

RUPERT ACQUISITION LLC

as New Holdco

and

HUDSON'S BAY COMPANY

as the Company

ARRANGEMENT AGREEMENT

October 20, 2019

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ARRANGEMENT AGREEMENT

THIS ARRANGEMENT AGREEMENT is made as of October 20, 2019,

BETWEEN:

RUPERT ACQUISITION LLC

("New Holdco")

- and -

HUDSON'S BAY COMPANY, a corporation existing under the federal laws of Canada

(the "Company").

RECITALS:

- A. New Holdco proposes to become the sole shareholder of the Company following the purchase by the Company of all of the issued and outstanding common shares of the Company (other than common shares owned by New Holdco, its Subsidiaries and the Continuing Shareholders) by way of a plan of arrangement under the provisions of the *Canada Business Corporations Act*.
- B. A special committee of the board of directors of the Company and the board of directors of the Company (excluding the directors of the Company who are Participating Insiders) have each unanimously determined that this Agreement and the Arrangement are in the best interests of the Company and have resolved, subject to the terms of this Agreement, to recommend that the Shareholders (other than New Holdco and the Continuing Shareholders) vote in favour of the Arrangement Resolution.
- C. New Holdco has determined that this Agreement and the Arrangement are in the best interests of New Holdco and has approved the terms of this Agreement, the Arrangement and the other transactions contemplated hereby.

NOW THEREFORE, in consideration of the covenants and agreements herein contained, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

Section 1.1 Defined Terms.

As used in this Agreement, the following terms have the following meanings:

"**Acquisition Proposal**" means, other than the transactions contemplated by this Agreement, the Lord + Taylor Transaction and any transaction involving only the

Company and/or one or more of its wholly-owned Subsidiaries, any offer, proposal or inquiry (written or oral) from any Person or group of Persons other than New Holdco (or any affiliate or joint actor of New Holdco) after the date of this Agreement relating to: (i) any sale or disposition (or any lease, joint venture, long-term supply agreement or other arrangement having the same economic effect as a sale), direct or indirect, of assets representing 20% or more of the consolidated assets or contributing 20% or more of the consolidated revenue of the Company and its Subsidiaries or of 20% or more of the voting or equity securities of the Company; (ii) any take-over bid, exchange offer or other transaction that, if consummated, would result in such Person or group of Persons beneficially owning 20% or more of any class of voting or equity securities (including securities convertible into or exercisable or exchangeable for voting or equity securities) of the Company or any of its Subsidiaries or Joint Ventures that, collectively, represent 20% or more of the consolidated assets or contribute 20% or more of the consolidated revenue of the Company and its Subsidiaries; (iii) any plan of arrangement, merger, amalgamation, consolidation, share exchange, business combination, reorganization, recapitalization, liquidation, dissolution, winding up or exclusive license involving the Company or any of its Subsidiaries or Joint Ventures that, collectively, represent 20% or more of the consolidated assets or contribute 20% or more of the consolidated revenue of the Company and its Subsidiaries; or (iv) any other similar transaction or series of transactions involving the Company or any of its Subsidiaries or Joint Ventures.

“Affected Securityholders” means, collectively, the Shareholders (other than the Continuing Shareholders), the holders of Options, the holders of DSUs and the holders of RSUs.

“affiliate” has the meaning specified in National Instrument 45-106 – *Prospectus Exemptions* as of the date of this Agreement.

“Agreed Reorganization” has the meaning specified in Section 4.9(1).

“Agreement” means this arrangement agreement.

“AIF” means the annual information form of the Company dated and filed on SEDAR on May 3, 2019.

“ARCA” means the Amended and Restated Credit Agreement, dated as of October 11, 2019, by, among others, the Company and Lord & Taylor Acquisition, Inc. as borrowers, the lenders party thereto, Bank of America, as administrative agent, and the other agents named therein.

“Arrangement” means an arrangement under Section 192 of the CBCA on the terms and subject to the conditions set out in the Plan of Arrangement, subject to any amendments or variations to the Plan of Arrangement made in accordance with the terms of this Agreement and the Plan of Arrangement or made at the direction of the Court in the Final Order with the prior written consent of the Company and New Holdco, each acting reasonably.

“Arrangement Resolution” means the special resolution approving the Plan of Arrangement to be considered at the Company Meeting, substantially in the form of Schedule “B”.

“Articles of Arrangement” means the articles of arrangement of the Company in respect of the Arrangement required by the CBCA to be sent to the Director after the Final Order is made, which shall include the Plan of Arrangement and otherwise be in a form and content satisfactory to the Company and New Holdco, each acting reasonably.

“Authorization” means, with respect to any Person, any order, permit, approval, authorization, consent, waiver, licence or similar authorization of any Governmental Entity having jurisdiction over such Person.

“Board” means the board of directors of the Company as constituted from time to time.

“Board Recommendation” has the meaning specified in Section 2.4(2).

“Breaching Party” has the meaning specified in Section 4.7(3).

“Business Day” means any day of the year, other than a Saturday, Sunday or any day on which major banks are closed for business in the Province of Ontario or the State of New York.

“CBCA” means the *Canada Business Corporations Act*.

“Centerview” means Centerview Partners LLC.

“Certificate of Arrangement” means the certificate of arrangement to be issued by the Director pursuant to Subsection 192(7) of the CBCA in respect of the Articles of Arrangement.

“Change in Recommendation” occurs when the Board or any committee of the Board fails to recommend or withdraws, amends, modifies or qualifies in a manner adverse to New Holdco, or fails to publicly reaffirm (without qualification) within five (5) Business Days after having been requested in writing by New Holdco to do so, the Board Recommendation, or takes no position or a neutral position with respect to an Acquisition Proposal for more than five (5) Business Days after the first public disclosure of such Acquisition Proposal.

“Closing” has the meaning specified in Section 2.7(4).

“Collective Agreements” means all collective bargaining agreements or union agreements currently applicable to the Company and/or any of its Subsidiaries and all related documents, including letters or memorandums of understanding, letters of intent or other written communications with bargaining agents for any Company

Employee which impose any obligations upon the Company and/or any of its Subsidiaries.

“Commissioner of Competition” means the Commissioner of Competition appointed pursuant to subsection 7(1) of the *Competition Act* or his or her designee.

“Common Shareholders” means the registered and/or beneficial holders of Common Shares, as the context requires.

“Common Shares” means the common shares in the capital of the Company.

“Company” has the meaning given to it in the preamble to this Agreement.

“Company Circular” means the notice of the Company Meeting and accompanying management information circular, including all schedules, appendices and exhibits to, and information incorporated by reference in, such management information circular, to be sent to the Shareholders in connection with the Company Meeting, as amended, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

“Company Disclosure Letter” means the disclosure letter dated the date of this Agreement and delivered by the Company to New Holdco with this Agreement.

“Company Employees” means the employees of the Company and its Subsidiaries.

“Company Filings” means all documents publicly filed under the profile of the Company on the System for Electronic Document Analysis Retrieval (SEDAR) since February 4, 2018.

“Company Meeting” means the special meeting of Shareholders, including any adjournment or postponement of such special meeting in accordance with the terms of this Agreement, to be called and held in accordance with the Interim Order to consider the Arrangement Resolution.

“Competition Act” means the *Competition Act* (Canada).

“Competition Act Approval” means (i) the issuance to New Holdco of an advance ruling certificate by the Commissioner of Competition under Subsection 102(1) of the Competition Act to the effect that the Commissioner of Competition is satisfied that she or he would not have sufficient grounds upon which to apply to the Competition Tribunal for an order under Section 92 of the Competition Act with respect to the transactions contemplated by this Agreement; or (ii) both of (A) the waiting period, including any extension thereof, under Section 123 of the Competition Act shall have expired or been terminated or the obligation to provide a pre-merger notification in accordance with Part IX of the Competition Act shall have been waived in accordance with paragraph 113(c) of the Competition Act, and (B) New Holdco shall have received a No Action Letter.

“Competition Brief” has the meaning specified in Section 4.4(2).

“Consideration” means \$10.30 in cash per Common Share, without interest.

“Continuing Shareholders” means Richard A. Baker, Lisa Baker, Lisa and Richard Baker Enterprises, LLC, Red Trust, Yellow Trust, Blue Trust, Robert Baker, Christina Baker, A Trust for Bettina Jane Richman, A Trust for Emma Richman, A Trust for Francesca Richman, Ashley S. Baker 3/15/84 Trust, Lion Trust, Mr. and Mrs. Robert Baker Family Foundation, Christina Baker Trust for Grandchildren, Robert C. Baker Trust for Grandchildren, William Mack, The William and Phyllis Mack Family Foundation, Inc., Mack 2010 Family Trust I, Richard Mack, WRS Advisors III, LLC, WRS Advisors IV, LLC, Lee Neibart, Lee S. Neibart 2010 GRAT, Hanover Investments (Luxembourg) S.A., Abrams Capital Partners I, L.P., Abrams Capital Partners II, L.P., Whitecrest Partners, LP. and Fabric Luxembourg Holdings S.à r.l. (and, in each case, an affiliate of such shareholder that acquires such shareholder’s shares prior to the Effective Time).

“Contract” means any legally binding agreement, commitment, engagement, contract, franchise, lease, licence, undertaking, or other right or obligation (written or oral) to which the Company or any of its Subsidiaries is a party or by which it or any of its Subsidiaries is bound or affected or to which any of their respective properties or assets is subject.

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

“Debt Commitment Letter” means the executed amended and restated debt commitment letter from the Debt Financing Sources party thereto to the Company, dated the date hereof, as amended, supplemented or replaced in compliance with this Agreement.

“Debt Financing” means the debt financing contemplated by the Debt Commitment Letter.

“Debt Financing Sources” means the Persons that have committed to provide or arrange, or have otherwise entered into agreements in connection with, all or any part of the Debt Financing or alternative debt financings (including any debt securities issued in lieu of any Debt Financing) in connection with the Arrangement including the parties to any joinder agreements, notes or credit agreements entered into pursuant thereto or relating thereto, together with their respective affiliates and their and their respective affiliates’ officers, directors, employees, agents and representatives and their respective successors and assigns.

“Depository” means such Person as the Company may appoint to act as depository in respect of the Arrangement, with the prior consent of New Holdco, acting reasonably.

“Director” means the Director appointed pursuant to section 260 of the CBCA.

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

“DSU Plan” means the Hudson’s Bay Company Deferred Share Unit Plan effective November 26, 2012.

“DSUs” means the outstanding deferred share units granted under the DSU Plan.

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

“Effective Time” means 12:01 a.m. on the Effective Date, or such other time as the Parties agree to in writing before the Effective Date.

“Employee Plans” means all health, welfare, supplemental unemployment benefit, change of control, bonus, profit sharing, option, life insurance, compensation, incentive, incentive compensation, deferred compensation, share purchase, share compensation, disability, pension, vacation, severance or termination pay, retirement or savings plans, stock purchase, stock appreciation, medical, dental, or other employee benefit plans, fringe benefit, policies, trusts, funds, agreements, programmes, practices or arrangements for the benefit of employees, former employees, officers, directors or former directors of the Company or any of its Subsidiaries, whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered, which are maintained by or binding upon the Company or any of its Subsidiaries or in respect of which the Company or any of its Subsidiaries has an actual or contingent liability or otherwise, excluding obligations pursuant to a statute and Contracts with individual Company Employees, and including for greater certainty the Option Plan, the RSU Plan, the PSU Plan and the DSU Plan.

“Environmental Laws” means all Laws and agreements with Governmental Entities and all other statutory requirements relating to public health or the protection of the environment and all Authorizations issued pursuant to such Laws, agreements or other statutory requirements.

“Fairness Opinions” means the opinions of each of TD Securities, Centerview and JP Morgan to the effect that, as of the date of such opinion, the Consideration to be received by the Common Shareholders other than the Continuing Shareholders is fair, from a financial point of view, to such Common Shareholders.

“Final Order” means the final order of the Court pursuant to Section 192 of the CBCA in a form acceptable to the Company and New Holdco, each acting reasonably, approving the Arrangement, as such order may be amended by the Court (with the consent of both the Company and New Holdco, each acting reasonably) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is acceptable to both the Company and New Holdco, each acting reasonably) on appeal.

“Governmental Entity” means (i) any international, multinational, national, federal, provincial, territorial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, board, bureau, ministry, agency or instrumentality, domestic or foreign, (ii) any subdivision or authority of any of the above, (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing or (iv) any stock exchange.

“HSR Act” means the *Hart-Scott-Rodino Antitrust Improvements Act of 1976* (United States), as amended, and the rules and regulations promulgated thereunder.

“HSR Clearance” means that the applicable waiting period (including any extension thereof) pursuant to the HSR Act shall have expired or been terminated.

“IFRS” means the international financial reporting standards issued by the International Accounting Standards Board that are applicable to public issuers in Canada.

“Information” has the meaning specified in Section 4.5(2).

“Intellectual Property” means domestic and foreign: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications; (ii) proprietary and non-public business information, including inventions (whether patentable or not), invention disclosures, improvements, discoveries, trade secrets, confidential information, know-how, methods, processes, designs, technology, technical data, schematics, formulae and customer lists, and documentation relating to any of the foregoing; (iii) copyrights, copyright registrations and applications for copyright registration; (iv) mask works, mask work registrations and applications for mask work registrations; (v) designs, design registrations, design registration applications and integrated circuit topographies; (vi) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, and the goodwill associated with any of the foregoing; (vii) software; and (viii) any other intellectual property and industrial property.

“Interim Order” means the interim order of the Court pursuant to Section 192 of the CBCA in a form acceptable to the Company and New Holdco, each acting reasonably, providing for, among other things, the calling and holding of the Company Meeting, as such order may be amended by the Court with the consent of the Company and New Holdco, each acting reasonably.

“Joint Ventures” means, collectively, RioCan-HBC Limited Partnership, HBS Global Properties LLC and 424 Fifth Avenue Holdings LLC, and **“Joint Venture”** means any of them, as the context requires.

“JP Morgan” means JP Morgan Securities Canada Inc.

“Law” or “Laws” means, with respect to any Person, any and all applicable law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, tariff, order, injunction, judgment, decree, ruling or other similar requirement, whether domestic or foreign, enacted, adopted, promulgated or applied by a Governmental Entity that is binding upon or applicable to such Person or its business, undertaking, property or securities, and to the extent that they have the force of law, policies, guidelines, notices and protocols of any Governmental Entity, as amended.

“Leased Real Property” means the leased Real Property of the Company and its Subsidiaries identified in the AIF, except as modified by the Company Disclosure Letter.

“Lien” means any mortgage, charge, pledge, hypothec, security interest, prior claim, encroachments, option, right of first refusal or first offer, occupancy right, covenant, assignment, lien (statutory or otherwise), defect of title, or restriction (including any restriction on use, transfer, voting or other exercise of any attributes of ownership) or adverse right or claim, or other third party interest or encumbrance of any kind, including in each case, whether contingent or absolute.

“Lord + Taylor Transaction” means the Company’s sale of certain assets of the Lord + Taylor business to Le Tote, Inc. pursuant to an asset purchase agreement among Lord & Taylor Holdings, LLC, Lord & Taylor Acquisition Inc. and Le Tote, Inc. dated August 27, 2019, as it may be amended with New Holdco’s prior consent from time to time.

“Matching Period” has the meaning specified in Section 5.4(1)(e).

“Material Adverse Effect” means any change, effect, event, occurrence, state of fact or circumstance that, individually or in the aggregate with other such changes, effects, events, occurrences, state of facts or circumstances, is, or would reasonably be expected to be, material and adverse to the business, operations, results of operations, assets, properties, capitalization, condition (financial or otherwise) or liabilities (contingent or otherwise) of the Company and its Subsidiaries taken as a whole, except in respect of such changes, effects, events, occurrences or states of facts resulting from or arising in connection with:

- (i) any change, effect, event, occurrence, state of fact or circumstance affecting the Canadian and U.S. retail or retail real estate industries as a whole;
- (ii) any change, effect, event, occurrence, state of fact or circumstance in global, national or regional political conditions (including the outbreak or escalation of hostilities, acts of war, sabotage or acts of terrorism);
- (iii) any change, effect, event, occurrence, state of fact or circumstance in currency exchange or interest rates or in general economic, business, regulatory or market conditions or in national or global credit, currencies or securities markets;

- (iv) any adoption, proposal, implementation or change in Law or any interpretation of Law by any Governmental Entity;
- (v) any change in U.S. GAAP;
- (vi) any hurricane, flood, tornado, earthquake or other natural or man-made disaster or act of God;
- (vii) any action taken (or omitted to be taken) by the Company or any of its Subsidiaries or Joint Ventures that is required to be taken (or omitted to be taken) pursuant to this Agreement or that is taken (or omitted to be taken) at the written request, or with the prior written consent, of New Holdco;
- (viii) the announcement of this Agreement or the Arrangement;
- (ix) any change in the market price or trading volume of any securities of the Company (it being understood that the causes underlying such change in market price may be taken into account in determining whether a Material Adverse Effect has occurred); or
- (x) the failure by the Company or any of its Subsidiaries or Joint Ventures, as applicable, to meet any internal or public projections, forecasts, guidance or estimates, including of revenues or earnings (it being understood that any cause underlying such failure may be taken into account in determining whether a Material Adverse Effect has occurred);

provided, however, that with respect to clauses (i) through to and including (vi), such matter does not have a materially disproportionate effect on the Company and its Subsidiaries, taken as a whole, relative to other comparable companies and entities operating in the industry in which the Company and/or its Subsidiaries operate, and, unless expressly provided in any particular section of this Agreement, references in certain sections of this Agreement to dollar amounts are not intended to be, and shall not be deemed to be, illustrative or interpretive for purposes of determining whether a “Material Adverse Effect” has occurred.

“Material Contract” means any Contract: (i) that if terminated or modified or if it ceased to be in effect, would reasonably be expected to have a Material Adverse Effect; (ii) relating directly or indirectly to the guarantee of any liabilities or obligations or to indebtedness for borrowed money; (iii) restricting the incurrence of indebtedness by the Company or any of its Subsidiaries (including by requiring the granting of an equal and rateable Lien) or the incurrence of any Liens on any properties or assets of the Company or any of its Subsidiaries, or restricting the payment of dividends by the Company; (iv) under which the Company or any of its Subsidiaries is obligated to make or expects to receive payments in excess of \$25,000,000 over the remaining term; (v) providing for the establishment, investment in, organization or formation of any joint venture, limited liability company or partnership; (vi) that, other than in the case of retail products, creates an exclusive dealing arrangement or right of first offer or refusal; (vii) providing for the purchase,

sale or exchange of, or option to purchase, sell or exchange, any property or asset for a price or having a value equal to or in excess of \$25,000,000; or (viii) that limits or restricts (A) the ability of the Company or any Subsidiary to engage in any line of business or carry on business in any geographic area, or (B) the scope of Persons to whom the Company or any of its Subsidiaries may sell products, deliver services or conduct business.

“MI 61-101” means Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions*.

“Misrepresentation” means an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

“Netherlands Transaction” means the transactions pursuant the sale and purchase agreement dated 08/09/10 June 2019 (as amended and/or amended and restated from time to time) between, among others, HBC Europe S.à r.l. as purchaser, and European Department Store Holding S.à r.l. as seller pursuant to which the European Department Store Holding S.à r.l. sells its shareholding in HBC Netherlands B.V. to HBC Europe S.à r.l.

“New Holdco” has the meaning given to it in the preamble to this Agreement.

“NI 52-109” means National Instrument 52-109 - *Certification of Disclosure in Issuers’ Annual and Interim Filings*.

“No Action Letter” means written confirmation from the Commissioner of Competition indicating that she or he does not, as of the date of the letter, intend to make an application under section 92 of the *Competition Act* in respect of the transactions contemplated by this Agreement.

“officer” has the meaning specified in the *Securities Act* (Ontario).

“Option Plan” means the Hudson’s Bay Company second amended and restated option plan adopted by the Board on November 26, 2012, as amended on June 9, 2015, and as further amended on June 12, 2018.

“Options” means the outstanding options to purchase Common Shares granted under the Option Plan or under the employment inducement exemption pursuant to Section 613(c) of the TSX Company Manual.

“Ordinary Course” means, with respect to an action taken by a Person, that such action is consistent with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of the business of such Person.

“Outside Date” means March 30, 2020, or such later date as may be agreed to in writing by the Parties.

“Owned Real Property” means owned Real Property of the Company and its Subsidiaries identified in the AIF, except as modified by the Company Disclosure Letter.

“Participating Insiders” means Richard A. Baker, Robert Baker, William Mack, Lee Neibart, Eric Gross, Steven Langman and Ian Putnam, and Participating Insider means any one of them, as the context requires.

“Parties” means the Company and New Holdco and **“Party”** means any one of them.

“Permitted Liens” means, in respect of the Company or any of its Subsidiaries, any one or more of the following:

- (a) Liens for Taxes and utilities which are not delinquent or that are being contested in good faith and for which an adequate reserve has been made;
- (b) inchoate or statutory Liens or legal hypothecs of contractors, subcontractors, mechanics, workers, suppliers, materialmen, carriers and others in respect of the construction, maintenance, repair or operation of the assets of the Company or its Subsidiaries, provided that such Liens in the aggregate are not material and arose or were incurred in the Ordinary Course;
- (c) title defects or irregularities, unregistered easements or rights of way, restrictions in the original grant from the Crown or unregistered servitudes and other unregistered restrictions affecting the use of the Real Property provided that they are not, in the aggregate, material;
- (d) the right reserved to or vested in any Governmental Entity by any statutory provision or by the terms of any lease, licence, franchise, grant or permit of the Company or any of its Subsidiaries, to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition of their continuance;
- (e) purchase money security interests and refinancings thereof where the amount of indebtedness secured thereby is not material;
- (f) easements, agreements, servitudes, covenants, rights of way and other Liens or restrictions registered on title to the Real Property; and
- (g) Liens listed and described in Section 1.1(1) of the Company Disclosure Letter.

