

MAXIM POWER CORP.

as Vendor

- and -

VALORY RESOURCES INC.

as Purchaser

PURCHASE AND SALE AGREEMENT

February 18, 2025

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PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT dated as of February 18, 2025 between MAXIM POWER CORP., an Alberta corporation ("**Maxim**"), and VALORY RESOURCES INC., a British Columbia corporation (the "**Purchaser**").

WHEREAS Maxim and the Purchaser are parties to the Option Agreement, whereby Maxim granted the Option to the Purchaser, or a nominee thereof, to purchase all of the Securities;

AND WHEREAS, in accordance with the terms of the Option Agreement, the Purchaser has exercised the Option to acquire the Securities upon the terms and subject to the conditions contained in this Agreement;

AND WHEREAS Maxim wishes to sell, assign, transfer and convey to the Purchaser and the Purchaser wishes to purchase, assume and accept from Maxim, the Securities upon the terms and subject to the conditions contained in this Agreement.

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

ARTICLE 1 INTERPRETATION

1.1 Defined Terms.

In this Agreement, including the recitals thereto, the following terms have the following meanings:

- (a) "**Actions**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, notice of assessment, notice or reassessment or investigation of any nature, civil, criminal, administrative, investigative, regulatory or otherwise, whether at law or in equity.
- (b) "**Additional Indemnitees**" means, with respect to any Person to which an indemnity is granted pursuant to Article 11, its Affiliates and the respective shareholders, directors, officers, servants, agents, advisors and employees of that Person and its Affiliates.
- (c) "**AER**" means the Alberta Energy Regulator.
- (d) "**Affiliate**" has the same meaning as "affiliate" under the *Securities Act* (Alberta).
- (e) "**Agreement**" means this purchase and sale agreement and all Exhibits and Schedules attached hereto and any instruments in amendment or confirmation of it; and the expressions "Article", "Section", "Exhibit" and "Schedule" followed by a number or letter, as the case may be, mean and refer to the specified Article, Section, Exhibit or Schedule of this Agreement.
- (f) "**Agreement Default**" means any misrepresentation or breach of warranty made by a Party, or the failure of a Party to perform or observe in any respect any of the covenants or agreements to be performed by such Party under this Agreement or in the certificates referred to in Sections 8.1(a), 8.1(b), 8.2(a) or 8.2(b).

- (g) "**Ancillary Agreements**" means the Lease Agreement, the Royalty Agreement, the D&O Releases, the Confidentiality Agreement and all other agreements, certificates, documents and other instruments delivered or given pursuant to this Agreement or any Ancillary Agreement.
- (h) "**Applicable Privacy Laws**" means any and all applicable Laws relating to privacy and the collection, use and disclosure of Personal Information in all applicable jurisdictions, including the *Personal Information Protection and Electronic Documents Act* (Canada) and/or any comparable provincial Law (including the *Personal Information Protection Act* (Alberta)).
- (i) "**Approving Parties**" has the meaning specified in Section 14.3.
- (j) "**ASX**" means the Australian Securities Exchange.
- (k) "**ATB Loan**" means the credit agreement provided to Maxim by ATB Financial.
- (l) "**ATB Security**" means the security granted by Maxim to ATB Financial in respect of the ATB Loan.
- (m) "**Authorizations**" means, with respect to any Person, any order, permit, approval, waiver, license or similar authorization of any Governmental Entity having jurisdiction over the Person.
- (n) "**Business Day**" means any day of the year, other than a Saturday or Sunday, on which banks in Calgary, Alberta, Canada are open for commercial banking business during normal banking hours.
- (o) "**Cash Consideration**" has the meaning specified in Section 3.1(b).
- (p) "**Claim**" has the meaning specified in Section 11.6.
- (q) "**Closing**" or "**Close**" means the completion of the Transaction.
- (r) "**Closing Consideration Securities**" means, at the sole election of Maxim in accordance with Section 3.1(c), either:
 - (i) such number of Purchaser Common Shares having a value equal to \$4,000,000.00 based on the price per share of the Purchaser Common Shares, dependent on the timing of issuing such Purchaser Common Shares, as follows:
 - (A) upon an initial public offering, the issue price per share of the Purchaser Common Shares pursuant to such initial public offering multiplied by, if the financing was not denominated in Canadian dollars, the Exchange Ratio;
 - (B) after an initial public offering, the volume weighted average price per Purchaser Common Share over the 30 trading days before the date of issuance of the Purchaser Common Shares multiplied by, if the financing was not denominated in Canadian dollars, the Exchange Ratio;
 - (C) following a Go Public Transaction, the volume weighted average price per Purchaser Common Share over the 30 trading days (excluding, if applicable, any trading days that occur prior to the Go Public Transaction) before the date of issuance of the Purchaser Common Shares multiplied by, if the financing was not denominated in Canadian dollars, the Exchange Ratio; or

