shall only be obligated to pay one Clear Termination Fee pursuant to this **Section 6.2**.

6.3 Liquidated Damages

Each Party acknowledges that all of the payment amounts set out in **Sections 6.1** and **Section 6.2** are payments of liquidated damages which are a genuine pre-estimate of the damages which the Party entitled to such damages will suffer or incur as a result of the event giving rise to such damages and resultant termination of this Agreement and are not penalties. Each Party irrevocably waives any right it may have to raise as a defence that any such liquidated damages are excessive or punitive. For greater certainty, the Parties agree that the payment of the amount pursuant to **Sections 6.1** or **6.2**, as applicable is the sole monetary remedy of the Party receiving such payment. Nothing herein shall preclude a Party from seeking injunctive relief to restrain any breach or threatened breach of the covenants or agreements set forth in this Agreement or the Confidentiality Agreement or otherwise to obtain specific performance of any of such act, covenants or agreements, without the necessity of posting bond or security in connection therewith.

ARTICLE 7 AMENDMENT

7.1 Amendment

This Agreement may at any time and from time to time before or after the holding of the Trust Meeting or the Clear Meeting be amended by written agreement of the Parties hereto without, subject to Applicable Laws, further notice to or authorization on the part of their respective securityholders and any such amendment may, without limitation:

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

provided that no such amendment reduces or materially adversely affects the consideration to be received by a Clear Securityholder or a Trust Securityholder without approval by the Clear Shareholders or the Trust Securityholders, as the case may be, given in the same manner as required for the approval of the Arrangement or as may be ordered by the Court.

ARTICLE 8 TERMINATION

8.1 Termination

This agreement may be terminated at any time prior to the Effective Date:

- (a) by mutual written consent of Clear and the Trust;
- (b) as provided in **Article 5**;
- (c) by the Trust upon the occurrence of a Trust Damages Event as provided in **Section 6.1** provided that in the event of a Trust Damages Event provided for in **Section 6.1(a)**, this Agreement may not be terminated by the Trust unless the Clear Shareholders do not approve the Arrangement or the Arrangement is not submitted for their approval;

- (d) by Clear upon the occurrence of a Clear Damages Event as provided in **Section 6.2** provided that in the event of a Clear Damages Event provided for in **Section 6.2(a)**, this Agreement may not be terminated by Clear unless the Trust Securityholders do not approve the Arrangement or the Arrangement is not submitted for their approval;
- (e) by the Trust upon the occurrence of a Trust Damages Event as provided in **Section 6.1** and the payment by Clear to the Trust of the Trust Termination Fee; and
- (f) by Clear upon the occurrence of a Clear Damages Event as provided in **Section 6.2** and the payment by the Trust to Clear of the Clear Termination Fee.

In the event of the termination of this Agreement in the circumstances set out in paragraphs (a) through (f) of this **Section 8.1**, this Agreement shall forthwith become void and no Party shall have any liability or further obligation to the other Parties hereunder except with respect to the obligations set forth in **Sections 4.3, 6.1, 6.2, 10.4 and 10.11** and each Party's obligations in the Confidentiality Agreement, which shall survive such termination.

ARTICLE 9 NOTICES

9.1 Notices

All notices which may or are required to be given pursuant to any provision of this Agreement are to be given or made in writing and served personally or sent by telecopy and in the case of:

- (a) the Trust and Navigo, addressed to:

NAV Energy Trust
1800, 635 - 8th Avenue SW

Calgary, AB T2P 3M3

Attention: Mr. Tom Stan
President

with a copy to:

Burnet Duckworth and Palmer LLP
1400, 350 - 7th Avenue SW
Calgary, AB T2P 3N9

Attention: Ms. Shannon Gangl

Telecopier: (403) 260-0332

- (b) Clear, addressed to:

Clear Energy Inc.
Suite 500, 400 - 3rd Avenue SW
Calgary, AB T2P 4H2

Attention: Mr. Jeffrey S. Boyce
President

Telecopier: (403) 410-3111

with a copy to:

Borden Ladner Gervais LLP
1000 Canterra Tower
400 — 3rd Avenue S.W.
Calgary, Alberta T2P 4H2

Attention: Mr. Dan Kolibar
Telecopier: (403) 266-1395

or such other address as the Parties may, from time to time, advise to the other Parties hereto by notice in writing. The date or time of receipt of any such notice will be deemed to be the date of delivery or the time such telecopy is received.