“Person” includes any individual, partnership, association, body corporate, organization, trust, estate, trustee, executor, administrator, legal representative, government (including Governmental Entity), syndicate or other entity, whether or not having legal status.

“Plan of Arrangement” means the plan of arrangement under Section 192 of the CBCA, substantially in the form of Schedule “A” hereto, subject to any amendments or variations to such plan made in accordance with this Agreement and the Plan of Arrangement or made at the direction of the Court in the Final Order with the prior written consent of the Company and New Holdco, each acting reasonably.

“Preferred Shareholders” means the registered and/or beneficial holders of Preferred Shares, as the context requires.

“Preferred Shares” means the series “A” convertible preferred shares in the capital of the Company.

“PSU Plan” means the Hudson’s Bay Company Performance Share Unit Plan effective as of November 26, 2012, as amended May 6, 2013 and as further amended April 1, 2016.

“PSUs” means the outstanding performance share units granted under the PSU Plan and the PRSUs.

“PRSUs” means the performance restricted share units granted under the RSU Plan.

“Purpose” has the meaning specified in Section 4.5(1).

“Real Property” means all real property interests (including, but not limited to, Owned Real Property, Leased Real Property, licenses of occupation, and real property security) and all buildings, structures, improvements, appurtenances and fixtures thereon or attached thereto, whether created privately or by the action of any Governmental Entity.

“Regulatory Approval” means any consent, waiver, permit, exemption, review, order, decision or approval of, or any registration and filing with, any Governmental Entity (excluding any court), or the expiry, waiver or termination of any waiting period imposed by Law or a Governmental Entity, in each case, to the extent required in connection with or applicable to the Arrangement, and shall include the Competition Act Approval and the HSR Clearance.

“Representatives” means, in respect of a Party, any officer, director, trustee, employee, representative (including any financial or other adviser) or agent of such Party, provided that for purposes hereof Representative of the Company shall exclude persons who are also Representatives of New Holdco.

“Required Approval” has the meaning specified in Section 2.2(b).

“Required Regulatory Approvals” means the Competition Act Approval and the HSR Clearance.

“RSU Plan” means the Hudson’s Bay Company amended and restated restricted share unit plan dated June 9, 2015, as amended on April 1, 2016 and as further amended on June 12, 2018.

“RSUs” means the outstanding restricted share units granted under the RSU Plan, excluding the PRSUs, or under the employment inducement exemption pursuant to Section 613(c) of the TSX Company Manual.

“Securities Authority” means the Ontario Securities Commission and any other applicable securities commissions or securities regulatory authority of a province or territory of Canada.

“Securities Laws” means the *Securities Act* (Ontario) and any other applicable Canadian provincial or territorial securities Laws.

“Shareholders” means the Common Shareholders and the Preferred Shareholders.

“Special Committee” means the special committee of independent directors established by the Board and mandated to consider, among other things, the transactions contemplated by this Agreement.

“Subsidiary” has the meaning specified in National Instrument 45-106 - *Prospectus Exemptions* as in effect on the date of this Agreement.

“Superior Proposal” means any unsolicited bona fide written Acquisition Proposal from a Person who is arm’s length to the Company: (a) to acquire not less than all of the outstanding Common Shares and Preferred Shares or all or substantially all of the assets of the Company on a consolidated basis; (b) that complies with Securities Laws and did not result from a breach of Article 5 of this Agreement or any agreement between the Person making such Acquisition Proposal and the Company; (c) that is reasonably capable of being completed without undue delay, taking into account all financial, legal, regulatory and other aspects of such proposal and the Person making such proposal; (d) that is not subject to any financing contingency and for which adequate arrangements have been made in respect of any financing required to complete such Acquisition Proposal without undue delay; and (e) that the Board (excluding the directors of the Company who are Participating Insiders) determines, in its good faith judgment, after receiving the advice of its outside legal and financial advisors and after taking into account all the terms and conditions of the Acquisition Proposal, including all legal, financial, regulatory and other aspects of such Acquisition Proposal and the party making such Acquisition Proposal, would, if consummated in accordance with its terms, but without assuming away the risk of non-completion, result in a transaction which is more favourable, from a financial point of view, to the Shareholders (other than the Continuing Shareholders) than the Arrangement (including any amendments to the terms and conditions of the Arrangement proposed by New Holdco pursuant to Section 5.4(2)).

“Superior Proposal Notice” has the meaning specified in Section 5.4(1)(c).

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

“Tax Returns” means any and all returns, reports, declarations, elections, notices, forms, designations, filings, and statements (including estimated tax returns and reports, withholding tax returns and reports, and information returns and reports) filed or required to be filed in respect of Taxes.

“Taxes” means (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever imposed by any Governmental Entity, whether computed on a separate, consolidated, unitary, combined or other basis, including those levied on, or measured by, or described with respect to, income, gross receipts, profits, gains, windfalls, capital, capital stock, production, recapture, transfer, land transfer, license, gift, occupation, wealth, environment, net worth, indebtedness, surplus, sales, goods and services, harmonized sales, use, value-added, excise, special assessment, stamp, withholding, business, franchising, real or personal property, health, employee health, payroll, workers’ compensation, employment or unemployment, severance, social services, social security, education, utility, surtaxes, customs, import or export, and including all license and registration fees and all employment insurance, health insurance and government pension plan premiums or contributions; (ii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Entity on or in respect of amounts of the type described in clause (i) above or this clause (ii); (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (iv) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any party.

“TD Securities” means TD Securities Inc.

“Terminating Party” has the meaning specified in Section 4.7(3).

“Termination Notice” has the meaning specified in Section 4.7(3).

“U.S. GAAP” means accounting principles and practices generally accepted in the United States.

“Valuation” means the formal valuation prepared by TD Securities for the Special Committee in accordance with and pursuant to MI 61-101.

Section 1.2 Certain Rules of Interpretation

In this Agreement, unless otherwise specified:

- (a) **Headings, etc.** The provision of a Table of Contents, the division of this Agreement into Articles, Sections and subsections and the insertion of

headings are for convenience of reference only and do not affect the meaning or interpretation of this Agreement.

- (b) **Currency.** All references to dollars or to \$ are references to Canadian dollars.
- (c) **Gender and Number.** Any reference to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (d) **Certain Phrases and References, etc.** The words “including”, “includes” and “include” mean “including (or includes or include) without limitation,” and “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of.” Unless stated otherwise, “Article”, “Section”, and “Schedule” followed by a number or letter mean and refer to the specified Article or Section of or Schedule to this Agreement. The term “Agreement” and any reference in this Agreement to this Agreement or any other agreement or document includes, and is a reference to, this Agreement or such other agreement or document as it may have been, or may from time to time be, amended, restated, replaced, supplemented or novated and includes all schedules to it.
- (e) **Capitalized Terms in Exhibits and Schedules.** Any capitalized terms used in any exhibit or Schedule but not otherwise defined therein, have the meanings given to them in this Agreement.
- (f) **Statutes.** Any reference to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended or re-enacted, unless stated otherwise.
- (g) **Computation of Time.** A period of time is to be computed as beginning on the day following the event that began the period and ending at 5:00 p.m. on the last day of the period, if the last day of the period is a Business Day, or at 5:00 p.m. on the next Business Day if the last day of the period is not a Business Day. If the date on which any action is required or permitted to be taken under this Agreement by a Person is not a Business Day, such action shall be required or permitted to be taken on the next succeeding day which a Business Day.
- (h) **Time References.** References to time are to local time, Toronto, Ontario.

Section 1.3 Accounting Matters

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

Section 1.4 Schedules

The following Schedules attached to this Agreement, being:

Schedule "A"	Plan of Arrangement
Schedule "B"	Arrangement Resolution
Schedule "C"	Representations and Warranties of the Company
Schedule "D"	Representations and Warranties of New Holdco

are incorporated by reference into, and form part of, this Agreement.

Section 1.5 Knowledge

In this Agreement, references to "to the knowledge of" or "known to" means, in the case of the Company, the actual knowledge of the Company's Chief Executive Officer, Interim Chief Financial Officer and Executive Vice President, General Counsel in each case after reasonable inquiry, with the presumption that such officers have made such due and diligent inquiries as are reasonable in the circumstances.

Section 1.6 Company Disclosure Letter

The Company Disclosure Letter itself and all information contained in it is confidential information and may not be disclosed unless (i) it is required to be disclosed pursuant to Law unless such Law permits the Parties to refrain from disclosing the information for confidentiality or other purposes, (ii) it is disclosed to a Representative who is advised of the confidentiality obligation owed in respect of the information, or (iii) a Party, acting reasonably and in good faith, needs to disclose it in order to enforce or exercise its rights under this Agreement and then, in each case, only to the extent required.

Section 1.7 Consent

A Party shall not be deemed to have provided its consent under this Agreement unless such consent is provided in writing, provided that New Holdco shall be deemed to have provided its written consent to any action taken by or on behalf of the Company, in consultation and cooperation with New Holdco, that is necessary to comply with Section 4.10.

ARTICLE 2 THE ARRANGEMENT

Section 2.1 Arrangement

The Company and New Holdco agree that the Arrangement will be implemented in accordance with and subject to the terms and conditions of this Agreement and the Plan of Arrangement.

Section 2.2 Interim Order

As soon as reasonably practicable after the date of this Agreement (which the Company shall endeavour to be on or before November 15, 2019), but in any event on or before November 29, 2019, the Company shall apply pursuant to Section 192 of the CBCA and, in cooperation with New Holdco, prepare, file and diligently pursue an application for the Interim Order, which must provide, among other things:

- (a) for the class of persons to whom notice is to be provided in respect of the Arrangement and the Company Meeting and for the manner in which such notice is to be provided;
- (b) that the required level of approval (the “**Required Approval**”) for the Arrangement Resolution shall be: (i) 75% of the votes cast on the Arrangement Resolution by Shareholders, voting together as a single class, present in person or represented by proxy at the Company Meeting; and (ii) a simple majority of the votes attached to the Common Shares cast on the Arrangement Resolution by Common Shareholders in person or represented by proxy at the Company Meeting, excluding for this purpose votes attached to Common Shares held by persons described in items (a) through (d) of section 8.1(2) of MI 61-101;
- (c) that, in all other respects, the terms, restrictions and conditions of the constating documents of the Company, including quorum requirements and all other matters, shall apply in respect of the Company Meeting;
- (d) for the grant of the Dissent Rights to those Shareholders who are registered Shareholders as contemplated in the Plan of Arrangement;
- (e) for the notice requirements with respect to the presentation of the application to the Court for the Final Order;
- (f) that the Company Meeting may be adjourned or postponed from time to time by the Company with the consent of New Holdco, as required by Law or in accordance with the terms of this Agreement without the need for additional approval of the Court;
- (g) confirmation of the record date for the purposes of determining the Shareholders entitled to notice of and to vote at the Company Meeting in accordance with the Interim Order;
- (h) that the record date for the Shareholders entitled to notice of and to vote at the Company Meeting will not change in respect of any adjournment(s) or postponement(s) of the Company Meeting, unless required by Law; and
- (i) for such other matters as the Company or New Holdco may reasonably require, provided that any such matters, individually or in the aggregate, are not prejudicial to the Shareholders other than the Continuing Shareholders or to the Company and would not impair or materially delay completion of the Arrangement.

Section 2.3 The Company Meeting

- (1) Subject to the terms of this Agreement and applicable Law, the Company shall:

- (a) convene and conduct the Company Meeting in accordance with the Interim Order, the Company's constituting documents and Law as soon as reasonably practicable, which the Company shall endeavour to be on or before December 17, 2019 (and in any event initially scheduled to be held on or before January 7, 2020), and not adjourn, postpone or cancel (or propose the adjournment, postponement or cancellation of) the Company Meeting without the prior written consent of New Holdco, except:
 - (A) in the case of an adjournment, as required for quorum purposes;
 - (B) as required or permitted under Section 4.7(3) or Section 5.4; or
 - (C) as required by Law;
- (b) from time to time as requested by New Holdco, adjourn or postpone the Company Meeting for the purposes of attempting to solicit proxies to obtain the requisite approval of the Arrangement Resolution, provided that the Company shall not be required to adjourn or postpone the Company Meeting for more than 20 Business Days in the aggregate pursuant to this Section 2.3(1)(b) (it being understood that New Holdco may request to adjourn or postpone the Company Meeting on multiple occasions);
- (c) provided that the Board has not made a Change in Recommendation, solicit proxies and support and encourage Shareholders to vote in favour of the approval of the Arrangement Resolution and against any resolution submitted by any Person that is inconsistent with the Arrangement Resolution and the completion of any of the transactions contemplated by this Agreement, including using and cooperating with Kingsdale Advisors to solicit proxies in favour of the approval of the Arrangement Resolution;
- (d) promptly provide New Holdco with copies of or access to information regarding the Company Meeting generated by any proxy solicitation services firm retained by the Company, as requested from time to time by New Holdco;
- (e) consult with New Holdco in fixing the date of the Company Meeting;
- (f) promptly advise New Holdco, at such times as New Holdco may reasonably request and at least on a daily basis on each of the last ten (10) Business Days prior to the date of the Company Meeting, as to the aggregate tally of the proxies received by the Company in respect of the Arrangement Resolution;
- (g) promptly advise New Holdco of any communication (written or oral) from any Person in opposition to the Arrangement, any written notice of dissent or purported exercise by any Shareholder of Dissent Rights received by the Company in relation to the Arrangement and any withdrawal of Dissent Rights received by the Company. The Company shall not settle or

compromise, agree to settle or compromise, or make, or agree to make, any payment, with respect to any exercise or purported exercise of Dissent Rights without the prior written consent of New Holdco and shall cooperate and consult with New Holdco in advance in connection with any discussions or communications with any Person in opposition to the Arrangement;

- (h) not change, without New Holdco's written consent, the record date for the Shareholders entitled to vote at the Company Meeting in connection with any adjournment or postponement of the Company Meeting unless required by Law; and
- (i) at the reasonable request of New Holdco from time to time, provide New Holdco with a list (in both written and electronic form) of (i) the Shareholders, together with their addresses and respective holdings of Common Shares and Preferred Shares and (ii) participants and book-based nominee registrants such as CDS & Co. and non-objecting beneficial owners of Common Shares and Preferred Shares if applicable, together with their addresses and respective holdings of Common Shares and Preferred Shares and the Company shall from time to time require that its registrar and transfer agent furnish New Holdco with such additional information, including updated or additional lists of Shareholders, and lists of securities positions and other assistance as New Holdco may reasonably request in order to be able to communicate with respect to the Arrangement with the Shareholders and with such other Persons as are entitled to vote on the Arrangement Resolution.

Section 2.4 The Company Circular

- (1) Subject to New Holdco complying with Section 2.4(4), the Company shall promptly prepare and complete, in consultation with New Holdco, the Company Circular together with any other documents required by Law in connection with the Company Meeting and the Arrangement, and the Company shall, promptly after obtaining the Interim Order, cause the Company Circular and such other documents to be filed and sent to each Shareholder and other Person as required by the Interim Order and Law, in each case so as to permit the Company Meeting to be held by the date specified in Section 2.3(1)(a).
- (2) The Company shall ensure that as of its date the Company Circular complies in material respects with Law, does not contain any Misrepresentation (provided that the Company shall not be responsible for the accuracy of any information furnished by or on behalf of New Holdco and its joint actors in writing specifically for purposes of inclusion in the Company Circular) and provides the Shareholders with sufficient information to permit them to form a reasoned judgement concerning the matters to be placed before the Company Meeting. Without limiting the generality of the foregoing, the Company Circular must include: (i) a copy of the Valuation and the Fairness Opinions, (ii) a statement that the Board and the Special Committee have received the Valuation and the Fairness Opinions, (iii) subject to any Change in Recommendation in accordance with Article 5, a statement that the Special

Committee has unanimously, after receiving legal and financial advice, determined that the Arrangement is in the best interests of the Company and recommended that the Board approve the Arrangement and recommend that the Shareholders (other than the Continuing Shareholders) vote in favor of the Arrangement Resolution, and (iv) subject to any Change in Recommendation in accordance with Article 5, a statement that the Board (excluding the directors of the Company who are Participating Insiders) has unanimously, acting on the unanimous recommendation of the Special Committee and after receiving legal and financial advice, determined that the Arrangement is in the best interests of the Company and that the Board recommends that the Shareholders (other than the Continuing Shareholders) vote in favour of the Arrangement Resolution (the “**Board Recommendation**”), and (v) to the extent accurate as of such date, a statement that each director and senior officer of the Company intends to vote all of such individual’s Common Shares in favour of the Arrangement Resolution.

- (3) The Company shall give New Holdco and its legal counsel a reasonable opportunity to review and comment on drafts of the Company Circular and other related documents, and shall give reasonable consideration in good faith to any comments made by New Holdco and its counsel, and agrees that all information relating solely to New Holdco and its joint actors included in the Company Circular must be in a form and content satisfactory to New Holdco, acting reasonably. The Company shall, to the extent legally permissible, promptly provide New Holdco with copies of all correspondence in connection with the Company Circular between the Company and its Representatives, on the one hand, and Securities Authorities or any other Governmental Entity, on the other hand.
- (4) New Holdco shall on a timely basis provide all necessary information concerning New Holdco (and shall use its commercially reasonable efforts to provide all necessary information concerning its joint actors) that is required by Law to be included by the Company in the Company Circular or other related documents to the Company in writing, and shall ensure that such information does not contain any Misrepresentation.
- (5) Each Party shall promptly notify the other Party if it becomes aware that the Company Circular contains a Misrepresentation, or otherwise requires an amendment or supplement. The Parties shall co-operate in the preparation of any such amendment or supplement as required or appropriate, and the Company shall promptly mail, file or otherwise publicly disseminate any such amendment or supplement to the Shareholders and, if required by the Court or by Law, file the same with the Securities Authorities or any other Governmental Entity as required.

Section 2.5 Final Order

If the Interim Order is obtained and the Required Approval of the Arrangement Resolution is obtained at the Company Meeting, the Company shall take all steps necessary or desirable to submit the Arrangement to the Court and diligently pursue an application for the Final Order pursuant to Section 192 of the CBCA, as soon as reasonably practicable, but in any event not later than three (3) Business Days after the Arrangement Resolution is

passed at the Company Meeting as provided for in the Interim Order.

Section 2.6 Court Proceedings

- (1) New Holdco shall cooperate with and assist the Company in seeking the Interim Order and the Final Order, including by providing the Company on a timely basis such information regarding New Holdco and the Continuing Shareholders as the Company reasonably requests or as is required by Law to be supplied by New Holdco in connection therewith.
- (2) In connection with all Court proceedings relating to obtaining the Interim Order and the Final Order, the Company shall:
 - (a) diligently pursue, and cooperate with New Holdco in pursuing, the Interim Order and the Final Order;
 - (b) provide New Holdco and its legal counsel with a reasonable opportunity to review and comment upon drafts of all material to be filed with the Court in connection with the Arrangement and will give reasonable consideration to any comments of New Holdco and its legal counsel thereon, provided however that the Company agrees that all information relating solely to New Holdco and its joint actors included in all such materials must be in a form and content satisfactory to New Holdco, acting reasonably;
 - (c) provide New Holdco with copies of any notice of appearance, evidence or other documents served on the Company or its legal counsel in respect of the application for the Interim Order or the Final Order or any appeal from them, and any notice, written or oral, indicating the intention of any Person to appeal, or oppose the granting of, the Interim Order or the Final Order;
 - (d) ensure that all material filed with the Court in connection with the Arrangement is consistent with this Agreement and the Plan of Arrangement;
 - (e) not file any material with the Court in connection with the Arrangement or serve any such material, and will not agree to modify or amend any materials so filed or served, except as contemplated by this Agreement or with New Holdco's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed; except that nothing in this Agreement requires New Holdco to agree or consent to any increase or variation in the form of the Consideration or other modification or amendment to such filed or served materials that expands or increases New Holdco's obligations, or diminishes or limits New Holdco's rights, set forth in any such filed or served materials or under this Agreement or the Arrangement;
 - (f) oppose any proposal from any Person that the Final Order contains any provision inconsistent with the Arrangement or this Agreement, and, if at any time after the issuance of the Final Order and prior to the Effective Date, the Company is required by the terms of the Final Order or by applicable

Law to return to Court with respect to the Final Order, it will do so only after notice to, and in consultation and cooperation with, New Holdco; and

- (g) not object to legal counsel to New Holdco making such submissions on the hearing of the motion for the Interim Order and the application for the Final Order as such counsel considers appropriate, provided New Holdco advises the Company of the nature of any such submissions on a reasonably timely basis prior to the hearing and such submissions are consistent with this Agreement and the Plan of Arrangement.

Section 2.7 Articles of Arrangement and Effective Date

- (1) The Articles of Arrangement shall implement the Plan of Arrangement. The Articles of Arrangement shall include the form of the Plan of Arrangement attached to this Agreement as Schedule "A" and any amendments or variations thereto made in accordance with the terms of this Agreement or made at the direction of the Court in the Final Order with the consent of the Company and New Holdco, each acting reasonably.
- (2) The Company shall amend the Plan of Arrangement from time to time at the reasonable request of New Holdco, provided that no such amendment is inconsistent with the Interim Order or the Final Order or is prejudicial to the Shareholders (other than the Continuing Shareholders) or other Persons to be bound by the Plan of Arrangement.
- (3) The Company shall file the Articles of Arrangement with the Director within five (5) Business Days of the satisfaction or, where not prohibited, the waiver by the applicable Party or Parties in whose favour the condition is, of the conditions set out in Article 6 (excluding conditions that, by their terms, cannot be satisfied until the Effective Date, but subject to the satisfaction or, where not prohibited, the waiver by the applicable Party or Parties in whose favour the condition is, of those conditions as of the Effective Date), unless another time or date is agreed to in writing by the Parties.
- (4) The closing of the Arrangement (the "**Closing**") will take place via electronic document exchange.
- (5) The specified amount for purposes of subsection 191(4) of the Tax Act for each Common Share, being the fair market value of a Common Share immediately before the date of this Agreement, is determined to be \$10.30.