- (D) before (A), (B) or (C) above, the average weighted price per share of the Purchaser Common Shares issued before the date of issuance of the Purchaser Common Shares pursuant to the most recently completed single *bona fide* arm's length equity financing of the Purchaser after the date of the Option Agreement that raised a minimum of \$5,000,000; provided that if less than \$5,000,000 of gross proceeds is raised from a such single *bona fide* arm's length equity financing, the value of the Purchaser Common Shares shall be based on the average weighted price per share of all of the Purchaser Common Shares, up to gross proceeds of \$10,000,000, issued after the date of the Option Agreement and before the date of issuance of the Purchaser Common Shares pursuant to the most recently completed *bona fide* arm's length equity financing(s) of the Purchaser, and in each case multiplied by, if the financing was not denominated in Canadian dollars, the Exchange Ratio; or
- (ii) if the Purchaser has issued Convertible Notes, a convertible note in the principal amount of \$4,000,000.00 on the same terms as the Convertible Notes.
- (s) "**Closing Date**" means the third Business Day following the satisfaction or waiver of all of the Closing conditions set out in Sections 8.1, 8.2 and 8.3, or such other date as the Parties may agree in writing (which in no event will be later than the Outside Date).
- (t) "**Closing Time**" means the time of Closing on the Closing Date.
- (u) "**Confidential Information**" has the meaning specified in Section 12.1(b).
- (v) "**Convertible Note**" means a convertible note issued by the Purchaser or proposed to be issued by the Purchaser at Closing, with the purpose of funding a portion of the Purchase Price less the Cash Consideration payable pursuant to this Agreement. The terms and conditions of the convertible notes shall be as advised by the Purchaser to Maxim in writing.
- (w) "**Confidentiality Agreement**" means the confidentiality and non-disclosure agreement entered into between Maxim and the Purchaser dated December 23, 2021.
- (x) "**D&O Release**" has the meaning specified in Section 9.2(p).
- (y) "**Dispute**" has the meaning specified in Section 13.1.
- (z) "**Dispute Notice**" has the meaning specified in Section 13.1.
- (aa) "**Dust Control Handbook**" means the dust control handbook negotiated and developed by the Purchaser and Maxim in accordance with the terms of the Option Agreement.
- (bb) "**Effective Time**" means 12:01 a.m. (Calgary time) on the Closing Date.
- (cc) "**Environment**" means the environment or natural environment as defined in any Environmental Laws and includes air, surface water, ground water, land surface, soil and subsurface strata.
- (dd) "**Environmental Laws**" means all applicable Laws and agreements with Governmental Entities and all other statutory requirements relating to public health, occupational health and safety, product safety, transportation of dangerous goods, product liability, Hazardous Substances or the protection, preservation and remediation of the Environment (including, without limitation, the *Environmental Protection and Enhancement Act* (Alberta) and the *Environmental Protection Act*