ARTICLE 10 GENERAL

10.1 Binding Effect

This Agreement shall be binding upon and enure to the benefit of the Parties hereto.

10.2 Assignment

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties hereto without the prior written consent of the other Parties hereto.

10.3 Disclosure

Each Party shall receive the prior consent, not to be unreasonably withheld, of the other Parties prior to issuing or permitting any director, officer, employee or agent to issue, any press release or other written statement with respect to this Agreement or the transactions contemplated hereby. Notwithstanding the foregoing, if any Party is required by law or administrative regulation to make any disclosure relating to the transactions contemplated herein, such disclosure may be made, but that Party will consult with the other Parties as to the wording of such disclosure prior to its being made.

10.4 Costs

Except as contemplated herein (including **Sections 6.1** and **6.2**), each Party hereto covenants and agrees that all fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such cost or expense, whether or not the Arrangement is completed.

10.5 Severability

If any one or more of the provisions or parts thereof contained in this Agreement should be or become invalid, illegal or unenforceable in any respect in any jurisdiction, the remaining provisions or parts thereof contained herein shall be and shall be conclusively deemed to be, as to such jurisdiction, severable therefrom and:

- (a) the validity, legality or enforceability of such remaining provisions or parts thereof shall not in any way be affected or impaired by the severance of the provisions or parts thereof severed; and
- (b) the invalidity, illegality or unenforceability of any provision or part thereof contained in this Agreement in any jurisdiction shall not affect or impair such provision or part thereof or any other provisions of this Agreement in any other jurisdiction.

10.6 Further Assurances

Each Party hereto shall, from time to time and at all times hereafter, at the request of the other Parties hereto, but without further consideration, do all such further acts, and execute and deliver all such further documents and instruments as may be reasonably required in order to fully perform and carry out the terms and intent hereof.

10.7 Third Party Beneficiaries

The provisions of **Sections 2.3(d)** and **2.3(e)** are intended for the benefit of past and present directors and officers of Navigo and Clear, and shall be enforceable by each of such persons and his, her or its heirs, executors, administrators, successors and other legal representatives (collectively, the “**Third Party Beneficiaries**”) and Navigo and Clear, as the case may be, and any successor thereto shall hold the rights and benefits under the foregoing Sections in trust for and on behalf of the Third Party Beneficiaries and Navigo and Clear hereby accept such trust and agree to hold the benefit of and enforce the performance of such covenants on behalf of the Third Party Beneficiaries and which rights are in addition to and not in substitution for any other rights the Third Party Beneficiaries may have by contract or otherwise.

10.8 Time of Essence

Time shall be of the essence of this Agreement.

10.9 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the Parties hereto irrevocably attorn to the jurisdiction of the courts of the Province of Alberta.

10.10 Waiver

No waiver by any Party shall be effective unless in writing and any waiver shall affect only the matter, and the occurrence thereof; specifically identified and shall not extend to any other matter or occurrence.

10.11 Limitations on Liability

The Parties hereto acknowledge that, in addition to entering into this Agreement in its own capacity:

- (a) The obligations of the Trust hereunder shall not be personally binding upon the Trustee, Navigo or any of the Unitholders and that any recourse against the Trust, the Trustee, Navigo or any Unitholder in any manner in respect of any indebtedness, obligation or liability of the Trust arising hereunder or arising in connection herewith or from the matters to which this Agreement relates, if any, including without limitation claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of; the Trust Assets as defined in the Trust Indenture;

10.12 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together constitute one and the same instrument.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

NAV ENERGY TRUST

Per: (signed) "Thomas P. Stan"

NAVIGO ENERGY INC.

Per: (signed) "Thomas P. Stan"

CLEAR ENERGY INC.

Per: (signed) "Jeffrey S. Boyce"

SURE ENERGY INC.

Per: (signed) "Jeffrey S. Boyce"