Section 2.8 Payment of Consideration

The Company shall, following receipt of the Final Order and immediately prior to the filing by the Company of the Articles of Arrangement with the Director, provide the Depositary with sufficient funds to be held in escrow (the terms and conditions of such escrow to be satisfactory to the Company and New Holdco, acting reasonably) to satisfy the aggregate Consideration payable to the Shareholders (other than the Continuing

Shareholders) as provided in the Plan of Arrangement.

Section 2.9 Withholding Taxes

The Depositary and the Company shall be entitled to deduct or withhold from the consideration payable or otherwise deliverable to any Affected Securityholders, including Shareholders exercising Dissent Rights, pursuant to the Arrangement and from all dividends, other distributions or other amounts otherwise payable to any Shareholders or holders of Options, DSUs and/or RSUs such Taxes or other amounts as the Depositary and the Company are, or reasonably believe to be, required, entitled or permitted to deduct or withhold with respect to such payment under the Tax Act, or any other provisions of any applicable Laws, in each case, as amended. To the extent that Taxes or other amounts are so deducted or withheld, such deducted or withheld Taxes or other amounts shall be treated for all purposes under this Agreement as having been paid to the Person in respect of which such deduction or withholding was made, provided that such deducted or withheld Taxes or other amounts are actually remitted to the appropriate taxing authority.

Section 2.10 Options, DSUs and RSUs

- (1) Pursuant to the Arrangement, the Company shall take all reasonable steps necessary or desirable to cancel the securities identified below that are outstanding immediately prior to the Effective Time at the time and as otherwise provided in the Plan of Arrangement and in exchange for such cancellation will pay the amounts set out below to the holders of such securities, subject to applicable withholding Taxes:
 - (a) in respect of each Option, whether vested or unvested, an amount equal to the Consideration per Common Share less the applicable exercise price in respect of such Option (for greater certainty, where such amount is zero or a negative, neither the Company nor New Holdco shall be obligated to pay the holder of such Option any amount in respect of such Option) and such Option shall immediately be cancelled and the Option Plan will terminate and none of the former holders of Options, the Parties or any of their respective successors or assigns shall have any rights, liabilities or obligations in respect of the Options or the Option Plan;
 - (b) in respect of each DSU, whether vested or unvested, an amount equal to the Consideration per Common Share, in accordance with the DSU Plan; and
 - (c) in respect of each RSU, whether vested or unvested, an amount equal to the Consideration per Common Share, in accordance with the RSU Plan.
- (2) All amounts payable pursuant to Section 2.10(1) shall be paid to the applicable recipient solely through the payroll and or equity plan management system of the Company and its Subsidiaries, as applicable, less applicable withholding Taxes and other applicable deductions, if any.
- (3) New Holdco shall: (a) cause the Company to make the election referred to in (and otherwise comply with) subsection 110(1.1) of the Tax Act and the analogous

provisions of any applicable law of any province or territory of Canada in respect of the cancellation of the securities described in Section 2.10(1), to the extent permitted by Law and provided that paragraph 110(1)(d) of the Tax Act was otherwise available to such holder in respect of such Options; and (b) provide evidence in writing of such election to holders of such Options, it being understood that the holders of such Options will not be precluded from claiming any deductions otherwise available to them under the Tax Act in respect of any benefit arising from the surrender of Options as contemplated herein.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties of the Company

- (1) Except as disclosed in the Company Filings prior to the date hereof (other than in connection with any risk factors or forward-looking information) or in the Company Disclosure Letter (which disclosure shall apply against any representations and warranties to which it is reasonably apparent it should relate), the Company represents and warrants to New Holdco as set forth in Schedule "C" and acknowledges and agrees that New Holdco is relying upon such representations and warranties in connection with the entering into of this Agreement.
- (2) The representations and warranties of the Company contained in this Agreement shall not survive the completion of the Arrangement and shall expire and be terminated on the earlier of the Effective Time and the date on which this Agreement is terminated in accordance with its terms.
- (3) Except for the representations and warranties set forth in this Agreement, neither the Company nor any other Person has made or makes any other express or implied representation and warranty, either written or oral, on behalf of the Company.

Section 3.2 Representations and Warranties of New Holdco

- (1) New Holdco represents and warrants to the Company as set forth in Schedule "D" and acknowledges and agrees that the Company is relying upon the representations and warranties in connection with the entering into of this Agreement.
- (2) The representations and warranties of New Holdco contained in this Agreement shall not survive the completion of the Arrangement and shall expire and be terminated on the earlier of the Effective Time and the date on which this Agreement is terminated in accordance with its terms.
- (3) Except for the representations and warranties set forth in this Agreement, neither New Holdco nor any other Person has made or makes any other express or implied representation and warranty, either written or oral, on behalf of New Holdco

ARTICLE 4 COVENANTS

Section 4.1 Conduct of Business of the Company

- (1) Until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms, except with the consent of New Holdco, not to be unreasonably withheld, conditioned or delayed, the Company shall, and shall cause its Subsidiaries to, conduct business in the Ordinary Course, except as contemplated by the Lord + Taylor Transaction.
- (2) Without limiting the generality of Section 4.1(1), the Company shall use its commercially reasonable efforts to maintain and preserve intact the current business organization, assets and properties of the Company, its Subsidiaries and its Joint Ventures, keep available the services of the present employees and agents of the Company, its Subsidiaries and its Joint Ventures and maintain good relations with, and the goodwill of, suppliers, customers, landlords, creditors, distributors, joint venture partners and all other Persons having business relationships with the Company or any of its Subsidiaries and, except (i) as contemplated by this Agreement, the Plan of Arrangement and the Lord + Taylor Transaction and the Netherlands Transaction, (ii) as disclosed in the Company Disclosure Letter or (iii) with the prior written consent of New Holdco (not to be unreasonably withheld, conditioned or delayed), the Company shall not, shall not permit any of its Subsidiaries to, and shall not exercise any of its rights with respect to the Joint Ventures to cause any of the Joint Ventures to, directly or indirectly:
 - (a) amend (by merger, consolidation or otherwise) its constating documents or, in the case of any Subsidiary or Joint Venture which is not a corporation, its similar organizational documents;
 - (b) reduce the stated capital or split, combine or reclassify any shares of its capital stock or amend any term of any outstanding debt security;
 - (c) declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof), other than distributions by a wholly-owned Subsidiary of the Company or a Joint Venture to the Company or to another wholly-owned Subsidiary of the Company or, in the case of the Company, a quarterly dividend not in excess of \$0.0125 per Common Share on a basis and on timing consistent with the Company's current practice with respect to quarterly dividends;
 - (d) redeem, repurchase, or otherwise acquire or offer to redeem, repurchase or otherwise acquire any shares of its capital stock;
 - (e) issue, deliver, sell, pledge or otherwise encumber, or authorize the issuance, delivery, sale, pledge or other encumbrance of any shares of its capital stock or other equity or voting interests, or any options, warrants or similar rights exercisable or exchangeable for or convertible into such capital stock or other

equity or voting interests, or any stock appreciation rights, phantom stock awards or other rights that are linked to the price or the value of the Common Shares or Preferred Shares, except for the issuance of Common Shares issuable upon the exercise of the Options, settlement of RSUs or in accordance with the terms of other convertible securities, in each case, outstanding as of the date hereof;

- (f) acquire (by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, in one transaction or in a series of related transactions, securities, properties, interests or businesses;
- (g) sell, lease, pledge, transfer, mortgage, license, encumber or otherwise dispose of any of its assets except (i) for assets which are obsolete and which individually or in the aggregate do not exceed \$5,000,000 and (ii) for assets sold in the Ordinary Course;
- (h) reorganize, amalgamate or merge or adopt a plan of liquidation or resolutions providing for any liquidation or dissolution;
- (i) make any capital expenditure or commitment to do so which individually or in the aggregate exceeds \$5,000,000, other than in accordance with the Company's capital expenditure plan for fiscal year 2019 as approved by the Board prior to the date hereof;
- (j) prepay any long-term indebtedness before its scheduled maturity or increase, create, incur, assume or otherwise become liable for any indebtedness for borrowed money or guarantees thereof;
- (k) make any loan or advance to, or any capital contribution or investment in, or assume, guarantee or otherwise become liable with respect to the liabilities or obligations of, any Person, other than the ongoing capital call requirement in respect of the RioCan Joint Venture;
- (l) enter into any interest rate, currency, equity or commodity swaps, hedges, derivatives, forward sales contracts or similar financial instruments other than in the Ordinary Course;
- (m) make any change in the Company's methods of accounting, except as required by concurrent changes in U.S. GAAP;
- (n) grant any material increase in the rate of wages, salaries, bonuses or other remuneration of any employees outside of the Ordinary Course unless required by Contract or applicable Law;
- (o) (i) adopt, enter into or materially amend any Employee Plan; (ii) pay any benefit to any director or officer of the Company or any of its Subsidiaries that is not required under the terms of any Employee Plan in effect on the date of this Agreement except in the Ordinary Course or as required by

applicable Law; (iii) grant, accelerate, increase or otherwise amend any material payment, award or other material benefit payable to, or for the benefit of, any director or officer of the Company or any of its Subsidiaries, including under any Employee Plan; or (iv) make any material determination under any Employee Plan that is not in the Ordinary Course or required by applicable Law;

- (p) cancel, waive, release, assign, settle or compromise any material claims or rights;
 - (q) commence, waive, release, assign, compromise or settle any litigation, proceeding or governmental investigation relating to the assets or the business of the Company or any of its Subsidiaries in excess of an aggregate amount of \$5,000,000 per claim or which would reasonably be expected to impede, prevent, hinder or delay the consummation of the transactions contemplated by this Agreement;
 - (r) amend or modify, or terminate or waive any right under, any Material Contract or enter into any contract or agreement that would be a Material Contract if in effect on the date hereof;
 - (s) except as contemplated in Section 4.8, amend, modify or terminate any material insurance policy of the Company or any Subsidiary in effect on the date of this Agreement, unless simultaneously with such termination, cancellation or lapse, replacement policies underwritten by insurance or re-insurance companies of nationally recognized standing providing coverage equal to or greater than the coverage under the terminated, cancelled or lapsed policies for substantially similar premiums are in full force and effect;
 - (t) make, change or revoke any material Tax election or settle or compromise any material Tax liability, make or file any material amended Tax Return, enter into any material agreement with respect to material Taxes or surrender any right to claim a material refund of Taxes;
 - (u) abandon, dedicate to the public, convey title to or grant licenses under (other than in the Ordinary Course) any material Intellectual Property owned by the Company or any of its Subsidiaries; or
 - (v) authorize, agree, resolve or otherwise commit, whether or not in writing, to do any of the foregoing.
- (3) For the purposes of this Section 4.1, New Holdco shall be deemed to have consented to any action taken by or on behalf of the Company or any of its Subsidiaries or Joint Ventures with the written authorization, or on the written instruction, of any of the Participating Insiders.

Section 4.2 Covenants of the Company Regarding the Arrangement.

- (1) The Company shall do all such reasonable acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, the Company shall and, where appropriate, shall cause each of its Subsidiaries to:
 - (a) use all commercially reasonable efforts to obtain and maintain all third party or other consents, waivers, permits, exemptions, orders, approvals, agreements, amendments or confirmations that are (A) necessary or advisable in connection with the Arrangement or (B) required in order to maintain the Material Contracts in full force and effect following completion of the Arrangement, in each case, on terms that are reasonably satisfactory to New Holdco, and without paying or committing the Company or New Holdco to pay any consideration or incurring or committing the Company or New Holdco to incur any liability, without the prior consent of New Holdco;
 - (b) use all commercially reasonable efforts to oppose, lift or rescind any injunction, restraining or other order, decree or ruling seeking to restrain, enjoin or otherwise prohibit or delay or otherwise adversely affect the consummation of the Arrangement and defend, or cause to be defended, any proceedings to which it is a party or brought against it or its directors or officers challenging the Arrangement or this Agreement;
 - (c) use all commercially reasonable efforts to satisfy, or cause the satisfaction of, all conditions precedent in this Agreement, carry out the terms of the Interim Order and Final Order applicable to it and comply promptly with all requirements imposed by Law on it or its Subsidiaries with respect to this Agreement or the Arrangement; and
 - (d) not take any action, or refrain from taking any commercially reasonable action, or permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the Arrangement or the transactions contemplated by this Agreement.
- (2) The Company shall promptly notify New Holdco in writing of:
 - (a) any Material Adverse Effect or any change, effect, event, development, occurrence, circumstance or state of facts which would reasonably be expected to have a Material Adverse Effect;
 - (b) any notice or other communication from any Person alleging that the consent (or waiver, permit, exemption, order, approval, agreement, amendment or confirmation) of such Person (or another Person) is or may be required in connection with this Agreement or the Arrangement;
 - (c) unless prohibited by Law or any existing Contract, any notice or other communication from any joint venture partner, supplier, marketing partner,

landlord, customer or distributor to the effect that such joint venture partner, supplier, marketing partner, landlord, customer or distributor is terminating or otherwise materially adversely modifying its relationship with the Company, any of its Subsidiaries or any of its Joint Ventures as a result of this Agreement or the Arrangement or alleging that the transactions contemplated by this Agreement would result in the breach of any Material Contract;

- (d) unless prohibited by Law, any notice or other communication from any Governmental Entity in connection with this Agreement or the Arrangement (and the Company shall contemporaneously provide a copy of any such written notice or communication to New Holdco); or
 - (e) any filings, actions, suits, claims, investigations or proceedings commenced or, to its knowledge, threatened against, relating to or involving or otherwise affecting the Company or any of its Subsidiaries in any material manner or that relate to this Agreement or the Arrangement.
- (3) New Holdco's receipt of information pursuant to Section 4.2(2) or otherwise shall not operate as a waiver (including with respect to Article 6) or otherwise diminish the scope of, or otherwise affect any representation, warranty or covenant made by the Company in this Agreement.

Section 4.3 Covenants of New Holdco Regarding the Arrangement

- (1) New Holdco shall do all such reasonable acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by this Agreement, including:
 - (a) using all commercially reasonable efforts to assist and cooperate with the Company in obtaining and maintaining all third party or other consents, waivers, permits, exemptions, orders, approvals, agreements, amendments or confirmations that are (A) necessary or advisable in connection with the Arrangement or (B) required in order to maintain the Material Contracts in full force and effect following completion of the Arrangement, in each case, on terms that are reasonably satisfactory to New Holdco, and without the Company paying or being committed to pay any consideration or incur any liability without the prior consent of New Holdco;
 - (b) use all commercially reasonable efforts, upon reasonable consultation with the Company, to oppose, lift or rescind any injunction, restraining or other order, decree or ruling seeking to restrain, enjoin or otherwise prohibit or delay or otherwise adversely affect the consummation of the Arrangement and defend, or cause to be defended, any proceedings to which it is a party or brought against it or its directors or officers challenging the Arrangement or this Agreement;

- (c) use all commercially reasonable efforts to satisfy, or cause the satisfaction of, all conditions precedent in this Agreement, carry out the terms of the Interim Order and Final Order applicable to it and comply promptly with all requirements imposed by Law on it with respect to this Agreement or the Arrangement; and
 - (d) not take any action, or refrain from taking any commercially reasonable action, or permit any action to be taken or not taken, that is inconsistent with this Agreement or that would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the Arrangement or the transactions contemplated by this Agreement.
- (2) New Holdco shall promptly notify the Company in writing of:
- (a) any notice or other communication from any Person alleging that the consent (or waiver, permit, exemption, order, approval, agreement, amendment or confirmation) of such Person (or another Person) is or may be required in connection with this Agreement or the Arrangement;
 - (b) unless prohibited by Law, any notice or other communication from any Governmental Entity in connection with this Agreement or the Arrangement (and New Holdco shall contemporaneously provide a copy of any such written notice or communication to the Company); or
 - (c) any filings, actions, suits, claims, investigations or proceedings commenced or, to the knowledge of New Holdco, threatened against, relating to or involving or otherwise affecting New Holdco or the Continuing Shareholders which could reasonably be expected to prevent or materially delay the consummation of the Arrangement.

Section 4.4 Regulatory Approvals

- (1) Notwithstanding any other provision of this Agreement, the Parties shall, as promptly as practicable, prepare and file all appropriate or advisable documents, registrations, statements, petitions, filings and applications for the Regulatory Approvals and use all commercially reasonable efforts to obtain and maintain all Regulatory Approvals.
- (2) Notwithstanding any other provision of this Agreement, New Holdco shall, as soon as reasonably practicable and in any event within 10 Business Days following the date hereof or such other period of time as may be agreed to by the Parties in respect of the Competition Act Approval, file with the Commissioner a competition brief (the "**Competition Brief**") in respect of the transactions contemplated by this Agreement requesting an advance ruling certificate under section 102 of the Competition Act or in the alternative a No Action Letter and such submission shall explain why the transactions contemplated by this agreement will not prevent or lessen, or be likely to prevent or lessen, competition substantially within the meaning of section 92 of the Competition Act.

- (3) Notwithstanding any other provision of this Agreement, New Holdco and the Company shall, as soon as reasonably practicable and in any event within 10 Business Days following the date hereof or such other period of time as may be agreed to by the Parties in respect of the HSR Clearance, prepare and file any filing required under the HSR Act. New Holdco and the Company shall request an early termination of any applicable waiting period under the HSR Act.
- (4) New Holdco and the Company shall, if the Competition Act Approval is not received within 15 Business Days following the date New Holdco files the Competition Brief or such other period of time as may be agreed to by the Parties, file a pre-merger notification pursuant to Part IX of the Competition Act in relation to the transactions contemplated by this Agreement.
- (5) Notwithstanding any other provision of this Agreement, the Parties shall, and shall cause their affiliates to, use all commercially reasonable efforts to promptly and expeditiously take all steps required to obtain the Regulatory Approvals and permit the Closing to occur prior to the Outside Date.
- (6) Subject to Law, the Parties shall cooperate with one another in connection with obtaining the Regulatory Approvals and shall provide such assistance as any other Party may reasonably request in connection with obtaining the Regulatory Approvals. In particular:
 - (a) the Parties shall exchange drafts of all submissions, material correspondence (including emails), filings, presentations, applications, plans, consent agreements and other materials documents submitted to, filed with or received from any Governmental Entity, shall consider in good faith any suggestions made by the other Party and its counsel, and shall provide the other Party and its counsel with final copies of all such material documents submitted to or filed with any Governmental Entity in respect of this Agreement (except for information which a Party reasonably considers to be confidential or sensitive, which such Party shall provide on an "external counsel only" basis); and
 - (b) the Parties shall cooperate with and keep one another fully informed as to the status of and the processes and proceedings relating to obtaining the Regulatory Approvals, and shall promptly notify each other of any communication from any Governmental Entity in respect of the Arrangement or this Agreement, and shall not make any submissions or filings, participate in any meetings or any material conversations with any Governmental Entity in respect of any filings, investigations or other inquiries related to the Arrangement or this Agreement unless it consults with the other Party in advance and, to the extent not precluded by such Governmental Entity, gives the other Party the opportunity to review drafts of any submissions or filings, or attend and participate in any communications or meetings. Despite the foregoing, submissions, filings or other written communications with any Governmental Entity may be redacted as necessary before sharing with the other Party to address reasonable attorney-client or other privilege or

confidentiality concerns, provided that a Party must provide external legal counsel to the other Party non-redacted versions of drafts and final submissions, filings or other written communications with any Governmental Entity on the basis that the redacted information will not be shared with its clients.

Section 4.5 Access to Information; Confidentiality

- (1) In order to permit New Holdco to consider, evaluate and implement the transactions contemplated hereby (the “**Purpose**”), the Company has and, from the date hereof until the earlier of the Effective Time and the termination of this Agreement, subject to Law and the terms of any existing Contracts, shall, and shall cause its Subsidiaries and their respective officers, directors, employees, independent auditors, advisers and agents to, give New Holdco and its Representatives (a) upon reasonable notice, reasonable access during normal business hours to its and its Subsidiaries’ (i) premises, (ii) property and assets (including all books and records, whether retained internally or otherwise), (iii) Contracts, and (iv) senior personnel, so long as the access does not unduly interfere with the Ordinary Course conduct of the business of the Company; and (b) such financial and operating data or other information with respect to the assets or business of the Company or any of its Subsidiaries as New Holdco from time to time reasonably requests. Investigations made by or on behalf of New Holdco, whether under this Section 4.5 or otherwise, shall not operate as a waiver (including with respect to Article 6) or otherwise diminish the scope of, or otherwise affect any representation, warranty or covenant made by the Company in this Agreement.
- (2) New Holdco shall keep confidential all non-public information related to the Company which is furnished to New Holdco by or on behalf of the Company (the “**Information**”) and shall use the Information only for the Purpose and for no other purpose, and shall not disclose such Information in any manner whatsoever, in whole or in part, except (i) with the prior written consent and approval of the Company, (ii) to its Representatives on a confidential basis, (iii) if required by applicable Law (provided that New Holdco shall immediately notify the Company of any request for disclosure purported to be required under applicable Law and shall consult with the Company on the advisability of taking legally available steps to resist or narrow the request or avoid the requirement and cooperate with the Company in seeking a protective order or other appropriate remedy), (iv) as required in order for New Holdco to enforce or defend its rights under this Agreement, or (v) on a confidential basis to any of the Continuing Shareholders.
- (3) In the event that New Holdco provides Information to its Representatives or any of the Continuing Shareholders, it shall inform such Representatives or Continuing Shareholders (as the case may be) of the confidential nature of such Information and shall cause each of its Representatives and such Continuing Shareholders to treat such Information confidentially in accordance with this Section 4.5 and not disclose such Information. New Holdco shall be responsible for any failure of any of its Representatives or any Continuing Shareholder to comply with this Section 4.5.