- (Canada), in each case as amended from time to time) and all Authorizations, guidelines and policies issued pursuant to such Laws, agreements or statutory requirements.
- (ee) **"Exchange Ratio"** means the five (5) day average of the Original Currency to Canadian Dollar spot exchange rate published by the Bank of Canada as of 4:30 p.m. (Eastern time), on each of the five (5) Business Days immediately preceding the Closing Date.
- (ff) **"Fundamental Representations"** has the meaning specified in Section 11.5(a).
- (gg) **"GAAP"** means: (i) in respect of Maxim, the accounting principles so prescribed, recommended or promulgated from time to time by the Chartered Professional Accountants of Canada (hereinafter **"CPA Canada"**) applicable to public enterprises under Part I of the CPA Canada Standards and Guidance Collection; and (ii) in respect of the Purchaser, the accounting principles so prescribed, recommended or promulgated from time to time by CPA Canada applicable to private enterprises under Part II of the CPA Canada Standards and Guidance Collection; consistently applied in accordance with past practice.
- (hh) **"Go Public Transaction"** means a transaction, or series of transactions, other than an initial public offering, resulting in the Purchaser Common Shares (as such may be constituted or amended from time to time, or any successor security thereto, including in any parent entity following a merger between the Purchaser and any other entity) being listed for trading on the ASX (or such other exchange on which the Purchaser Common Shares are listed and which forms the primary trading market for such shares).
- (ii) **"Governmental Entity"** means: (i) any multinational, federal, provincial, state, municipal, local or other governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any subdivision or authority of any of the foregoing; or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of or in lieu of any of the above.
- (jj) **"GP Unit"** has the meaning specified in Part 2, 2(a) of Schedule A.
- (kk) **"GST Legislation"** means Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended, and the regulations promulgated thereunder.
- (ll) **"Hazardous Substance"** means any substance or material that is prohibited, controlled or regulated under any Environmental Laws including any sound, heat, vibration, radiation or other form of energy, contaminant, pollutant, dangerous substance, toxic substance, designated substance, controlled product, hazardous waste, subject waste, hazardous material, dangerous good or petroleum, its derivatives, by-products or other hydrocarbons.
- (mm) **"Indemnification Notice"** has the meaning specified in Section 11.11.
- (nn) **"Indemnification Objection Notice"** has the meaning specified in Section 11.11.
- (oo) **"Indemnified Losses"** means all losses, costs, damages, expenses, charges, fines, penalties, assessments or other liabilities whatsoever.
- (pp) **"Indemnified Party"** has the meaning specified in Section 11.11.
- (qq) **"Indemnifying Party"** has the meaning specified in Section 11.11.

- (rr) **"Interim Period"** means the period between 12:00:01 a.m. (Calgary time) on the date of this Agreement and the Closing Time.
- (ss) **"ITA"** means the *Income Tax Act* (Canada), as amended from time to time.
- (tt) **"Lands"** means those lands legally described in Schedule N.
- (uu) **"Laws"** means any and all applicable laws including all statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, ruling or awards, and general principles of common and civil law and equity, binding on or affecting the Person referred to in the context in which the word is used.
- (vv) **"Lease Agreement"** means the ground lease agreement to be entered into between Milner and **REDACTED** at Closing in the form attached hereto as Exhibit A.
- (ww) **"Liabilities"** means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.
- (xx) **"Lien"** means any mortgage, charge, pledge, hypothecation, security interest, assignment, lien (statutory or otherwise), title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature and will include any arrangement or condition which, in substance, secures payment or performance of an obligation.
- (yy) **"Maxim"** has the meaning specified on the first page of this Agreement.
- (zz) **"Maxim Counsel"** means Burnet, Duckworth & Palmer LLP.
- (aaa) **"Maxim Disclosure Schedule"** has the meaning specified in Section 4.1.
- (bbb) **"Maxim Material Adverse Change"** means any effect or change on SCI, SCLP, the Securities or the Summit Assets, in each case taken as a whole, that is or is reasonably likely to be materially adverse to the assets, properties, capital, liabilities (contingent or otherwise) or financial condition of SCI, SCLP, the Securities or the Summit Assets *provided, however*, that a Maxim Material Adverse Change will not include any change, effect, fact, circumstance, occurrence or event resulting from: (i) changes in general economic, financial, currency exchange conditions; (ii) changes in securities or commodity prices; (iii) conditions affecting the coal industry as a whole, and not specifically relating to SCI or SCLP, including changes in Laws (including any interpretation thereof by any applicable Governmental Entity); (iv) any decline in coal prices on a current or forward basis; (v) natural disasters, weather developments, epidemics, pandemics (including COVID-19), manmade disasters or "acts of God"; (vi) changes in GAAP or any other country or international accounting principles or standards (including any interpretation thereof by any applicable Governmental Entity); (vii) any failure, in and of itself, to meet any budgets, projections, forecasts or predictions of financial performance or estimates of revenue, earnings, cash flow or cash position, for any period following the Closing Date; (viii) any changes or effects arising from matters expressly required by this Agreement or which the Purchaser have consented to or approved in writing; or (ix) the execution, announcement or performance of this Agreement or the consummation of the Transaction.
- (ccc) **"Maxim Required Consents"** has the meaning specified in Section 4.1(e).