- (4) If this Agreement is terminated pursuant to Section 7.2, New Holdco shall (a) return promptly to the Company or destroy all physical copies of any Information, then in New Holdco's possession or in the possession of its Representatives or of the Continuing Shareholders, (b) destroy all electronic copies of the Information in a manner that ensures that such Information may not be retrieved or undeleted by New Holdco, its Representatives or the Continuing Shareholders in the ordinary course, and (c) deliver to the Company a certificate executed by a duly authorized senior officer of New Holdco indicating that the requirements of this sentence have been satisfied in full, provided that New Holdco may retain data or electronic records containing the Information solely for the purposes of legal or regulatory compliance, backup, recovery, contingency planning or business continuity planning so long as such data or records are not accessible in the ordinary course of business and are not accessed except as required for legal or regulatory compliance, backup, recovery, contingency planning or business continuity planning purposes.

Section 4.6 Public Communications

The Parties shall co-operate in the preparation of presentations, if any, to the Shareholders regarding the Arrangement. Except as contemplated herein, a Party shall not issue, or cause to be issued, any press release or make any other public statement or disclosure (including any public filing with any Governmental Entity) with respect to this Agreement or the Arrangement without the prior written consent of the other Party (which consent shall not be unreasonably withheld, conditioned or delayed); provided that any Party that is required to make disclosure by Law shall use its commercially reasonable efforts to give the other Party prior notice and a reasonable opportunity to review or comment on the disclosure or filing (other than with respect to confidential information contained in such disclosure or filing). The Party making such disclosure shall give reasonable consideration to any comments made by the other Party or its counsel. If such prior notice is not possible, the Party shall give such notice immediately following the making of such disclosure or filing.

Section 4.7 Notice and Cure Provision

- (1) Each Party shall promptly notify the other Party of the occurrence, or failure to occur, of any event or state of facts which occurrence or failure would, or would be reasonably likely to:
- (a) cause any of the representations or warranties of such Party contained in this Agreement to be untrue or inaccurate in any material respect at any time from the date of this Agreement to the Effective Time; or
 - (b) result in the failure, in any material respect, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by such Party under this Agreement.
- (2) Notification provided under this Section 4.7 will not affect the representations, warranties, covenants, agreements or obligations of the Parties (or remedies with

respect thereto) or the conditions to the obligations of the Parties under this Agreement.

- (3) New Holdco may not elect to exercise its right to terminate this Agreement pursuant to Section 7.2(1)(d)(i) and the Company may not elect to exercise its right to terminate this Agreement pursuant to Section 7.2(1)(c)(i), unless the Party seeking to terminate the Agreement (the “**Terminating Party**”) has delivered a written notice (“**Termination Notice**”) to the other Party (the “**Breaching Party**”) specifying in reasonable detail all breaches of covenants, representations and warranties or other matters which the Terminating Party asserts as the basis for termination. After delivering a Termination Notice, provided the Breaching Party is proceeding diligently to cure such matter and such matter is capable of being cured prior to the Outside Date (with any intentional breach being deemed to be incurable), the Terminating Party may not exercise such termination right until the earlier of (a) the Outside Date, and (b) if such matter has not been cured by the date that is fifteen (15) Business Days following receipt of such Termination Notice by the Breaching Party, such date. If the Terminating Party delivers a Termination Notice less than five (5) Business Days prior to the date of the Company Meeting, unless the Parties agree otherwise, the Company shall postpone or adjourn the Company Meeting to the earlier of (a) five (5) Business Days prior to the Outside Date and (b) the date that is ten (10) Business Days following receipt of such Termination Notice by the Breaching Party.

Section 4.8 Insurance and Indemnification

Prior to the Effective Date, the Company shall purchase customary “tail” policies of directors’ and officers’ liability insurance providing protection no less favourable in the aggregate to the protection provided by the policies maintained by the Company and its Subsidiaries which are in effect immediately prior to the Effective Date and providing protection in respect of claims arising from facts or events which occurred on or prior to the Effective Date and New Holdco shall, or shall cause the Company and its Subsidiaries to maintain such tail policies in effect without any reduction in scope or coverage for six (6) years from the Effective Date; provided that New Holdco shall not be required to pay any amounts in respect of such coverage prior to the Effective Time. New Holdco shall and shall cause the Company and its Subsidiaries and Joint Ventures to, from and after the Effective Time, honour all rights to indemnification or exculpation now existing in favour of present and former employees, officers and directors of the Company and its Subsidiaries, as well as the Company’s and its Subsidiaries’ designees, nominees and appointees as officers, directors or trustees of its Joint Ventures, and acknowledges that such rights shall survive the completion of the Plan of Arrangement and shall continue in full force and effect in accordance with their terms for a period of not less than six (6) years from the Effective Date. If New Holdco, the Company or any of its Subsidiaries or any of their respective successors or assigns (i) consolidates with or merges into any other Person and is not a continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfers all or substantially all of its properties and assets to any Person, New Holdco shall ensure that any such successor or assign (including, as applicable, any acquirer of

substantially all of the properties and assets of the Company or its Subsidiaries) assumes all of the obligations set forth in this Section 4.8.

Section 4.9 Pre-Acquisition Reorganization

- (1) Subject to Section 4.9(2), the Company shall, upon the request of New Holdco: (i) perform such reorganizations of its corporate structure, capital structure, business, operations and assets or such other transactions as New Holdco may request, acting reasonably (each a “**Pre-Acquisition Reorganization**”); (ii) cooperate with New Holdco and its advisors to determine the nature of the Pre-Acquisition Reorganizations that might be undertaken and the manner in which they would most effectively be undertaken; and (iii) prior to the Effective Time and in consultation and cooperation with New Holdco, use, and cause each of its Subsidiaries to use, commercially reasonable efforts to take or cause to be taken all actions necessary, proper or advisable in connection with the matters pertaining to the Company and its Subsidiaries in the transaction steps deck attached to Section 4.9(1) of the Company Disclosure Letter (the “**Agreed Reorganization**”) at such time and in such manner as New Holdco reasonably requests (provided that (a) such steps comply with the requirements of Section 4.9(2)(b) and Section 4.9(2)(f) and (b) any such steps which are subject to further determination in such step deck must either be acceptable to both Parties, acting reasonably, or be treated as a Pre-Acquisition Reorganization for the purposes of this Section 4.9).
- (2) The Company will not be obligated to participate in any Pre-Acquisition Reorganization under Section 4.9(1)(i) unless such Pre-Acquisition Reorganization:
 - (a) can be completed immediately prior to the Effective Date without the approval of the Shareholders;
 - (b) does not reduce the Consideration or change the form of Consideration;
 - (c) does not, in the opinion of the Company, acting reasonably, interfere with the ongoing operations of the Company or any of its Subsidiaries or Joint Ventures in any material respect;
 - (d) does not require any approval of any Governmental Entity or third party (other than a partner of a Joint Venture);
 - (e) does not require the Company or any of its Subsidiaries or Joint Ventures to contravene any applicable Law or its applicable constating documents or any Material Contracts;
 - (f) does not require the Company or any of its Subsidiaries to take any action that could reasonably be expected to result in Taxes being imposed on, or adverse Tax or other consequences to any Shareholders (other than the Continuing Shareholders) or other securityholders that are incrementally greater than the Taxes imposed on or other consequences to such persons in

connection with the completion of the Arrangement in the absence of such Pre-Acquisition Reorganization;

- (g) does not result in the withdrawal or material modification of the Fairness Opinions or the Valuation;
 - (h) does not require any director, Company Employee or agent of the Company to take, in connection with the Pre-Acquisition Reorganization, any action in any capacity other than as a director, Company Employee or agent of the Company;
 - (i) does not impair the ability of the Company to consummate, and will not materially delay the consummation of, the Arrangement; and
 - (j) does not become effective unless New Holdco has, in writing, waived or confirmed the satisfaction of all conditions in its favour under Article 6 and has confirmed that it is prepared to promptly and without further condition (other than compliance with Section 4.9(1)) proceed to effect the Arrangement.
- (3) New Holdco must provide written notice to the Company of any proposed Pre-Acquisition Reorganization at least fifteen (15) Business Days prior to the Effective Date. Upon receipt of such notice in the case of a Pre-Acquisition Reorganization and in any event in the case of the Agreed Reorganization, the Company and New Holdco shall at the expense of New Holdco work cooperatively and use their commercially reasonable efforts to prepare prior to the Effective Time all documentation necessary and do such other acts and things as are necessary to give effect to such Pre-Acquisition Reorganization or the Agreed Reorganization, including any amendment to this Agreement or the Plan of Arrangement (provided that such amendments do not require the Company to obtain the approval of the Shareholders).
- (4) New Holdco acknowledges and agrees that any Pre-Acquisition Reorganization or Agreed Reorganization will not be considered in determining whether a representation, warranty or covenant of the Company under this Agreement has been breached (including where any such Pre-Acquisition Reorganization or Agreed Reorganization requires the consent of any third party under a Contract).
- (5) If the Arrangement is not completed, other than due to a breach by the Company of the terms and conditions of this Agreement, New Holdco shall (i) forthwith reimburse the Company for all reasonable out-of-pocket costs and expenses incurred in connection with any proposed Pre-Acquisition Reorganization or Agreed Reorganization, including any reasonable costs incurred by the Company in order to restore the organizational structure of the Company to a substantially identical structure of the Company as at the date hereof; and (ii) indemnify the Company, its Subsidiaries, and their respective officers, directors and employees (to the extent that such officers, directors and employees are assessed with statutory liability therefor) for all direct and indirect liabilities, losses, Taxes, damages, claims, costs, expenses,

interest awards, judgements and penalties suffered or incurred by any of them in connection with or as a result of any Pre-Acquisition Reorganization or Agreed Reorganization (other than those costs and expenses reimbursed in accordance with the foregoing paragraph (i)). The obligations of New Holdco under this Section 4.9 shall survive termination of this Agreement.

Section 4.10 Company Financing

- (1) The Company shall, and shall cause each of its Subsidiaries to, use commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, in consultation and cooperation with New Holdco, all things necessary, proper or advisable to arrange and obtain the proceeds of the Debt Financing on the terms and conditions described in the Debt Commitment Letter by no later than the Closing, and shall not permit, without the prior written consent of New Holdco, any amendment or modification to be made to, or any waiver or release of any provision or remedy to be made under, the Debt Commitment Letter or any definitive agreement or documentation in connection therewith. For purposes of this Agreement, references to "Debt Financing" shall include the financing contemplated by the Debt Commitment Letter as permitted to be amended or modified by this Section 4.10 and references to "Debt Commitment Letter" shall include such documents as permitted to be amended or modified by this Section 4.10.
- (2) Without limiting the generality of Section 4.10(1), the Company shall, and shall cause each of its Subsidiaries to, use commercially reasonable efforts to, in each case in consultation and cooperation with New Holdco: (i) maintain in effect the Debt Commitment Letter until the transactions contemplated by this Agreement are consummated; (ii) satisfy, on a timely basis, all conditions, covenants, terms, representations and warranties in the Debt Commitment Letter (and any definitive documentation related thereto) at or prior to the Closing and otherwise comply with its obligations thereunder; (iii) enter into definitive agreements and documentation with respect to the Debt Financing in the forms negotiated in accordance with the immediately following sentence at or prior to the Closing, on the terms and conditions contemplated by the Debt Commitment Letter; and (iv) consummate the Debt Financing prior to the Closing. The Company will, in consultation and cooperation with New Holdco, negotiate definitive agreements and documentation to be entered into in connection with the Debt Financing.
- (3) The Company will keep New Holdco fully informed with respect to the Debt Financing and will give New Holdco prompt written notice of any material change in or with respect to the Debt Financing. Without limiting the generality of the foregoing, the Company shall give New Holdco prompt written notice: (i) of any breach or default (or any event or circumstance that, with or without notice, lapse of time or both, would reasonably be expected to give rise to any breach or default) by any party to any Debt Commitment Letter or definitive document related to the Debt Financing of which the Company becomes aware; (ii) of the receipt of any written notice or other communication from any Person with respect to any actual or potential breach, default, termination or repudiation by any party to any Debt

Commitment Letter or any definitive document related to the Debt Financing or a request for amendments or waivers thereto that are or could be reasonably expected to be adverse to the timely completion of the Debt Financing; (iii) if for any reason the Company believes in good faith that it will not be able to obtain all or any portion of the Debt Financing on the terms, in the manner or from the sources contemplated by any Debt Commitment Letter or the definitive documents related to the Debt Financing including if the Company has any reason to believe that it will be unable to satisfy, on a timely basis, any term or condition of any Debt Commitment Letter or any definitive document related to the Debt Financing; and (iv) if the Debt Commitment Letter or the definitive documents related to the Debt Financing will expire or be terminated for any reason. As soon as reasonably practicable, but in any event within two (2) Business Days after the date New Holdco delivers to the Company a written request, the Company shall provide any information reasonably requested by New Holdco relating to any circumstance referred to in clause (i), (ii), (iii) or (iv) of the immediately preceding sentence.

- (4) If any portion of the Debt Financing becomes unavailable or could reasonably be expected to become unavailable in the manner or from the sources contemplated in the Debt Commitment Letter, the Parties shall use reasonable commercial efforts to arrange and obtain, as promptly as practicable, alternative financing from alternative sources in an amount sufficient to consummate the transactions contemplated by this Agreement and the Plan of Arrangement on a basis that is not subject to any new or additional conditions precedent not contained in the Debt Commitment Letter and otherwise on terms and conditions not materially less favourable from the perspective of the Company and New Holdco than the terms and conditions contained in the Debt Commitment Letter.
- (5) The Parties acknowledge that (i) the Board (excluding directors of the Company who are Participating Insiders) has delegated to the Special Committee the authority to make all decisions with regard to the Debt Commitment Letter and the ARCA, including the provision of an authorization of drawdown thereunder in contemplation of Closing and (ii) the Participating Insiders shall have no authority on behalf of the Company with respect to the Debt Commitment Letter and the ARCA.

Section 4.11 Voting Commitments

New Holdco shall cause each Continuing Shareholder to vote all such Person's Common Shares and Preferred Shares in favour of the Arrangement Resolution and shall ensure that they do not exercise Dissent Rights.

Section 4.12 Performance Stock Units

The Company shall cooperate with New Holdco in delivering to each holder of PSUs any documentation provided by New Holdco in connection with the cancellation and/or exchange of such PSUs.

ARTICLE 5
ADDITIONAL COVENANTS REGARDING NON-SOLICITATION

Section 5.1 Non-Solicitation

- (1) Except as expressly provided in this Article 5, the Company shall not, directly or indirectly, through any Representative of the Company or otherwise, and shall not permit any such Person to:
 - (a) solicit, initiate, encourage or otherwise knowingly facilitate (including by way of furnishing or providing copies of, access to, or disclosure of, any confidential information, properties, facilities, books or records of the Company or any Subsidiary or entering into any form of agreement, arrangement or understanding) any inquiry, proposal or offer that constitutes or may reasonably be expected to constitute or lead to an Acquisition Proposal;
 - (b) enter into or otherwise engage or participate in any discussions or negotiations with any Person (other than New Holdco or its joint actors) regarding an Acquisition Proposal; provided that, for greater certainty, the Company shall be permitted to: (i) communicate with any Person for the purposes of clarifying the terms of any inquiry, proposal or offer made by such Person; (ii) advise any Person of the restrictions of this Agreement; and (iii) advise any Person making an Acquisition Proposal that the Board has determined that such Acquisition Proposal does not constitute a Superior Proposal or is not reasonably expected to constitute or lead to a Superior Proposal, in each case, if, in so doing, no confidential information is communicated to such Person;
 - (c) make a Change in Recommendation;
 - (d) enter into any Contract or agreement in principle requiring the Company to abandon, terminate or fail to consummate the Arrangement or any other transactions contemplated by this Agreement or to breach its obligations hereunder, or propose or agree to do any of the foregoing;
 - (e) fail to enforce, or grant any waiver under, any standstill or similar agreement with any Person;
 - (f) accept, approve, endorse or recommend, or publicly propose to accept, approve, endorse or recommend, or take no position or remain neutral with respect to, any publicly disclosed or publicly announced Acquisition Proposal (it being understood that taking no position or a neutral position with respect to a publicly disclosed or publicly announced Acquisition Proposal for a period of no more than five (5) Business Days following the formal announcement of such Acquisition Proposal will not be considered to be in violation of this Section 5.1 provided the Board has rejected such

Acquisition Proposal and affirmed the Board Recommendation before the end of such five (5) Business Day period); or

- (g) enter into or publicly propose to enter into any agreement, letter of intent or other Contract in respect of an Acquisition Proposal.
- (2) The Company shall, and shall cause its Subsidiaries and its Representatives to, immediately cease and terminate, and cause to be terminated, any solicitation, encouragement, discussion, negotiations, or other activities commenced prior to the date of this Agreement with any Person (other than New Holdco or its joint actors) with respect to any inquiry, proposal or offer that constitutes, or may reasonably be expected to constitute or lead to, an Acquisition Proposal, and in connection with such termination shall:
- (a) discontinue access to and disclosure of all information of the Company or any of its Subsidiaries with respect to any inquiry, proposal or offer that constitutes, or may reasonably be expected to constitute or lead to, an Acquisition Proposal, including any confidential information, properties, facilities, books and records of the Company or any Subsidiary; and
 - (b) as soon as possible (and in any event within five Business Days of the date hereof), request, to the extent it is entitled to do so, and exercise all rights it has to require (i) the return or destruction of all copies of any confidential information regarding the Company or any Subsidiary provided to such Person other than New Holdco and its joint actors, and (ii) the destruction by such Person and its Representatives of all material including or incorporating or otherwise reflecting such confidential information regarding the Company or any Subsidiary of the Company, to the extent that such information has not previously been returned or destroyed, using its commercially reasonable efforts to ensure that such requests are fully complied with in accordance with the terms of such rights or entitlements.

Section 5.2 Notification of Acquisition Proposals

- (1) If the Company or any of its Subsidiaries receives or otherwise becomes aware of any inquiry, proposal or offer that constitutes or may reasonably be expected to constitute or lead to an Acquisition Proposal, or any request for copies of, access to, or disclosure of, confidential information relating to the Company or any Subsidiary of the Company in connection therewith, including but not limited to information, access, or disclosure relating to the properties, facilities, books or records of the Company or any Subsidiary, the Company shall promptly notify New Holdco, at first orally, and then as soon as practicable and in any event within 24 hours in writing, of such Acquisition Proposal, inquiry, proposal, offer or request, including a description of its material terms and conditions, the identity of all Persons making the Acquisition Proposal, inquiry, proposal, offer or request, and shall provide New Holdco with copies of all written documents, correspondence or other material received in respect of, from or on behalf of any such Person. The Company shall keep New Holdco fully informed on a current basis of the status of developments

and (to the extent permitted by Section 5.3) negotiations with respect to any Acquisition Proposal, inquiry, proposal, offer or request, including any changes, modifications or other amendments to any such Acquisition Proposal, inquiry, proposal, offer or request and shall provide to New Holdco copies of all material or substantive correspondence if in writing or electronic form, and if not in writing or electronic form, a description of the material terms of such correspondence communicated to the Company by or on behalf of any Person making any such Acquisition Proposal, inquiry, proposal, offer or request.

Section 5.3 Responding to an Acquisition Proposal

Notwithstanding Section 5.1, if at any time prior to obtaining the Required Approval of the Arrangement Resolution the Company receives an unsolicited bona fide written Acquisition Proposal, the Company may engage in or participate in discussions or negotiations with the relevant Person New Holdco and the Continuing Shareholders regarding such Acquisition Proposal, and provide copies of, access to or disclosure of confidential information, properties, facilities, books or records of the Company or its Subsidiaries and Joint Ventures if and only if:

- (a) the Board (excluding the directors of the Company who are Participating Insiders) first determines in good faith, after consultation with its financial advisors and outside legal counsel, that such Acquisition Proposal constitutes or would reasonably be expected to constitute or lead to a Superior Proposal (disregarding for the purposes of such determination any condition relating to due diligence), and, after consultation with outside legal counsel to the Special Committee, that the failure to take such actions would be inconsistent with its fiduciary duties;
- (b) such Person was not restricted from making such Acquisition Proposal pursuant to an existing confidentiality, standstill, non-disclosure, use, business purpose or similar restriction;
- (c) the Company has been, and continues to be, in material compliance with its obligations under this Article 5; and
- (d) prior to providing any such copies, access or disclosure, the Company enters into a customary confidentiality and standstill agreement.

Section 5.4 Right to Match

- (1) If the Company receives an Acquisition Proposal that constitutes a Superior Proposal prior to obtaining the Required Approval of the Arrangement Resolution, the Board (excluding the directors of the Company who are Participating Insiders) may make a Change in Recommendation and may authorize the Company to enter into a definitive agreement with respect to such Acquisition Proposal, if and only if:

- (a) the Person making the Superior Proposal was not restricted from making such Superior Proposal pursuant to an existing confidentiality, standstill, non-disclosure, use, business purpose or similar restriction;
 - (b) the Company has been, and continues to be, in compliance with its obligations under this Article 5;
 - (c) the Company has delivered to New Holdco a written notice of the determination of the Board that such Acquisition Proposal constitutes a Superior Proposal and of the intention of the Board to make a Change in Recommendation and enter into a definitive agreement, together with a written notice from the Board regarding the value and financial terms that the Board, in consultation with its financial advisors, has determined should be ascribed to any non-cash consideration offered under such Acquisition Proposal (the “**Superior Proposal Notice**”);
 - (d) the Company has provided New Holdco a copy of the proposed definitive agreement for the Superior Proposal and all supporting materials, including any financing documentation supplied to the Company in connection therewith;
 - (e) at least five (5) Business Days (the “**Matching Period**”) have elapsed from the date that is the later of the date on which New Holdco received the Superior Proposal Notice and the date New Holdco received all of the materials set forth in Section 5.4(1)(d);
 - (f) during any Matching Period, New Holdco has had the opportunity (but not the obligation), in accordance with Section 5.4(2), to offer to amend this Agreement and the Arrangement in order for such Acquisition Proposal to cease to be a Superior Proposal;
 - (g) if New Holdco has offered to amend this Agreement and the Arrangement under Section 5.4(2), after the Matching Period, the Board (excluding the directors of the Company who are Participating Insiders) has determined in good faith, after consultation with the Company’s outside legal counsel and financial advisers, that such Acquisition Proposal continues to constitute a Superior Proposal compared to the terms of the Arrangement as proposed to be amended by New Holdco under Section 5.4(2); and
 - (h) after the Matching Period, the Board (excluding the directors of the Company who are Participating Insiders) has determined in good faith, after consultation with the Company’s outside legal counsel, that the failure to make a Change in Recommendation and enter into a definitive agreement with respect to such Superior Proposal would be inconsistent with the Board’s exercise of its fiduciary duties.
- (2) During the Matching Period, or such longer period as the Company may approve in writing for such purpose:

- (a) New Holdco shall have the opportunity (but not the obligation) to offer to amend this Agreement and the Arrangement;
 - (b) the Board (excluding the directors of the Company who are Participating Insiders) shall review any offer made by New Holdco under Section 5.4(1)(f) to amend the terms of this Agreement and the Arrangement in good faith in order to determine whether such proposal would, upon acceptance, result in the Acquisition Proposal previously constituting a Superior Proposal ceasing to be a Superior Proposal; and
 - (c) the Company shall negotiate in good faith with New Holdco to make such amendments to the terms of this Agreement and the Arrangement as would enable the Company to proceed with the transactions contemplated by this Agreement on such amended terms. If the Board determines that the Acquisition Proposal previously constituting a Superior Proposal would cease to be a Superior Proposal, the Company shall promptly so advise New Holdco, and the Company and New Holdco shall amend this Agreement to reflect such offer made by New Holdco, and shall take and cause to be taken all such actions as are necessary to give effect to the foregoing.
- (3) Each successive amendment to any Acquisition Proposal that results in an increase to, or a modification of, the consideration (or value of such consideration) to be received by Shareholders or other material amendment to the terms or conditions thereof shall constitute a new Acquisition Proposal for the purposes of this Section 5.4, and New Holdco shall be afforded a new five (5) Business Day Matching Period from the later of the date on which New Holdco received the Superior Proposal Notice and all of the material set forth in Section 5.4(1)(d) for the new Superior Proposal from the Company.
- (4) The Board (excluding the directors of the Company who are Participating Insiders) shall promptly reaffirm the Board Recommendation by press release after any Acquisition Proposal which is not determined to be a Superior Proposal is publicly announced or publicly disclosed or the Board determines that a proposed amendment to the terms of this Agreement as contemplated under Section 5.4(2) would result in an Acquisition Proposal no longer being a Superior Proposal. The Company shall provide New Holdco and its outside legal counsel with a reasonable opportunity to review the form and content of any such press release and shall make all reasonable amendments to such press release as requested by New Holdco and its legal counsel.
- (5) Subject to Section 4.6, nothing in this Agreement shall prohibit the Board from responding through a directors' circular or otherwise as required by applicable Securities Laws to an Acquisition Proposal that it determines is not a Superior Proposal. Further, subject to Section 4.6, nothing in this Agreement shall prevent the Board from making any disclosure if the Board (excluding the directors of the Company who are Participating Insiders), acting in good faith and upon the advice of its financial advisors and outside legal counsel, shall have determined that the failure to make such disclosure would be inconsistent with the fiduciary duties of

the Board or such disclosure is otherwise required under Law; provided, however, that, notwithstanding that the Board shall be permitted to make such disclosure, the Board shall not be permitted to make a Change in Recommendation other than as permitted by Section 5.4(1).

- (6) If the Company provides a Superior Proposal Notice to New Holdco after a date that is less than ten (10) Business Days before the Company Meeting, the Company may, and shall at the request of New Holdco, acting reasonably, postpone the Company Meeting to a date that is not more than fifteen (15) Business Days after the scheduled date of the Company Meeting but at least five (5) Business Days before the Outside Date.
- (7) Nothing contained in this Section 5.4 shall limit in any way the obligations of the Company contained in this Agreement, including the obligation to convene and hold the Company Meeting in accordance with Section 2.3 of this Agreement while this Agreement remains in force.

ARTICLE 6 CONDITIONS

Section 6.1 Mutual Conditions Precedent

The Parties are not required to complete the Arrangement unless each of the following conditions is satisfied on or prior to the Effective Time, which conditions to the extent permitted by Law may only be waived, in whole or in part, by the mutual consent of each of the Parties:

- (a) **Arrangement Resolution.** The Required Approval of the Arrangement Resolution by the Shareholders has been obtained at the Company Meeting in accordance with the Interim Order.
- (b) **Interim and Final Order.** The Interim Order and the Final Order have each been obtained on terms consistent with this Agreement, and have not been set aside or modified in a manner unacceptable to either the Company or New Holdco, each acting reasonably, on appeal or otherwise.
- (c) **Required Regulatory Approvals.** The Required Regulatory Approvals shall have been obtained and be in force.
- (d) **No Material Adverse Effect.** No Material Adverse Effect in respect of the Company shall have occurred.
- (e) **Illegality.** No Law is in effect that makes the consummation of the Arrangement illegal or otherwise prohibits or enjoins New Holdco or the Company from consummating the Arrangement.

Section 6.2 Additional Conditions Precedent to the Obligations of New Holdco

- (1) New Holdco is not required to complete the Arrangement unless each of the following conditions is satisfied on or before the Effective Time, which conditions are for the exclusive benefit of New Holdco and may only be waived, in whole or in part, by New Holdco in its sole discretion:
- (a) **Representations and Warranties.** (i) the representations and warranties of the Company which are qualified by the expression “Material Adverse Effect” and the representations and warranties set forth in paragraphs (1), (2), (3), (4), (5)(i), (vi) and (vii) and the first sentence of each of paragraphs (5)(ii), (iii), (iv) and (v) (in each case except for de minimis inaccuracies therein), (6) (except for the last sentence of the second paragraph thereof) and (36) of Schedule “C” are true and correct as of the date of this Agreement and are true and correct as of the Effective Date, in all respects, and (ii) all other representations and warranties of the Company are true and correct as of the date of this Agreement and are true and correct as of the Effective Date, in each case except for representations and warranties made as of a specified date, the accuracy of which shall be determined as of such specified date, and except in the case of clause (ii), where the failure of such representations and warranties to be so true and correct, individually or in the aggregate, would not have a Material Adverse Effect, and the Company has delivered a certificate confirming same to New Holdco, executed by two (2) senior officers of the Company (without personal liability) addressed to New Holdco and dated the Effective Date.
 - (b) **Performance of Covenants.** The Company has fulfilled or complied in all material respects with each of the covenants of the Company contained in this Agreement to be fulfilled or complied with by it on or prior to the Effective Date which have not been waived in writing by New Holdco, and has delivered a certificate confirming same to New Holdco, executed by two (2) senior officers of the Company (without personal liability) addressed to New Holdco and dated the Effective Date.
 - (c) **No Legal Action.** There is no action or proceeding pending or threatened by any Person (other than New Holdco or any of its joint actors) in Canada or the United States that is reasonably likely to:
 - (i) prohibit or materially restrict the Arrangement, or the ownership or operation by New Holdco or its joint actors of the business or assets of the Company and its Subsidiaries, taken as a whole, or compel New Holdco or its joint actors to dispose of or hold separate any material portion of the business or assets of the Company and its Subsidiaries, taken as a whole, as a result of the Arrangement; or
 - (ii) prevent or materially delay the consummation of the Arrangement, or if the Arrangement is consummated, have a Material Adverse Effect.
 - (d) **Dissent Rights.** Dissent Rights shall not have been exercised (and not withdrawn) with respect to more than 5% of the issued and outstanding

Common Shares; provided that no Dissent Rights exercised with respect to Common Shares held by any Continuing Shareholder or any other joint actor of New Holdco shall be included for the purpose of determining whether this condition have been satisfied.

- (2) Notwithstanding the foregoing, for the purposes of determining whether the conditions in Section 6.1(d), Section 6.2(1)(a) and Section 6.2(1)(b) have been satisfied, neither (i) anything that was actually known to any Participating Insider and not known to the Company or to the Company's Lead Independent Director as of the date hereof nor (ii) any willful or intentional act taken by a Participating Insider with the actual knowledge that such act would constitute or would reasonably have been expected to result in or cause a breach of any representation or warranty or a failure to fulfil or comply with any covenant of the Company shall be considered.

Section 6.3 Additional Conditions Precedent to the Obligations of the Company

The Company is not required to complete the Arrangement unless each of the following conditions is satisfied on or before the Effective Time, which conditions are for the exclusive benefit of the Company and may only be waived, in whole or in part, by the Company in its sole discretion:

- (a) **Representations and Warranties.** (i) the representations and warranties of New Holdco which are qualified by references to materiality and the representations and warranties set forth in paragraphs (1), (2), (3) and (4) of Schedule "D" are true and correct as of the date of this Agreement and are true and correct as of the Effective Date, in all respects, and (ii) all other representations and warranties of New Holdco shall be true and correct as of the date of this Agreement and shall be true and correct as of the Effective Date, in each case except for representations and warranties made as of a specified date, the accuracy of which shall be determined as of such specified date, and except in the case of clause (ii), where the failure of such representations and warranties to be so true and correct, individually or in the aggregate, would not materially impede the completion of the Arrangement, and New Holdco has delivered a certificate confirming same to the Company, executed by a senior officer of New Holdco (without personal liability), addressed to the Company and dated the Effective Date.
- (b) **Performance of Covenants.** New Holdco has fulfilled or complied in all material respects with each of the covenants of New Holdco contained in this Agreement to be fulfilled or complied with by it on or prior to the Effective Date which have not been waived by the Company, except where the failure to comply with such covenants, individually or in the aggregate, would not materially impede the completion of the Arrangement, and has delivered a certificate confirming same to the Company, executed by two (2) senior officers of New Holdco (without personal liability) addressed to the Company and dated the Effective Date.

- (c) **CBCA Compliance Opinion.** The Company has received an opinion from a nationally recognized financial advisor or accounting firm to the effect purchase by the Company of the Common Shares (other than the Common Shares held by the Continuing Shareholders) pursuant to the Arrangement does not violate the provisions of Section 34(2) of the CBCA governing the purchase or other acquisition by a corporation of shares issued by it.

Section 6.4 Satisfaction of Conditions

The conditions precedent set out in Section 6.1, Section 6.2 and Section 6.3 will be conclusively deemed to have been satisfied, waived or released when the Certificate of Arrangement is issued by the Director.

ARTICLE 7 TERM AND TERMINATION

Section 7.1 Term

This Agreement shall be effective from the date hereof until the earlier of the Effective Time and the termination of this Agreement in accordance with its terms.

Section 7.2 Termination

- (1) This Agreement may be terminated prior to the Effective Time by:
 - (a) the mutual written agreement of the Parties;
 - (b) either the Company or New Holdco if:
 - (i) the Company Meeting shall have been held and the Required Approval for the Arrangement Resolution is not obtained at the Company Meeting in accordance with the Interim Order upon a vote thereon at the Company Meeting or any adjournment or postponement thereon;
 - (ii) after the date of this Agreement, any Law is enacted, made, enforced or amended, as applicable, that makes the consummation of the Arrangement illegal or otherwise permanently prohibits or enjoins the Company from consummating the Arrangement, and such Law has, if applicable, become final and non-appealable; provided that the Party seeking to terminate this Agreement pursuant to this Section 7.2(1)(b)(ii) has used its commercially reasonable efforts to, as applicable, appeal or overturn such Law or otherwise have it lifted or rendered non-applicable in respect of the Arrangement to the extent required by this Agreement; or
 - (iii) the Effective Time does not occur on or prior to the Outside Date; provided that a Party may not terminate this Agreement pursuant to

this Section 7.2(1)(b)(iii) if the failure of the Effective Time to so occur has been caused by, or is a result of, a breach by such Party of any of its representations or warranties or the failure of such Party to perform any of its covenants or agreements under this Agreement;

(c) the Company if:

- (i) a breach of any representation or warranty or failure to perform any covenant or agreement on the part of New Holdco under this Agreement occurs that would cause any condition in Section 6.3(a) or Section 6.3(b) not to be satisfied, and such breach or failure is incapable of being cured or is not cured on or prior to the Outside Date in accordance with the terms of Section 4.7(3); provided that the Company is not then in breach of this Agreement so as to cause any condition in Section 6.2(1)(a) or Section 6.2(1)(b) not to be satisfied;
- (ii) prior to obtaining the Required Approval of the Arrangement Resolution, the Board (excluding the directors of the Company who are Participating Insiders) authorizes the Company to enter into a definitive written agreement (other than a confidentiality agreement) with respect to a Superior Proposal in accordance with Section 5.4(1), provided that the Company has not breached Article 5 in any material respect; or
- (iii) (A) all conditions in Section 6.1 and Section 6.2 (other than conditions that, by their terms, are to be satisfied on the Effective Date) have been satisfied or waived, (B) the Company has complied with its obligations under Section 4.10, (C) the Debt Financing has not been obtained and the Parties have been unable to arrange and obtain alternative financing from alternative sources as contemplated by and in accordance with Section 4.10(4), and (D) the Company has given New Holdco written notice at least five (5) Business Days prior to such termination stating the Company's intention to terminate this Agreement pursuant to this Section 7.2(1)(c)(iii).

(d) New Holdco if:

- (i) a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Company under this Agreement occurs that would cause any condition in Section 6.2(1)(a) or Section 6.2(1)(b) not to be satisfied (taking into consideration Section 6.2(2)), and such breach or failure is incapable of being cured on or prior to the Outside Date or is not cured in accordance with the terms of Section 4.7(3); provided that New Holdco is not then in breach of this Agreement so as to cause any condition in Section 6.3(a) or Section 6.3(b) not to be satisfied;

- (ii) prior to obtaining the Required Approval of the Arrangement Resolution, a Change in Recommendation occurs or the Company breaches Article 5 in any material respect; or
- (iii) there has occurred after the date hereof a Material Adverse Effect.

Section 7.3 Effect of Termination/Survival

If this Agreement is terminated pursuant to Section 7.1 or Section 7.2, this Agreement shall become void and of no further force or effect without liability of any Party (or any shareholder, director, officer, employee, agent, consultant or representative of such Party) to any other Party to this Agreement, except that: (a) in the event of termination under Section 7.1 as a result of the Effective Time occurring, Section 4.8 shall survive for a period of six (6) years following such termination; and (b) in the event of termination under Section 7.2, Section 4.5(2), Section 4.9(5), this Section 7.3 and Section 8.2 through to and including Section 8.13, shall survive, and provided further that no Party shall be relieved of any liability for any wilful breach by it of this Agreement.

ARTICLE 8 GENERAL PROVISIONS

Section 8.1 Amendments

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

- (a) change the time for performance of any of the obligations or acts of the Parties;
- (b) waive any inaccuracies in or modify any representation or warranty contained in this Agreement or in any document delivered pursuant to this Agreement;
- (c) modify any of the covenants contained in this Agreement and waive or modify performance of any of the obligations of the Parties; and/or
- (d) waive compliance with or modify any mutual conditions contained in this Agreement;

provided that no such amendment reduces or materially adversely affects the Consideration to be received by Shareholders (other than the Continuing Shareholders) without approval by the affected Shareholders given in the same manner as required for the approval of the Arrangement or as may be ordered by the Court.

Section 8.2 Expenses.

Except as expressly provided in this Agreement, all out-of-pocket third party transaction expenses incurred in connection with this Agreement and the Plan of Arrangement, including all costs, expenses and fees of the Company incurred prior to or after the Effective Date in connection with, or incidental to, the Plan of Arrangement, shall be paid by the Party incurring such expenses, whether or not the Arrangement is consummated.

Section 8.3 Notices.

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

- (a) if to New Holdco:

Rupert Acquisition LLC
225 Liberty Street, 31st Floor
New York, NY 10128

Attention: Richard A. Baker
Email: [Redacted: personal information]

with a copy to:

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario, M5L 1B9

Attention: Brian Pukier
Email: [Redacted: personal information]
Facsimile: [Redacted: personal information]

with a copy to:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019-6099

Attention: Gregory B. Astrachan
Email: [Redacted: personal information]
Facsimile: [Redacted: personal information]

- (b) if to the Company:

Hudson's Bay Company

225 Liberty Street, 31st Floor
New York, New York 10281

Attention: David Schwartz, EVP, General Counsel & Corporate Secretary
Email: [Redacted: personal information]

with a copy to:
Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000
Commerce Court West
Toronto, Ontario M5L 1A9

Attention: Jeffrey R. Lloyd and Michael Gans
Email: [Redacted: personal information]
Facsimile: [Redacted: personal information]

Any notice or other communication is deemed to be given and received (i) if sent by personal delivery, same day courier or electronic mail, on the date of delivery if it is a Business Day and the delivery was made prior to 5:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (ii) if sent by overnight courier, on the next Business Day, or (iii) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile. A Party may change its address for service from time to time by providing a notice in accordance with the foregoing. Any subsequent notice or other communication must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a notice will be assumed not to be changed. Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party.

Section 8.4 Time of the Essence.

Time is of the essence in this Agreement.

Section 8.5 Injunctive Relief.

The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed by the Parties in accordance with their specific terms or were otherwise breached by the Parties. It is accordingly agreed that each of the Company and New Holdco shall be entitled to injunctive and other equitable relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, against the other Party, without any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief, this being in addition to any other remedy to which such Party may be entitled at law or in equity.

Section 8.6 Third Party Beneficiaries.

- (1) Except as provided in Section 2.10(3), Section 4.8 and Section 8.13, which, without limiting their terms, are intended as stipulations for the benefit of the third Persons mentioned in such provisions (such third Persons referred to in this Section 8.6 as the “**Indemnified Persons**”), and except for the rights of the Affected Securityholders (other than the Continuing Shareholders) to receive the applicable consideration following the Effective Time pursuant to the Arrangement (for which purpose the Company hereby confirms that it is acting as agent on behalf of the Affected Securityholders), the Parties intend that this Agreement will not benefit or create any right or cause of action in favour of any Person, other than the Parties and that no Person, other than the Parties, shall be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum.
- (2) Despite the foregoing, New Holdco acknowledges to each of the Indemnified Persons their direct rights against it under Section 4.8 and Section 8.13 of this Agreement, which are intended for the benefit of, and shall be enforceable by, each Indemnified Person, his or her heirs and his or her legal representatives, and for such purpose, the Company confirms that it is acting as trustee on their behalf, and agrees to enforce such provisions on their behalf.

Section 8.7 Waiver.

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right.

Section 8.8 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The Parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

Section 8.9 Successors and Assigns.

- (1) This Agreement becomes effective only when executed by the Company and New Holdco. After that time, it will be binding upon and enure to the benefit of the Company and New Holdco and their respective successors and permitted assigns.

- (2) Neither this Agreement nor any of the rights or obligations under this Agreement are assignable or transferable by any Party without the prior written consent of the other Party; provided that New Holdco may assign all or part of its right under this Agreement to, and its obligations under this Agreement may be assumed by, any Person wholly-owned by one or more of the Continuing Shareholders, provided that if such agreement and/or assumption takes place, New Holdco shall continue to be liable jointly and severally with such affiliate, as the case may be, for all of its obligations hereunder.

Section 8.10 Severability.

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction, that provision will be severed from this Agreement and the remaining provisions shall remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

Section 8.11 Governing Law.

- (1) This Agreement will be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (2) Each Party irrevocably attorns and submits to the exclusive jurisdiction of the Ontario courts situated in the City of Toronto and waives objection to the venue of any proceeding in such court or that such court provides an inconvenient forum.
- (3) Except as otherwise provided in the Debt Commitment Letter and notwithstanding anything herein to the contrary, the Parties acknowledge and agree (i) that any action, whether in law or in equity, whether in contract or in tort or otherwise, involving the Debt Financing Sources arising out of, or relating to, the transactions contemplated hereby, the Debt Commitment Letter, the Debt Financing or the performance of services thereunder or related thereto shall be subject to the exclusive jurisdiction of any state or federal court sitting in the Borough of Manhattan, New York, New York, and any appellate court thereof and each Party hereto submits for itself and its property with respect to any such action to the exclusive jurisdiction of such court, (ii) not to bring or permit any of their affiliates to bring or support anyone else in bringing any such action in any other court, (iii) that service of process, summons, notice or document by registered mail addressed to them at their respective addresses provided in Section 8.3 shall be effective service of process against them for any such action brought in any such court, (iv) to waive and hereby waive, to the fullest extent permitted by law, any objection which any of them may now or hereafter have to the laying of venue of, and the defense of an inconvenient forum to the maintenance of, any such action in any such court, (v) to waive and hereby waive any right to trial by jury in respect of any such action, (vi)

that any such action shall be governed by, and construed in accordance with, the laws of the State of New York, and (vii) that the Debt Financing Sources are express third party beneficiaries of, and may enforce, any provisions in this Section 8.11(3) (and such provisions shall not be amended without the prior written consent of the Debt Financial Sources). Subject to the rights of the parties to the Debt Commitment Letter under the terms thereof, the Parties, in their capacities as parties to this Agreement, acknowledge and agree that none of the Financing Sources will have any liability to any Continuing Shareholder (only in their capacity as such) relating to or arising out of this Agreement, the Debt Financing or otherwise, whether at law, or equity, in contract, in tort or otherwise, and no Continuing Shareholder (only in their capacity as such) will have any rights or claims against any of the Debt Financing Sources hereunder or thereunder, and in no event shall any Continuing Shareholder (in their capacity as such) be entitled to seek the remedy of specific performance of this Agreement against the Debt Financing Sources. For the avoidance of doubt, nothing contained herein shall in any way limit or modify the rights and obligations of the Company or the Debt Financing Sources set forth under the Debt Commitment Letter, and nothing herein shall restrict the ability of New Holdco to seek specific performance of the Company's obligations hereunder in connection with the Debt Financing pursuant to and in accordance with this Agreement.

Section 8.12 Rules of Construction.

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

Section 8.13 No Liability.

No director, officer or direct or indirect equity holder of New Holdco shall have any personal liability whatsoever to the Company under this Agreement or any other document delivered in connection with the transactions contemplated hereby on behalf of New Holdco. No director or officer of the Company or any of its Subsidiaries shall have any personal liability whatsoever to New Holdco under this Agreement or any other document delivered in connection with the transactions contemplated hereby on behalf of the Company or any of its Subsidiaries.

Section 8.14 Counterparts.

This Agreement may be executed in any number of counterparts (including counterparts by facsimile) and all such counterparts taken together shall be deemed to constitute one and the same instrument. The Parties shall be entitled to rely upon delivery of an executed facsimile or similar executed electronic copy of this Agreement, and such facsimile or similar executed electronic copy shall be legally effective to create a valid and binding agreement between the Parties.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF the Parties have executed this Arrangement Agreement.

RUPERT ACQUISITION LLC

By: (signed) "Richard A. Baker"
Authorized Signing Officer

HUDSON'S BAY COMPANY

By: (signed) "David Leith"
Authorized Signing Officer

Schedule "A"
Plan of Arrangement

(See attached.)

**PLAN OF ARRANGEMENT UNDER SECTION 192
OF THE CANADA BUSINESS CORPORATIONS ACT**

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

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

“Affected Securities” means, collectively, the Common Shares, Preferred Shares, Options, DSUs and RSUs.

“Affected Securityholders” means, collectively, the Shareholders other than the Continuing Shareholders, the holders of Options, the holders of DSUs and the holders of RSUs.

“Arrangement” means the arrangement under Section 192 of the CBCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations made in accordance with the terms of the Arrangement Agreement and Section 5.1 of this Plan of Arrangement or made at the direction of the Court in the Final Order with the prior written consent of the Company and New Holdco, each acting reasonably.

“Arrangement Agreement” means the arrangement agreement dated as of October 20, 2019, between the Company and New Holdco, as it may be amended, modified or supplemented from time to time in accordance with its terms.

“Arrangement Resolution” means the special resolution approving this Plan of Arrangement to be considered at the Company Meeting by Shareholders.

“Articles of Arrangement” means the articles of arrangement of the Company in respect of the Arrangement required by the CBCA to be sent to the Director after the Final Order is made, which shall include this Plan of Arrangement and otherwise be in form and substance satisfactory to the Company and New Holdco, each acting reasonably.

“Business Day” means any day of the year, other than a Saturday, Sunday or any day on which major banks are closed for business in the Province of Ontario or the State of New York.

“CBCA” means the *Canada Business Corporations Act*.

“Certificate of Arrangement” means the certificate of arrangement to be issued by the Director pursuant to Subsection 192(7) of the CBCA in respect of the Articles of Arrangement.

“Common Shareholders” means the registered and/or beneficial holders of Common Shares, as the context requires.

“Common Shares” means the common shares in the capital of the Company.

“Company” means Hudson’s Bay Company, a corporation existing under the federal laws of Canada.

“Company Circular” means the notice of the Company Meeting and accompanying management information circular, including all schedules, appendices and exhibits to, and information incorporated by reference in, such management information circular, to be sent to the Shareholders in connection with the Company Meeting, as amended, supplemented or otherwise modified from time to time in accordance with the terms of the Arrangement Agreement.

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

“Consideration” means \$10.30 in cash per Common Share, without interest.

“Continuing Shareholders” means Richard A. Baker, Lisa Baker, Lisa and Richard Baker Enterprises, LLC, Red Trust, Yellow Trust, Blue Trust, Robert Baker, Christina Baker, A Trust for Bettina Jane Richman, A Trust for Emma Richman, A Trust for Francesca Richman, Ashley S. Baker 3/15/84 Trust, Lion Trust, Mr. and Mrs. Robert Baker Family Foundation, Christina Baker Trust for Grandchildren, Robert C. Baker Trust for Grandchildren, William Mack, The William and Phyllis Mack Family Foundation, Inc., Mack 2010 Family Trust I, Richard Mack, WRS Advisors III, LLC, WRS Advisors IV, LLC, Lee Neibart, Lee S. Neibart 2010 GRAT, Hanover Investments (Luxembourg) S.A., Abrams Capital Partners I, L.P., Abrams Capital Partners II, L.P., Whitecrest Partners, LP. and Fabric Luxembourg Holdings S.à r.l. (and, in each case, an affiliate of such shareholder that acquires such shareholder’s shares prior to the Effective Time).

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

“Depository” means such Person as the Company may appoint to act as depository in respect of the Arrangement, with the consent of New Holdco, acting reasonably.

“Director” means the Director appointed pursuant to Section 260 of the CBCA.

“Dissent Rights” has the meaning specified in Section 3.1.

“Dissenting Holder” means a registered Shareholder who has validly exercised its Dissent Rights and has not withdrawn or been deemed to have withdrawn such exercise of Dissent Rights, but only in respect of the Common Shares in respect of which Dissent Rights are validly exercised by such registered Shareholder.

“DSU Plan” means the deferred share unit plan of the Company.

“DSUs” means the outstanding deferred share units granted under the DSU Plan.

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

“Effective Time” means 12:01 a.m. (Toronto time) on the Effective Date, or such other time as the Parties agree to in writing before the Effective Date.

“Final Order” means the final order of the Court pursuant to Section 192 of the CBCA in a form acceptable to the Company and New Holdco, each acting reasonably, approving the Arrangement, as such order may be amended by the Court (with the written consent of both the Company and New Holdco, each acting reasonably) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is acceptable to both the Company and New Holdco, each acting reasonably) on appeal.

“Governmental Entity” means (i) any international, multinational, national, federal, provincial, territorial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, board, bureau, ministry, agency or instrumentality, domestic or foreign, (ii) any subdivision or authority of any of the above, (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing or (iv) any stock exchange.

“Interim Order” means the interim order of the Court pursuant to Section 192 of the CBCA in a form acceptable to the Company and New Holdco, each acting reasonably, providing for, among other things, the calling and holding of the Company Meeting, as such order may be amended by the Court with the written consent of the Company and New Holdco, each acting reasonably.

“Law” or “Laws” means, with respect to any Person, any and all applicable law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement, whether domestic or foreign, enacted, adopted, promulgated or applied by a Governmental Entity that is binding upon or applicable to such Person or its business, undertaking, property or securities, and to the extent that they have the force of law, policies, guidelines, notices and protocols of any Governmental Entity, as amended.

“Lien” means any mortgage, charge, pledge, hypothec, security interest, prior claim, encroachments, option, right of first refusal or first offer, occupancy right, covenant, assignment, lien (statutory or otherwise), defect of title, or restriction or adverse right or claim, or other third party interest or encumbrance of any kind, in each case, whether contingent or absolute.

“Letter of Transmittal” means the letter of transmittal sent to holders of Common Shares for use in connection with the Arrangement.

“New Holdco” means Rupert Acquisition LLC or such other Person to whom Rupert Acquisition LLC has assigned its rights and obligations in accordance with the Arrangement Agreement.

“Option Plan” means the Hudson’s Bay Company second amended and restated option plan adopted by the Board on November 26, 2012, as amended on June 9, 2015, and as further amended on June 12, 2018.

“Options” means the options to purchase Common Shares granted under the Option Plan and the employment inducement exemption pursuant to Section 613(c) of the TSX Company Manual.

“Parties” means the Company and New Holdco, and **“Party”** means any one of them.

“Person” includes any individual, partnership, association, body corporate, organization, trust, estate, trustee, executor, administrator, legal representative, government (including Governmental Entity), syndicate or other entity, whether or not having legal status.

“Plan of Arrangement” means this plan of arrangement proposed under Section 192 of the CBCA, and any amendments or variations made in accordance with the Arrangement Agreement and Section 5.1 of this Plan of Arrangement or made at the direction of the Court in the Final Order with the prior written consent of the Company and New Holdco, each acting reasonably.

“Preferred Shareholders” means the registered and/or beneficial holders of Preferred Shares, as the context requires.

“Preferred Shares” means the series “A” convertible preferred shares in the capital of the Company.

“RAB” means, collectively, Richard A. Baker, Lisa Baker, Lisa and Richard Baker Enterprises, LLC, Red Trust, Yellow Trust and Blue Trust.

“Rollover Agreements” means the letter agreements between New Holdco and the Continuing Shareholders providing for the transfer of the Rolling Securities to New Holdco in connection with the Arrangement, and **“Rollover Agreement”** means any one of them.

“Rolling Securities” means the Common Shares or Preferred Shares (as applicable) held by the Continuing Shareholders, which are to be transferred and assigned by the Continuing Shareholders pursuant to the Rollover Agreements.

“RSU Plan” means the Hudson’s Bay Company Performance Share Unit Plan effective as of November 26, 2012, as amended May 6, 2013 and as further amended April 1, 2016.

“RSUs” means the outstanding restricted share units granted under the RSU Plan or under the employment inducement exemption pursuant to Section 613(c) of the TSX Company Manual, excluding the performance restricted share units granted under the RSU Plan.

“Shareholders” means the Common Shareholders and the Preferred Shareholders.

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

1.2 Certain Rules of Interpretation

In this Plan of Arrangement, unless otherwise specified:

- (1) **Headings, etc.** The division of this Plan of Arrangement into Articles, Sections and subsections and the insertion of headings are for convenience of reference only and do not affect the meaning or interpretation of this Plan of Arrangement.
- (2) **Currency.** All references to dollars or to \$ are references to Canadian dollars.
- (3) **Gender and Number.** Any reference to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (4) **Certain Phrases, etc.** The words “including”, “includes” and “include” mean “including (or includes or include) without limitation,” and “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of.” Unless stated otherwise, “Article” and “Section” followed by a number or letter mean and refer to the specified Article or Section of this Plan of Arrangement.
- (5) **Statutes.** Any reference to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended or re-enacted, unless stated otherwise.
- (6) **Computation of Time.** A period of time is to be computed as beginning on the day following the event that began the period and ending at 5:00 p.m. on the last day of the period, if the last day of the period is a Business Day, or at 5:00 p.m. on the next Business Day if the last day of the period is not a Business Day.
- (7) **Time References.** References to time herein or in any Letter of Transmittal are to local time, Toronto, Ontario.

ARTICLE 2 THE ARRANGEMENT

2.1 Arrangement Agreement

This Plan of Arrangement constitutes an arrangement under Section 192 of the CBCA and is made pursuant to the Arrangement Agreement.

2.2 Binding Effect

This Plan of Arrangement and the Arrangement, upon the filing of the Articles of Arrangement and the issuance of the Certificate of Arrangement, will become effective, and be binding on New Holdco, the Company, the Shareholders, all Affected Securityholders, including Dissenting Holders, the Continuing Shareholders, the register and transfer agent of the Company, the Depositary and all other Persons, at and after, the Effective Time without any further act or formality required on the part of any Person.

2.3 Arrangement

Commencing at the Effective Time each of the following events shall occur and shall be deemed to occur sequentially as set out below without any further authorization, act or formality, in each case, unless stated otherwise, effective as at five minute intervals starting at the Effective Time:

- (a) a portion of Common Shares held by RAB will be transferred and assigned by RAB, and acquired by New Holdco, in accordance with the terms of RAB's Rollover Agreement, and
 - (i) in respect of each Common Share so transferred and assigned under Section 2.3(a), RAB will cease to be the holder of such Common Shares so exchanged and RAB will be removed from the Company's register of holders of Common Shares, at such time; and
 - (ii) New Holdco will be deemed to be the holder of such Common Shares at such time and will be entered in the Company's register of holders of Common Shares, as the registered holder of the Common Shares so transferred and shall be deemed the legal and beneficial owner thereof;
- (b) simultaneously with the transfer in Section 2.3(a), each Rolling Security (other than the Common Shares transferred under Section 2.3(a)) will be transferred and assigned by the holder thereof to, and acquired by New Holdco, in accordance with the terms of such holder's Rollover Agreement, and
 - (i) in respect of each Rolling Security so transferred and assigned each Continuing Shareholder will cease to be the holder of such Rolling Securities so exchanged and such holder's name will be removed from the Company's register of holders of Common Shares or Preferred Shares, as applicable, at such time; and
 - (ii) New Holdco will be deemed to be the holder of such Common Shares or Preferred Shares, as applicable, at such time and will be entered in the Company's register of holders of Common Shares or Preferred Shares, as applicable, as the registered holder of the Common Shares or Preferred Shares, as applicable, so transferred and shall be deemed the legal and beneficial owner thereof;
- (c) each of the Common Shares held by Dissenting Holders in respect of which Dissent Rights have been validly exercised shall be deemed to have been transferred without any further act or formality to the Company in consideration for a claim against the Company for the amount determined under Article 3, and:
 - (i) such Dissenting Holders shall cease to be the holders of such Common Shares and to have any rights as holders of such Common Shares other than the right to be paid fair value by the Company for such Common Shares as set out in Section 3.1;

- (ii) such Dissenting Holders' names shall be removed as the holders of such Common Shares from the register of Common Shares maintained by or on behalf of the Company; and
 - (iii) the Company shall be deemed to be the transferee of such Common Shares free and clear of all Liens, and shall be entered in the register of Common Shares maintained by or on behalf of the Company;
- (d) each Common Share outstanding immediately prior to the Effective Time, other than (i) Common Shares held by a Dissenting Holder in respect of which Dissent Rights have been validly exercised, and (ii) Common Shares held by New Holdco or the Continuing Shareholders, shall, without any further action by or on behalf of a holder of Common Shares, be purchased by the Company and thereupon cancelled by the Company in exchange for the Consideration, and:
 - (i) the holders of such Common Shares shall cease to be the holders of such Common Shares and to have any rights as holders of such Common Shares other than the right to be paid the Consideration by the Company in accordance with this Plan of Arrangement;
 - (ii) such holders' names shall be removed from the register of the Common Shares maintained by or on behalf of the Company; and
 - (iii) the Company shall cancel such Common Shares;
- (e) each Preferred Share outstanding immediately prior to the Effective Time, notwithstanding the terms of the Preferred Shares, shall, without any further action by or on behalf of the holder of Preferred Shares, be converted into a number of Common Shares as calculated in accordance with the terms of the Preferred Shares and (i) the holder of such Preferred Shares shall cease to be the holder thereof, and to have any rights as holder of such Preferred Shares; (ii) such holder's name shall be removed from the register of the Preferred Shares maintained by or on behalf of the Company; and (iii) such holder will be deemed to be the holder of such Common Shares on the Effective Date and will be entered in the Company's register of holders of Common Shares as the registered holder of such Common Shares and shall be deemed the legal and beneficial owner thereof;
- (f) each DSU outstanding immediately prior to the Effective Time, notwithstanding the terms of the DSU Plan, shall, without any further action by or on behalf of a holder of DSUs, be deemed to be assigned and transferred by such holder to the Company in exchange for a cash payment from the Company equal to the Consideration, subject to Section 4.3, and each such DSU shall immediately be cancelled and (i) the holders of such DSUs shall cease to be the holders thereof, and to have any rights as holders of such DSUs other than the right to receive the consideration to which they are entitled under Section 2.3(f) of this Plan of Arrangement; (ii) such holders' names shall be removed from the register of the DSUs maintained by or on behalf of the Company; and (iii) the DSU Plan and all

agreements relating to the DSUs shall be terminated and shall be of no further force and effect;

- (g) each RSU outstanding immediately prior to the Effective Time, notwithstanding the terms of the RSU Plan, shall, without any further action by or on behalf of a holder of RSUs, be deemed to be assigned and transferred by such holder to the Company in exchange for a cash payment from the Company equal to the Consideration, subject to Section 4.3, and each such RSU shall immediately be cancelled and (i) the holders of such RSUs shall cease to be the holders thereof, and to have any rights as holders of such RSUs other than the right to receive the consideration to which they are entitled under Section 2.3(g) of this Plan of Arrangement; (ii) such holders' name shall be removed from the register of the RSUs maintained by or on behalf of the Company; and (iii) the RSU Plan and all agreements relating to the RSUs shall be terminated and shall be of no further force and effect; and
- (h) notwithstanding the terms of the Option Plan, each Option outstanding immediately prior to the Effective Time (whether vested or unvested), shall be deemed to be unconditionally vested and exercisable, and such Option shall, without any further action by or on behalf of a holder of Options, be deemed to be assigned and transferred by such holder to the Company in exchange for a cash payment from the Company equal to the amount by which the Consideration exceeds the exercise price per Common Share of such Option, subject to Section 4.3, and each such Option shall immediately be cancelled, and, for greater certainty, where such amount is nil or a negative, neither the Company nor New Holdco shall be obligated to pay the holder of such Option any amount in respect of such Option, and (i) the holders of such Options shall cease to be the holders thereof, and to have any rights as holders of such Options other than the right to receive the consideration (if any) to which they are entitled under Section 2.3(h) of this Plan of Arrangement; (ii) such holders' name shall be removed from the register of the Options maintained by or on behalf of the Company; and (iii) the Option Plan and all agreements relating to the Options shall be terminated and shall be of no further force and effect.

ARTICLE 3 RIGHTS OF DISSENT

3.1 Rights of Dissent

Registered Common Shareholders may exercise dissent rights with respect to the Common Shares held by such holders ("**Dissent Rights**") in connection with the Arrangement pursuant to and in the manner set forth in Section 190 of the CBCA, as modified by the Interim Order and this Section 3.1; provided that, notwithstanding subsection 190(5) of the CBCA, the written objection to the Arrangement Resolution referred to in subsection 190(5) of the CBCA must be received by the Company not later than 5:00 p.m. (Toronto time) two Business Days immediately preceding the date of the Company Meeting (as it may be adjourned or postponed from time to time). Dissenting Holders who duly exercise their Dissent Rights shall be deemed to have transferred the Common Shares held by them and in respect of which Dissent Rights

have been validly exercised to the Company free and clear of all Liens, as provided in Section 2.3(c), and if they:

- (a) ultimately are entitled to be paid fair value for such Common Shares: (i) shall be deemed not to have participated in the transactions in Article 2 (other than Section 2.3(c)); (ii) will be entitled to be paid the fair value of such Common Shares, which fair value, notwithstanding anything to the contrary contained in Part XV of the CBCA, shall be determined as of the close of business on the day before the Arrangement Resolution was adopted; and (iii) will not be entitled to any other payment or consideration, including any payment that would be payable under the Arrangement had such holders not exercised their Dissent Rights in respect of such Common Shares; or
- (b) ultimately are not entitled, for any reason, to be paid fair value for such Common Shares, shall be deemed to have participated in the Arrangement on the same basis as a non-dissenting holder of Common Shares other than New Holdco and the Continuing Shareholders as provided for in Section 2.3(d) of this Plan of Arrangement.

3.2 Recognition of Dissenting Holders

- (a) In no circumstances shall New Holdco or the Company or any other Person be required to recognize a Person exercising Dissent Rights unless such Person is the registered holder of those Common Shares in respect of which such rights are sought to be exercised.
- (b) For greater certainty, in no case shall New Holdco or the Company or any other Person be required to recognize Dissenting Holders as holders of Common Shares in respect of which Dissent Rights have been validly exercised after the completion of the transfer under Section 2.3(c), and the names of such Dissenting Holders shall be removed from the registers of holders of the Common Shares in respect of which Dissent Rights have been validly exercised at the same time as the event described in Section 2.3(c) occurs. In addition to any other restrictions under Section 190 of the CBCA, none of the following shall be entitled to exercise Dissent Rights: (i) holders of Options, (ii) holders of DSUs; (iii) holders of RSUs; and (iv) Shareholders who vote or have instructed a proxyholder to vote their Common Shares in favour of the Arrangement Resolution (but only in respect of such Common Shares).

ARTICLE 4 CERTIFICATES AND PAYMENTS

4.1 Payment of Consideration

- (a) Prior to the filing of the Articles of Arrangement, the Company shall deposit, or arrange to be deposited, for the benefit of Common Shareholders (other than New Holdco and the Continuing Shareholders), cash with the Depositary in the

aggregate amount equal to the payments in respect of Common Shares required by Section 2.3(d) of this Plan of Arrangement.

- (b) Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Common Shares that were transferred pursuant to Section 2.3(d), together with a duly completed and executed Letter of Transmittal and such additional documents and instruments as the Depositary may reasonably require, the Shareholders represented by such surrendered certificate shall be entitled to receive in exchange therefor, and the Depositary shall deliver to such holder, the cash which such holder has the right to receive under this Plan of Arrangement for such Common Shares, less any amounts withheld pursuant to Section 4.3, and any certificate so surrendered shall forthwith be cancelled.
- (c) On or as soon as practicable after the Effective Date, the Company shall deliver to each holder of Options, DSUs and RSUs, as reflected on the register maintained by or on behalf of the Company in respect of Options, DSUs and RSUs, or to such other Person as such holder may direct, the cash payment, if any, which such holder of Options, DSUs and RSUs has the right to receive under this Plan of Arrangement for such Options, DSUs and RSUs, less any amount withheld pursuant to Section 4.3, either (i) pursuant to the normal payroll practices and procedures of the Company; or (ii) by cheque.
- (d) Until surrendered as contemplated by this Section 4.1, each certificate that immediately prior to the Effective Time represented Common Shares (other than Common Shares held by New Holdco or the Continuing Shareholders), shall be deemed after the Effective Time to represent only the right to receive upon such surrender a cash payment in lieu of such certificate as contemplated in this Section 4.1, less any amounts withheld pursuant to Section 4.3. Any such certificate formerly representing Common Shares (other than Common Shares held by New Holdco or the Continuing Shareholders) not duly surrendered on or before the sixth anniversary of the Effective Date shall cease to represent a claim by or interest of any former holder of Common Shares of any kind or nature against or in the Company or New Holdco. On such date, all cash to which such former holder of Common Shares (other than Common Shares held by New Holdco or the Continuing Shareholders) was entitled shall be deemed to have been surrendered to the Company, and shall be paid over by the Depositary to the Company or as directed by the Company.
- (e) Any payment made by way of cheque by the Depositary or the Company, as applicable, pursuant to this Plan of Arrangement that has not been deposited or has been returned to the Depositary or that otherwise remains unclaimed, in each case, on or before the sixth anniversary of the Effective Time, and any right or claim to payment hereunder that remains outstanding on the sixth anniversary of the Effective Time shall cease to represent a right or claim of any kind or nature and the right of the holder to receive the applicable consideration for the Affected Securities pursuant to this Plan of Arrangement shall terminate

and be deemed to be surrendered and forfeited to the Company for no consideration.

- (f) No holder of Affected Securities shall be entitled to receive any consideration with respect to such Affected Securities other than any cash payment to which such holder is entitled to receive in accordance with Section 2.3 and this Section 4.1 and, for greater certainty, no such holder will be entitled to receive any interest, dividends, premium or other payment in connection therewith.

4.2 Lost Certificates

In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Common Shares that were transferred pursuant to Section 2.3 shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed, the Depositary will issue in exchange for such lost, stolen or destroyed certificate, cash deliverable in accordance with such holder's Letter of Transmittal. When authorizing such payment in exchange for any lost, stolen or destroyed certificate, the Person to whom such cash is to be delivered shall as a condition precedent to the delivery of such cash, give a bond satisfactory to the Company and the Depositary (each acting reasonably) in such sum as the Company may direct (acting reasonably), or otherwise indemnify New Holdco, the Company and the Depositary in a manner satisfactory to New Holdco, the Company and the Depositary, each acting reasonably, against any claim that may be made against New Holdco, the Company and the Depositary with respect to the certificate alleged to have been lost, stolen or destroyed.

4.3 Withholding Rights

The Depositary and the Company shall be entitled to deduct or withhold from the consideration payable or otherwise deliverable to any Affected Securityholders, including Shareholders exercising Dissent Rights, pursuant to this Plan of Arrangement and from all dividends, other distributions or other amount otherwise payable to any Shareholders or holders of Options, DSUs and/or RSUs such Taxes or other amounts as the Depositary and the Company are, or reasonably believe to be, required, entitled or permitted to deduct or withhold with respect to such payment under the Tax Act, or any other provisions of any applicable Laws, in each case, as amended. To the extent that Taxes or other amounts are so deducted or withheld, such deducted or withheld Taxes or other amounts shall be treated for all purposes under this Agreement as having been paid to the Person in respect of which such deduction or withholding was made, provided that such deducted or withheld Taxes or other amounts are actually remitted to the appropriate taxing authority.

4.4 No Liens

Any exchange or transfer of securities pursuant to this Plan of Arrangement shall be free and clear of any Liens or other claims of third parties of any kind.

4.5 Paramountcy

From and after the Effective Time: (a) this Plan of Arrangement shall take precedence and priority over any and all Affected Securities issued or outstanding prior to the Effective Time, and (b) the rights and obligations of the Affected Securityholders, the Company, New Holdco, the Depositary, the Continuing Shareholders and any transfer agent or other depositary therefor in relation thereto, shall be solely as provided for in this Plan of Arrangement.

ARTICLE 5 AMENDMENTS

5.1 Amendments to Plan of Arrangement

- (a) The Company and New Holdco may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must (i) be set out in writing, (ii) be approved by the Company and New Holdco, each acting reasonably, (iii) filed with the Court and, if made following the Company Meeting, approved by the Court, and (iv) communicated to the Affected Securityholders if and as required by the Court.
- (g) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by the Company or New Holdco at any time prior to the Company Meeting (provided that the Company or New Holdco, as applicable, shall have consented thereto) with or without any other prior notice or communication, and if so proposed and accepted by the Persons voting at the Company Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.
- (h) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Company Meeting shall be effective only if (i) it is consented to in writing by each of the Company and New Holdco (in each case, acting reasonably), and (ii) if required by the Court, it is consented to by some or all of the Shareholders voting in the manner directed by the Court.
- (i) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by New Holdco, provided that it concerns a matter which, in the reasonable opinion of New Holdco, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the economic interest of any former holder of Affected Securities.

ARTICLE 6 FURTHER ASSURANCES

6.1 Further Assurances

Notwithstanding that the transactions and events set out in this Plan of Arrangement shall occur and shall be deemed to occur in the order set out in this Plan of Arrangement

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

Schedule "B"
Arrangement Resolution

BE IT RESOLVED THAT:

1. The arrangement (the "**Arrangement**") under Section 192 of the *Canada Business Corporations Act* (the "**CBCA**") of Hudson's Bay Company (the "**Company**"), pursuant to the arrangement agreement (the "**Arrangement Agreement**") between the Company and Rupert Acquisition LLC ("**New Holdco**") dated October 20, 2019, all as more particularly described and set forth in the management information circular of the Company dated ●, 2019 (the "**Circular**") accompanying the notice of this meeting (as the Arrangement may be modified or amended in accordance with its terms) is hereby authorized, approved and adopted.
2. The plan of arrangement of the Company (as it has been or may be amended, modified or supplemented in accordance with the Arrangement Agreement and its terms (the "**Plan of Arrangement**")), the full text of which is set out in Appendix ● to the Circular, is hereby authorized, approved and adopted.
3. The (i) Arrangement Agreement and related transactions, (ii) actions of the directors of the Company in approving the Arrangement Agreement, and (iii) actions of the directors and officers of the Company in executing and delivering the Arrangement Agreement, and any amendments, modifications or supplements thereto, are hereby ratified and approved.
4. The Company be and is hereby authorized to apply for a final order from the Ontario Superior Court of Justice (Commercial List) (the "**Court**") to approve the Arrangement on the terms set forth in the Arrangement Agreement and the Plan of Arrangement (as they may be amended, modified or supplemented and as described in the Circular).
5. Notwithstanding that this resolution has been passed (and the Arrangement adopted) by the Shareholders (as defined in the Arrangement Agreement) or that the Arrangement has been approved by the Court, the directors of the Company other than directors who are Participating Insiders (as defined in the Arrangement Agreement) are hereby authorized and empowered to, at their discretion, without notice to or approval of the Shareholders: (i) amend, modify or supplement the Arrangement Agreement or the Plan of Arrangement to the extent permitted by the Arrangement Agreement and/or the Plan of Arrangement; and (ii) subject to the terms of the Arrangement Agreement, not to proceed with the Arrangement and related transactions.
6. Any officer or director of the Company is hereby authorized and directed for and on behalf of the Company to execute and deliver for filing with the Director under the CBCA articles of arrangement and such other documents as are necessary or desirable to give effect to the Arrangement in accordance with the Arrangement Agreement, such determination to be conclusively evidenced by the execution and delivery of such articles of arrangement and any such other documents.

7. Any officer or director of the Company is hereby authorized and directed for and on behalf of the Company to execute or cause to be executed and to deliver or cause to be delivered all such other documents and instruments and to perform or cause to be performed all such other acts and things as such person determines may be necessary or desirable to give full effect to the foregoing resolution and the matters authorized thereby, such determination to be conclusively evidenced by the execution and delivery of such document or instrument or the doing of any such act or thing.

[Remainder of page intentionally left blank.]

Schedule "C"
Representations and Warranties of the Company

- (1) **Organization and Powers.** The Company: (i) has been duly incorporated or formed and is validly existing under the laws of its jurisdiction of incorporation; (ii) has all requisite corporate power and authority to own and lease its property and assets and to carry on its business; and (iii) is duly qualified, licensed or registered to do business in each jurisdiction in which the nature of its business or the property or assets owned or leased by it make such qualification, licensing or registration necessary, except to the extent that any failure of the Company to be so qualified, licenced or registered would not, individually or in the aggregate, be material to the Company. No proceeding has been instituted or, to the Company's knowledge, threatened in any such jurisdiction revoking, limiting or curtailing, or seeking to revoke, limit or curtail, such power and authority or qualification, licensing or registration other than such proceedings as would not, individually or in the aggregate, be material to the Company. The Company is up-to-date on all its corporate filings in all material respects and is (if applicable) in good standing under applicable Laws in all material respects.
- (2) **Authority Relative to this Agreement.** The Company has the requisite corporate power, authority and capacity to enter into this Agreement and (subject to obtaining the Interim Order, the Final Order and the Required Approval) to perform its obligations hereunder and to complete the transactions contemplated by this Agreement. The execution and delivery of this Agreement and the performance by the Company of its obligations under this Agreement have been duly authorized by the Board and no other corporate proceedings on the part of the Company are necessary to authorize the execution and delivery by it of this Agreement or, subject to obtaining the Interim Order, the Final Order and the Required Approval, the completion by the Company of the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium and other Laws relating to or affecting the availability of equitable remedies and the enforcement of creditors' rights generally and general principles of equity and public policy and to the qualification that equitable remedies such as specific performance and injunction may be granted only in the discretion of a court of competent jurisdiction.
- (3) **Required Approvals.** Except for the Required Regulatory Approvals, no authorization, licence, permit, certificate, registration, consent or approval of, or filing with, or notification to, any Governmental Entity is required to be obtained or made by or with respect to the Company for the execution and delivery of this Agreement or the performance by the Company of its obligations hereunder, or the completion by the Company of the Arrangement, other than:
- (i) the Interim Order and any filings required in order to obtain, and approvals required under, the Interim Order;

- (ii) the Final Order, and any filings required in order to obtain the Final Order;
 - (iii) filings with the Director under the CBCA;
 - (iv) filings with Securities Authorities and/or the Toronto Stock Exchange; and
 - (v) authorizations, licences, permits, certificates, registrations, consents, approvals, filings or notifications the absence of which would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.
- (4) **No Violation.** The execution and delivery by the Company of this Agreement, the performance by the Company of its obligations hereunder and the completion of the Arrangement do not and will not (nor will they with the giving of notice or the lapse of time or both):
- (i) subject to compliance with the matters referred to in paragraph (3) above, result in a contravention, breach, violation or default under any Law applicable to it or any of its material assets;
 - (ii) result in a contravention, conflict, violation, breach or default under its constating documents;
 - (iii) result in a contravention, breach or default under or termination of, or acceleration or permit the acceleration of the performance required by, or loss of any benefit under, or require any approval under, any Material Contract or material Authorization to which it is a party or by which it is bound or to which any of its material assets are subject or give to any person any interest, benefit or right, including any right of purchase, termination, payment, modification, reimbursement, cancellation or acceleration, under any such contracts or permits; or
 - (iv) result in the creation of any Lien (other than Permitted Liens and Liens relating to the Debt Financing) upon any of its material assets,
- except in the case of each of, (iii) and (iv) as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.
- (5) **Authorized and Issued Capital.**
- (i) The authorized capital of the Company consists of an unlimited number of Common Shares and an unlimited number of preferred shares. As of the close of business on the Business Day prior to the date of this Agreement, there were 184,359,734 Common Shares and 50,919,608 Preferred Shares issued and outstanding. All of the issued and outstanding Common Shares and Preferred Shares are fully paid and non-assessable and have been duly authorized and validly issued, in compliance with applicable laws. No Common Shares or Preferred Shares have been issued in violation of any Law or any pre-emptive or similar rights applicable to them.
 - (ii) As of the close of business on the Business Day prior to the date of this Agreement there were 13,445,481 Common Shares issuable upon the exercise

of outstanding Options. Section 5(ii) of the Company Disclosure Letter contains a list of the Options, with details regarding the exercise price and the grant date, whether such Options are vested or unvested and the name of the holder of each Option. The Option Plan and the issuance of securities under such plan (including all outstanding Options) have been duly authorized by the Board in compliance with Laws and the terms of the Option Plan.

- (iii) As of the close of business on the Business Day prior to the date of this Agreement, there were 802,816 DSUs outstanding. Section 5(iii) of the Company Disclosure Letter contains a list of the DSUs, with details regarding grant date and market price at time of grant, whether such DSUs are vested or unvested and the name of the holder of each DSU, as applicable.
- (iv) As of the close of business on the Business Day prior to the date of this Agreement, there were 5,754,218 RSUs. Section 5(iv) of the Company Disclosure Letter contains a list of the RSUs and PRSUs, with details regarding the grant date and market price at time of grant, whether such RSUs are vested or unvested and the name of the holder of each RSU, as applicable.
- (v) As of the close of business on the Business Day prior to the date of this Agreement, there were 7,635,325 PSUs (including 1,308,014 PRSUs) outstanding. Section 5(v) of the Company Disclosure Letter contains a list of the PSUs, with details regarding grant date and market price at time of grant, whether such PSUs are vested or unvested and the name of the holder of each PSU, as applicable.
- (vi) As of the close of the business on the Business Day prior to the date of this Agreement, there were 113,687 phantom share units outstanding under the Company's phantom share plan effective as of November 26, 2012.
- (vii) As of the close of business on the Business Day prior to the date of this Agreement, the Company has no Common Shares or Preferred Shares reserved for or otherwise subject to issuance, except for 13,445,481 Common Shares reserved for issuance pursuant to the conversion of the Preferred Shares, the exercise of Options and the settlement of RSUs (including performance restricted share units).
- (viii) Other than as set out in (i), (ii), (iii), (iv) and (v) above, there are no issued, outstanding or authorized:
 - (A) shares, options, equity-based awards, warrants, conversion, pre-emptive, redemption, repurchase, stock appreciation or other rights, or any other agreements, arrangements, instruments or commitments of any kind to which the Company or any of its Subsidiaries are a party that obligate the Company or any of its Subsidiaries to, directly or indirectly, issue or sell any securities of the Company or of any of its Subsidiaries, or give any Person a right to subscribe for or acquire, any securities of the Company or of any of its Subsidiaries;

- (B) obligations of the Company or of any of its Subsidiaries to repurchase, redeem or otherwise acquire any securities of the Company or of any of its Subsidiaries, or qualify securities for public distribution in Canada or elsewhere, or, other than as contemplated by this Agreement or the Plan or Arrangement, with respect to the voting or disposition of any securities of the Company or of any of its Subsidiaries; or
- (C) notes, bonds, debentures or other evidences of indebtedness or any other agreements, arrangements, instruments or commitments of any kind that give any Person, directly or indirectly, the right to vote with holders of Common Shares on any matter except as required by Law.

(6) **Subsidiaries.**

- (i) Each Subsidiary is a corporation, partnership, trust, limited partnership or other entity, as the case may be, duly incorporated, organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, organization or formation, as the case may be, and has all requisite corporate, trust or partnership power and authority, as the case may be, to own, lease and operate its assets and properties and conduct its business as now being conducted, except where the failure to be so incorporated, organized or formed, validly existing, or in good standing, or to have such power or authority, would not reasonably be expected to have individually or in the aggregate, a Material Adverse Effect. Except as would not reasonably be expected to have individually or in the aggregate, a Material Adverse Effect, each Subsidiary is duly qualified, licensed or registered to carry on business and is in good standing in each jurisdiction in which the character of its assets and properties, owned, leased, licensed or otherwise held, or the nature of its activities makes such qualification, licensing or registration necessary, and has all Authorizations required to own, lease and operate its properties and assets and to conduct its business as now owned and conducted.
- (ii) The Company is, directly or indirectly, the registered and beneficial owner of all of the outstanding common shares or other equity interests of each of its Subsidiaries, free and clear of any Liens, except for Permitted Liens, and all such shares or other equity interests so owned by the Company have been duly authorized and validly issued as fully paid and non-assessable, as the case may be, and no such shares or other equity interests have been issued in violation of any Law or any pre-emptive or similar rights. Except for the shares or other equity interests owned by the Company in any Subsidiary or Joint Venture, the Company does not own, beneficially or of record, any equity interests of any kind in any other Person.

(7) **Acquisition and Repurchase Rights.** Other than rights to receive Common Shares pursuant to the Preferred Shares, Options, DSUs, RSUs, PSUs and phantom share units, no Person (other than the Company and any of its Subsidiaries) has any

option, warrant, right (pre-emptive, contractual or otherwise) or other security or conversion privilege issued or granted by the Company or any of its Subsidiaries of any kind that is exercisable or convertible into, or exchangeable for, or otherwise carries the right of the holder (pre-emptive, contractual or otherwise) to purchase or otherwise acquire (whether or not subject to conditions) Common Shares, Preferred Shares, Joint Venture interests or other securities of the Company or any of its Subsidiaries, including pursuant to one or more exercises, conversions and/or exchanges. No Person has any right to require the Company or any of its Subsidiaries to purchase, redeem or otherwise acquire any of its issued and outstanding Common Shares, Preferred Shares, Joint Venture interests or other securities of the Company or any of its Subsidiaries. No shareholder, unitholder or Joint Venture interest holder or other Person has any pre-emptive right or right of first refusal in respect of the allotment and issuance of any unissued Common Shares, other securities or Joint Venture interests of the Company or any of its Subsidiaries.

- (8) **Shareholders' and Similar Agreements.** Other than as disclosed on the Company's SEDAR profile, neither the Company nor any of its Subsidiaries is subject to, or affected by, any unanimous shareholders agreement involving a Person other than the Company or any of its Subsidiaries and is not a party to any shareholder, pooling, voting or other similar arrangement or agreement relating to the ownership or voting of any of the securities of the Company or of any of its Subsidiaries other than as between the Company and any of its Subsidiaries or pursuant to which any Person other than the Company or any of its Subsidiaries may have any right or claim in connection with any existing or past equity interest in the Company or in any of its Subsidiaries.
- (9) **Listing of Common Shares.** The Common Shares are listed and posted for trading on the TSX and no order prohibiting the sale or issuance of the Common Shares has been issued and no (formal or informal) proceedings for such purpose are pending or, to the knowledge of the Company, have been threatened. The Company has not taken any action which would reasonably be expected to result in the delisting or suspension of the Common Shares on or from the TSX, and the Company is currently in compliance in all material respects with the rules and regulations of the TSX.
- (10) **Securities Law Matters.**
- (i) The Company is a "reporting issuer" under Securities Laws in each of the provinces and territories of Canada. The Company is not in default of Securities Laws, except for any such defaults as would not reasonably be expected to have a Material Adverse Effect.
 - (ii) The Company has not taken any action to cease to be a reporting issuer in any province or territory nor has the Company received notification from any Securities Authority seeking to revoke the reporting issuer status of the Company. No delisting, suspension of trading or cease trade or other order or restriction with respect to any securities of the Company is pending or in

effect or, to the knowledge of the Company, has been threatened, or is expected to be implemented or undertaken, and the Company is not, to its knowledge, subject to any formal or informal review, enquiry, investigation or other proceeding relating to any such order or restriction.

- (iii) The Company has timely filed or furnished all forms, reports, schedules, statements and other documents required to be filed or furnished by the Company under Securities Laws with any Governmental Entity since January 1, 2018. Each of the Company Filings complied as filed with Law in all material respects and did not, as of the date filed (or, if amended or superseded by a subsequent filing prior to the date of this Agreement, on the date of such filing), contain any Misrepresentation.
- (iv) The Company has not filed any confidential material change report or any other confidential filings with any Securities Authority that at the date of this Agreement remains confidential. There are no outstanding or unresolved comments in comment letters from any Securities Authority with respect to any of the Company Filings and, to the knowledge of the Company, neither the Company nor any of the Company Filings is the subject of an ongoing audit, review, comment or investigation by any Securities Authority or the Toronto Stock Exchange.

(11) **Financial Statements.**

- (i) The audited consolidated financial statements and the consolidated interim financial statements of the Company (including, in each case, any of the notes or schedules to and the auditor's report on such financial statements) included in the Company Filings or otherwise publicly disseminated by the Company in respect of any subsequent period prior to the Effective Date (i) were prepared or shall be prepared, as applicable, in accordance with IFRS or U.S. GAAP, as applicable, and Law; (ii) complied or shall comply, as applicable, as to form in all material respects with applicable accounting requirements in Canada; and (iii) fairly present or shall fairly present, as applicable, in all material respects, the assets, liabilities (whether accrued, absolute, contingent or otherwise), consolidated financial position, results of operations or financial performance and cash flows of the Company and its Subsidiaries as of their respective dates and the consolidated financial position, results of operations or financial performance and cash flows of the Company and its Subsidiaries for the respective periods covered by such financial statements (except as may be expressly indicated in the notes to such financial statements).
- (ii) The Company does not intend to correct or restate, nor, to the knowledge of the Company, is there any basis for any correction or restatement of, any aspect of any of the financial statements referred to in this Section (11). The selected financial data and the summary financial information included in the Company Filings present fairly the information shown in the Company Filings and have been compiled on a basis consistent with that of the audited financial statements included in the Company Filings. The other financial and

operational information included in the Company Filings presents fairly the information included in the Company Filings.

- (iii) There are no off-balance sheet transactions, arrangements, obligations (including contingent obligations) or other relationships of the Company or any of its Subsidiaries with unconsolidated entities or other Persons.
 - (iv) The financial books, records and accounts of the Company and each of its Subsidiaries: (i) have been maintained, in all respects, in accordance with IFRS or U.S. GAAP, as applicable; (ii) are stated in reasonable detail; (iii) accurately and fairly reflect all the transactions, acquisitions and dispositions of the Company and its Subsidiaries; and (iv) accurately and fairly reflect the basis for the Company's financial statements, in each case in all material respects.
- (12) **Auditors.** Deloitte LLP has been the auditor of the Company since 2008 and is "independent" as required under Securities Laws. There has never been a "reportable event" (within the meaning of National Instrument 51-102 - *Continuous Disclosure Obligations*) with the auditor of the Company.
- (13) **No Material Undisclosed Liabilities.** There are no material liabilities or obligations of the Company or of any of its Subsidiaries of any nature, whether accrued, contingent, absolute, or otherwise, other than liabilities or obligations: (i) disclosed in the Company Filings; (ii) incurred in the Ordinary Course since February 2, 2019; (iii) incurred in connection with this Agreement; or (iv) as would not, individually or in the aggregate, have a Material Adverse Effect.
- (14) **Absence of Certain Changes.** Except as disclosed in the Company Filings and except the transactions contemplated by this Agreement, since February 2, 2019:
- (i) the Company has conducted its business only in the Ordinary Course; and
 - (ii) there has not been any event, occurrence, development or state of circumstances or facts that has had or would be reasonably expected to have a Material Adverse Effect.
- (15) **Disclosure Controls and Internal Control over Financial Reporting.**
- (i) The Company has established and maintains a system of disclosure controls and procedures (as such term is defined in NI 52-109) that are designed to provide reasonable assurance that information required to be disclosed by the Company in its annual filings or interim filings or other reports filed or submitted by it under Securities Laws is recorded, processed, summarized and reported within the time periods specified in Securities Laws. Such disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed by the Company in its annual filings, interim filings or other reports filed or submitted under Securities Laws are accumulated and communicated to the Company's

management, including its chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosed.

- (ii) The Company has established and maintains a system of internal control over financial reporting (as such term is defined in NI 52-109) that is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with IFRS or U.S. GAAP, as applicable.
 - (iii) To the knowledge of the Company, there is no material weakness (as such term is defined in NI 52-109) relating to the design, implementation or maintenance of its internal control over financial reporting.
- (16) **Compliance with Laws.** The business of the Company and each of the Subsidiaries has been since January 1, 2019 and is currently being conducted in compliance in all material respects with all applicable Laws.
- (17) **Authorizations.** The Company and each of its Subsidiaries have identified, obtained, acquired or entered into in their respective names, and is in compliance in all material respects with all Authorizations required by applicable Laws to conduct their current businesses as it is now being conducted or proposed to be conducted (as described in the Company Filings). All such Authorizations are valid and subsisting, in full force and effect, enforceable in accordance with terms thereof, expect such failure to be valid and subsisting as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All Authorizations are in good standing and there has been no material default under any such Authorization, and all fees and other amounts required to be paid with respect to such Authorizations to the date hereof have been paid except in each case for failure that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. There are no actions, proceedings or investigations, pending, or to the knowledge of the Company, threatened, against the Company or any of its Subsidiaries that could reasonably be expected to result in the suspension, loss or revocation of any such Authorizations, other than such actions, proceedings or investigations as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.
- (18) **Litigation.** There is no court, administrative, regulatory or similar proceeding (whether civil, quasi-criminal or criminal), arbitration or other dispute settlement procedure, investigation or inquiry before or by any Governmental Entity, or any claim, action, suit, demand, arbitration, charge, indictment, hearing or other similar civil, quasi-criminal or criminal, administrative or investigative matter or proceeding against or involving the Company or any of its Subsidiaries (whether in progress or, to the knowledge of the Company, threatened) that if determined adverse to the interests of the Company or its Subsidiaries would have a Material Adverse Effect, and, to the knowledge of the Company, no event has occurred which might reasonably be expected to give rise to any such proceeding. To the knowledge of the Company, there is no judgment, writ, decree, injunction, rule, award or order of any Governmental Entity outstanding against the Company or any of its Subsidiaries

that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

- (19) **Solvency.** No act or proceeding has been taken by or against the Company or any of its material Subsidiaries in connection with the dissolution, liquidation, winding up, bankruptcy or reorganization of the Company or any of its material Subsidiaries or for the appointment of a trustee, receiver, manager or other administrator of the Company or any of its material Subsidiaries or any of their property or assets nor, to the knowledge of the Company, is any such act or proceeding threatened. Neither the Company nor any of its material Subsidiaries has sought protection under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or similar legislation.

(20) **Taxes.**

- (a) The Company and each of its Subsidiaries has, in each of the three most recent years, timely filed all Tax Returns required to be filed by them prior to the date hereof and all such Tax Returns are complete and correct, other than such failures as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.
- (b) The Company and each of its Subsidiaries has paid or caused to be paid on a timely basis all Taxes which are due and payable, all assessments and reassessments, and all other Taxes due and payable by them on or before the date hereof, other than those which are being contested in good faith and in respect of which reserves have been provided in the most recently published consolidated financial statements of the Company and other than such failures as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and its Subsidiaries have provided adequate accruals in accordance with IFRS or U.S. GAAP, as applicable, in the most recently published consolidated financial statements of the Company for any Taxes of the Company and each of its Subsidiaries for the period covered by such financial statements that have not been paid whether or not shown as being due on any Tax Returns. Since such publication date, no liability in respect of Taxes not reflected in such financial statements or otherwise provided for has been assessed, proposed to be assessed, incurred or accrued, other than in the Ordinary Course.
- (c) No material deficiencies, litigation, proposed adjustments or matters in controversy exist or have been asserted with respect to Taxes of the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries is a party to any action or proceeding for assessment or collection of Taxes and no such event has been asserted or, to the knowledge of the Company, threatened against the Company or any of its Subsidiaries or any of their respective assets.

- (d) The Company and each of its Subsidiaries has withheld or collected all amounts required to be withheld or collected by it on account of Taxes and has remitted all such amounts to the appropriate Governmental Entity when required by Law to do so other than such failures as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.
- (e) The Company and each of its Subsidiaries have complied in all material respects with the intercompany transfer pricing provisions of each Law relating to Taxes, including the contemporaneous documentation and disclosure requirements thereunder.

(21) **Material Contracts.**

- (a) All Material Contracts to which the Company or any of its Subsidiaries is a party are in full force and effect, and the Company and its Subsidiaries are entitled to all rights and benefits thereunder in accordance with the terms thereof. All of the Material Contracts are valid and binding obligations of the Company or its Subsidiaries and, to the knowledge of the Company, the other parties thereto enforceable in accordance with their respective terms, except as may be limited by bankruptcy, insolvency and other Laws affecting the enforcement of creditors' rights generally and subject to the qualification that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.
- (b) The Company and each of its Subsidiaries have performed in all material respects all respective obligations required to be performed by them under the Material Contracts. None of the Company or any of its Subsidiaries, or, to the knowledge of the Company, any of the other parties thereto, is in material breach or violation of or in default under (in each case, with or without notice or lapse of time or both) any Material Contract nor has the Company or any of its Subsidiaries received or given any notice of default under any Material Contract which remains uncured, and, to the knowledge of the Company, there exists no state of facts which after notice or lapse of time or both would constitute a default under or material breach of any Material Contract or the inability of a party to any Material Contract to perform its obligations thereunder.

- (22) **Owned Real Property.** Except as would not have a Material Adverse Effect, one or more of the Company and its Subsidiaries have good and marketable title in fee simple to the Owned Real Property free and clear of all Liens except for Permitted Liens. Except for the Real Property and except as would not have a Material Adverse Effect, neither the Company nor any of its Subsidiaries is the owner or lessee of, or subject to any agreement or option to own or lease, any Real Property or any interest in any Real Property. Except as would not have a Material Adverse Effect, the Owned Real Property and the current use of it comply with all provisions of all applicable Laws in all material respects. Except as would not have a Material Adverse Effect, no written notice of a material violation of any covenant, restriction or easement affecting the Owned Real Property or with respect to the use or

occupancy of the Owned Real Property has been given to the Company or any of its Subsidiaries by any Person entitled to enforce the same.

(23) **Leased Real Property.**

- (a) Each lease with respect to the Leased Real Property is a valid and binding obligation of, and is an enforceable obligation against, the Company or a Subsidiary, as the case may be, subject to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of the rights of creditors and others and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.
- (b) Neither the Company nor any of its Subsidiaries has received any written notice of a material default by the Company or any of its Subsidiaries, as the case may be, under any lease with respect to the Leased Real Property or of a material dispute between the Company or any of its Subsidiaries, as the case may be, and any other party to a lease with respect to the Leased Real Property, in respect of such lease.

(24) **Title to Personal Property.** The Company and its Subsidiaries have good and valid title to, or a valid leasehold interest in, all other material property that is not Real Property, free and clear of all Liens other than Permitted Liens.

(25) **Employment Matters.**

- (a) The Company and its Subsidiaries are in material compliance with all terms and conditions of employment and all Law respecting employment, including pay equity, wages, hours of work, overtime, human rights and occupational health and safety, and there are no material outstanding claims, complaints, investigations or orders under any such Law and, to the knowledge of the Company, there is no basis for such claim.
- (b) The Company has not in the past three (3) years and is not engaged in any unfair labour practice and no unfair labour practice complaint, grievance or arbitration proceeding is pending or, to the knowledge of the Company, threatened against the Company.
- (c) All amounts due or accrued due for all salary, wages, bonuses, commissions, vacation with pay, sick days and benefits under Employee Plans and other similar accruals have either been paid or are accurately reflected in the books and records of the Company or of the applicable Subsidiary to the extent required under IFRS or U.S. GAAP, as applicable, and Law, other than as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.
- (d) No Company Employee (with the exception of any Participating Insider as to whom no representation is given) holding an executive position with the

Company or a Subsidiary has any Contract in relation to any employee's termination, length of notice, pay in lieu of notice, severance, job security or similar provisions in excess of such entitlements that result by Law from the employment of an employee without an agreement as to notice or severance. There are no change of control payments, golden parachutes, severance payments, retention payments, Contracts or other agreements with current or former Company Employees (with the exception of any Participating Insider as to whom no representation is given) providing for cash or other compensation or benefits upon the consummation of, or relating to, the Arrangement or any other transaction contemplated by this Agreement, including a change of control of the Company or of any of its Subsidiaries.

(26) **Collective Agreements.**

- (a) There is no Collective Agreement in force with respect to the employees of the Company nor is there any Contract with any employee association in respect of the employees of the Company.
- (b) Neither the Company nor any of its Subsidiaries is a party, either directly or indirectly, or by operation of law to any other Collective Agreement and there are no outstanding labour tribunal proceedings of any kind, including any proceedings which could result in certification of a trade union as bargaining agent for any Company Employees. No trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent holds bargaining rights with respect to any of the employees of the Company by way of certification, interim certification, voluntary recognition, or succession rights, or, to the knowledge of the Company, has applied or, threatened to apply to be certified as the bargaining agent of any employees of the Company.
- (c) To the knowledge of the Company, there are no threatened or pending union organizing activities involving any employees of the Company and no such event has occurred within the last three (3) years. There is no labour strike, dispute, work slowdown or stoppage pending or involving or, to the knowledge of the Company, threatened against the Company and no such event has occurred within the last three (3) years.

- (27) **Workers Compensation and Health and Safety.** There are no outstanding material assessments, penalties, fines, liens, charges, surcharges, or other amounts due or owing pursuant to any workplace safety and insurance legislation in respect of the Company and the Company has not been reassessed in any material respect under such legislation during the past three (3) years and, to the knowledge of Company, no audit of the Company is currently being performed pursuant to any applicable workplace safety and insurance legislation. To the knowledge of the Company, there are no material charges pending under applicable occupational health and safety legislation ("OHSA") in respect of the Company. The Company has complied or is complying in all material respects with any orders issued under OHSA and there are no appeals of any orders under OHSA currently outstanding.

(28) **Acceleration of Benefits.** No person will, as a result of any of the transactions contemplated herein or in the Plan of Arrangement, become entitled to (i) any retirement, severance, termination, retention, bonus or other similar payment from the Company or any other payment under an Employee Plan, (ii) the acceleration of the vesting or the time to exercise of any outstanding stock option or employee or director awards of the Company or of any other material obligation pursuant to any Employee Plan, (iii) the forgiveness or postponement of payment of any indebtedness owing by such person to the Company, or (iv) receive any additional payments or compensation under or in respect of any employee or director benefits or incentive or other compensation plans or arrangements or Employee Plan from the Company.

(29) **Pension and Employee Benefits.**

- (a) The Company has complied in all material respects with all the terms of, and all Laws applicable to the Company in respect of, the material Employee Plans.
- (b) No Employee Plan is a “registered pension plan” as such term is defined in the Tax Act or provides health and welfare benefits following the retirement or (except where required by statute) termination of employment of any employee of the Company or to the beneficiaries or dependants of retired or terminated employees. No advance tax rulings have been received in respect of any Employee Plan.
- (c) All material obligations of the Company and its Subsidiaries under applicable Laws and the terms of each material Employee Plan to make or remit payments, contributions or premiums in respect of each such Employee Plan have been satisfied in all material respects and there are no material outstanding defaults or violations in respect thereof.
- (d) Other than in respect of routine claims for benefits, no Employee Plan is subject to any pending action, investigation, examination, claim (including claims for income taxes, interest, penalties, fines or excise taxes) or any other proceeding initiated by any person, and, to the knowledge of the Company, there exists no state of facts which could reasonably be expected to give rise to any such action, investigation, examination, claim or other proceeding.

(30) **Intellectual Property.** The Company and each Subsidiary owns, licenses or otherwise has the right to use all material authorizations, patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, copyright applications, franchises, authorizations and other intellectual property rights that are necessary for the operation of its business, without infringement upon or conflict with the rights of any other Person with respect thereto (other than any intellectual property the absence of which or any such infringement upon or conflict with respect to which would not have a material impact on the Company or its Subsidiaries’ ability to operate their respective businesses). To the knowledge of the Company, no slogan or other advertising

device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Company or any of its Subsidiaries infringes upon or conflicts with any rights owned by any other Person other than as would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Company, threatened.

(31) **Environmental Matters.**

Except as would not have a Material Adverse Effect:

- (a) no written notice, order, complaint or penalty has been received by the Company or any of its Subsidiaries alleging that the Company or any of its Subsidiaries is in violation of, or has any liability or potential liability under, any Environmental Law or in respect of environmental matters;
- (b) there are no judicial, administrative or other actions, suits or proceedings pending or, to the knowledge of the Company, threatened against the Company or any of its Subsidiaries which allege any liability or potential liability under any Environmental Laws or in respect of environmental matters; and the Company is not aware of any facts or circumstances that reasonably could be expected to give rise to any such action, suit or proceeding;
- (c) none of the Company or any Subsidiary has been charged with or convicted of any offence, violation and/or breach of or non-compliance with Environmental Laws, or been fined or otherwise sentenced or settled any prosecution short of conviction under Environmental Laws; and
- (d) there are no contaminants located at or under any real property owned or leased by the Company or any of its Subsidiaries and no release of any hazardous substances has occurred on, in or from any such property, which could reasonably be expected to give rise to any material liability of the Company or any of its Subsidiaries.

(32) **Insurance.** All material insurance policies of the Company and its Subsidiaries are in full force and effect. All premiums due and payable under all such policies have been paid or will be paid in accordance with the terms and conditions thereof and the Company or any Subsidiary thereof is otherwise in compliance in all material respects with the terms of such policies. Neither the Company nor any Subsidiary thereof has received any written notice of cancellation or termination with respect to any such policy. There has been no denial of material claims nor material claims disputed by the Company's or any of its Subsidiary's insurers.

(33) **Books and Records.** The minute books and corporate records of the Company and each of its Subsidiaries are true and correct in all material respects and contain all minutes of all meetings and all resolutions of the Shareholders or directors (or any committee thereof) of each of the Company and its Subsidiaries, as applicable, other

than any such minutes or resolutions relating to the transactions contemplated hereby.

- (34) **Non-Arm's Length Transactions.** There are no current contracts, commitments, agreements, arrangements or other transactions between the Company or any of its Subsidiaries, on the one hand, and any (a) officer or director of the Company or any of its Subsidiaries, (b) any holder of record or, to the knowledge of the Company, beneficial owner or 5% or more of the outstanding Common Shares, or, (c) to the knowledge of the Company, any affiliate or associate or any such officer, director or Shareholder, on the other hand (excluding in all cases the Participating Insiders and the Continuing Shareholders with regard to whom no representation is made).
- (35) **Privacy.** The Company is conducting its business in material compliance with all Laws governing privacy and the protection of personal information, including the *Personal Information Protection and Electronic Documents Act* (Canada). The Company has a written privacy policy which governs the collection, use and disclosure of personal information and the Company is in material compliance in all respects with such policy.
- (36) **Financial Advisors or Brokers.** The Company has not incurred any obligation or liability, contingent or otherwise, or agreed to pay or reimburse any broker, finder, financial adviser or investment banker, for any brokerage, finder's, advisory or other fee or commission, or for the reimbursement of expenses, in connection with this Agreement, the transactions contemplated hereby or any alternative transaction in relation to the Company, other than with respect to TD Securities, JP Morgan and Centerview or as otherwise disclosed in Section (36) of the Company Disclosure Letter. Section (36) of the Company Disclosure Letter sets out the aggregate dollar amount determined to be payable to and as agreed upon with each of the Company's brokers, finders, financial advisers and investment bankers in connection with and in the event the Arrangement is completed.
- (37) **Fairness Opinions and Valuation.** The Special Committee and the Board have received the Fairness Opinions and the Valuation in oral form, which opinions and valuation have not been modified, amended, qualified or withdrawn. True and complete copies of the Fairness Opinions and the Valuation will be provided by the Company to New Holdco promptly following delivery by TD Securities, JP Morgan and Centerview, as applicable.
- (38) **Special Committee and Board Approval.** The Special Committee, at a meeting duly called and held, has unanimously upon consultation with its legal advisors and with JP Morgan, Centerview and TD Securities, who provided the Fairness Opinions and the Valuation (as applicable), has determined that the Arrangement is in the best interests of the Company and unanimously determined to recommend approval of this Agreement and the Arrangement to the Board and that the Board recommend that the Shareholders other than the Continuing Shareholders vote in favour of the Arrangement Resolution. The Board (excluding the directors of the Company who are affiliated with the Continuing Shareholders), at a meeting duly called and held, upon consultation with its legal and financial advisors has unanimously determined

that the Arrangement is in the best interests of the Company, has unanimously approved the execution and delivery of this Agreement and the transactions contemplated by this Agreement and has unanimously resolved to recommend that the Common Shareholders and the Preferred Shareholders vote in favour of the Arrangement Resolution. Each director and executive officer of the Company (excluding the Participating Insiders with regard to whom no representation is made) intends to vote all Common Shares held by him or her in favour of the Arrangement Resolution and has agreed that the news release announcing the execution of this Agreement may so state and that references to such intention may be made in the Company Circular and other documents relating to the Arrangement.

- (39) **Financing.** The Company has delivered to New Holdco a true, complete and accurate copy of the Debt Commitment Letter. As of the date hereof, the Debt Commitment Letter is in full force and effect and is a legal, valid, binding and enforceable obligation of the Company and, to the knowledge of the Company, each of the other parties thereto. Assuming the Debt Financing is funded in accordance with the Debt Commitment Letter, the net proceeds contemplated by the Debt Financing will, in the aggregate and together with the Company's available cash and other sources of financing available to the Company as of the date hereof, be sufficient to enable the Company to fund the aggregate consideration payable by the Company pursuant to the Arrangement in accordance with the terms of this Agreement and the Plan of Arrangement.

Schedule "D"
Representations and Warranties of New Holdco

- (1) **Organization and Power.** New Holdco has been duly and validly formed and organized and is validly existing under the laws of its jurisdiction of formation and has all requisite power and authority to carry out the provisions hereof and has full power and capacity to execute, deliver and perform its obligations hereunder and under any other document or agreement contemplated hereby and to complete the transactions contemplated herein.
- (2) **Authority Relative to this Agreement.** New Holdco has the requisite power, authority and capacity to enter into this Agreement and (subject to obtaining the Interim Order, the Final Order and the Required Approval) to perform its obligations hereunder and to complete the transactions contemplated by this Agreement. The execution and delivery of this Agreement and the performance by New Holdco of its obligations under this Agreement have been duly authorized by all necessary action on the part of New Holdco and no other proceedings on the part of New Holdco are necessary to authorize the execution and delivery by it of this Agreement or, subject to obtaining the Required Approval, the Interim Order and the Final Order, the completion by New Holdco of the transactions contemplated hereby. This Agreement has been duly executed and delivered by New Holdco and constitutes a legal, valid and binding obligation of New Holdco enforceable against New Holdco in accordance with its terms, subject to bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium and other Laws relating to or affecting the availability of equitable remedies and the enforcement of creditors' rights generally and general principles of equity and public policy and to the qualification that equitable remedies such as specific performance and injunction may be granted only in the discretion of a court of competent jurisdiction.
- (3) **Required Approvals.** Except for the Required Regulatory Approvals, no authorization, licence, permit, certificate, registration, consent or approval of, or filing with, or notification to, any Governmental Entity is required to be obtained or made by or with respect to New Holdco for the execution and delivery of this Agreement or, the performance by New Holdco of its obligations hereunder, the completion by New Holdco of the Arrangement, other than:
 - (i) the Interim Order and any filings required in order to obtain, and approvals required under, the Interim Order; and
 - (ii) the Final Order, and any filings required in order to obtain the Final Order.
- (4) **Non-Contravention.** The execution, delivery and performance by New Holdco of this Agreement and the consummation of the Arrangement do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition):

- (i) contravene, conflict with, or result in any violation or breach of the constating documents of New Holdco;
 - (ii) assuming compliance with the matters referred to in paragraph (3) above, contravene, conflict with or result in a violation or breach of Law; or
 - (iii) allow any Person to exercise any rights, require any consent or other action by any Person, or constitute a default under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which New Holdco is entitled (including by triggering any rights of first refusal or first offer, change in control provision or other restriction or limitation) under any material contract.
- (5) **Security Ownership.** Other than as has been previously disclosed to the Company, New Holdco and its joint actors do not beneficially own any securities of the Company or any of its affiliates.
- (6) **Voting Arrangements.** New Holdco has taken all necessary steps to ensure that all of its joint actors will vote in favour of the Arrangement Resolution.
- (7) **Litigation.** There is no court, administrative, regulatory or similar proceeding (whether civil, quasi-criminal or criminal), arbitration or other dispute settlement procedure, investigation or inquiry before or by any Governmental Entity, or any claim, action, suit, demand, arbitration, charge, indictment, hearing or other similar civil, quasi-criminal or criminal, administrative or investigative matter or proceeding against or involving New Holdco or any of its joint actors (whether in progress or, to the knowledge of New Holdco, threatened), and, to the knowledge of New Holdco, no event has occurred which might reasonably be expected to give rise to any such proceeding, which would reasonably be expected to materially impede, prevent, hinder or delay the consummation of the transactions contemplated by this Agreement. To the knowledge of New Holdco, there is no judgment, writ, decree, injunction, rule, award or order of any Governmental Entity outstanding against New Holdco or any of its joint actors, which would reasonably be expected to materially impede, prevent, hinder or delay the consummation of the transactions contemplated by this Agreement.