- (ddd) "**Maxim Responsible Persons**" means **REDACTED**.
- (eee) "**Milner**" means Milner Power Inc., an Alberta corporation.
- (fff) "**MPLP**" means Milner Power Limited Partnership, an Alberta limited partnership.
- (ggg) "**NI 45-106**" means *Canadian National Instrument 45-106 – Prospectus Exemptions*.
- (hhh) "**Notice**" has the meaning specified in Section 14.1.
- (iii) "**Ordinary Course**" means, with respect to an action taken by a Person, that such action is consistent with the past practices of the Person and is taken in the ordinary course of the normal day-to-day operations of the Person.
- (jjj) "**Original Currency**" means Australian dollars (or such other currency used by the exchange on which the Purchaser Common Shares are listed and which forms the primary trading market for such shares).
- (kkk) "**Operational Permits**" has the meaning given in the Option Agreement.
- (lll) "**Option**" has the meaning given in the Option Agreement.
- (mmm) "**Option Agreement**" means the option agreement entered into between the Purchaser and Maxim on February 15, 2022, as amended by an amending agreement to option agreement dated February 14, 2023, as further amended by a second amending agreement to option agreement dated March 6, 2023, as further amended by an amended and restated option agreement dated March 14, 2023, and as further amended by an amending agreement to the amended and restated option agreement dated October 16, 2023.
- (nnn) "**Outside Date**" means the date that is ten (10) weeks following the date of this Agreement.
- (ooo) "**Parties**" means Maxim and the Purchaser, and "**Party**" means any of them.
- (ppp) "**Person**" means a natural person, sole proprietorship, partnership, limited liability partnership, corporation, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Entity, and pronouns have a similarly extended meaning.
- (qqq) "**Project**" means the development of the Summit Coal Leases, commonly referred to as the "Mine 14 Project".
- (rrr) "**Proposed Third Party Agreements**" has the meaning specified in Section 12.1(d)(i).
- (sss) "**Private Issuer**" has the meaning of set forth in NI 45-106.
- (ttt) "**Public Statement**" has the meaning specified in Section 14.3.
- (uuu) "**Purchase Price**" has the meaning specified in Section 3.1.
- (vvv) "**Purchaser**" has the meaning specified on the first page of this Agreement.
- (www) "**Purchaser Common Shares**" means voting common shares in the capital of the Purchaser.

- (xxx) "**Purchaser's Disclosure Schedule**" has the meaning specified in Section 5.1.
- (yyy) "**Purchaser Financial Statements**" means the unaudited financial statements of the Purchaser for the fiscal year ended December 31, 2024, consisting of an unaudited statement of financial position and the accompanying statement of income, changes in equity and cash flows, but excluding the notes thereto, for the fiscal year, prepared in each case in accordance with GAAP.
- (zzz) "**Purchaser Guarantee**" means the guarantee to be entered into between Maxim and the Purchaser at Closing, pursuant to which the Purchaser shall guarantee the payment and performance obligations of SCLP under the Royalty Agreement, in the form attached hereto as Exhibit D.
- (aaaa) "**Purchaser's Material Adverse Change**" any effect or change on the Purchaser or the Closing Share Consideration, in each case taken as a whole, that is or is reasonably likely to be materially adverse to the assets, properties, capital, liabilities (contingent or otherwise) or financial condition of the Purchaser or the Closing Share Consideration *provided, however*, that a Purchaser's Material Adverse Change will not include any change, effect, fact, circumstance, occurrence or event resulting from: (i) changes in general economic, financial, currency exchange conditions; (ii) changes in securities or commodity prices; (iii) conditions affecting the coal industry as a whole, and not specifically relating to the Purchaser, including changes in Laws (including any interpretation thereof by any applicable Governmental Entity); (iv) any decline in coal prices on a current or forward basis; (v) natural disasters, weather developments, epidemics, pandemics (including COVID-19), manmade disasters or "acts of God"; (vi) changes in GAAP or any other country or international accounting principles or standards (including any interpretation thereof by any applicable Governmental Entity); (vii) any failure, in and of itself, to meet any budgets, projections, forecasts or predictions of financial performance or estimates of revenue, earnings, cash flow or cash position, for any period following the Closing Date; (viii) any changes or effects arising from matters expressly required by this Agreement or which Maxim have consented to or approved in writing; or (ix) the execution, announcement or performance of this Agreement or the consummation of the Transaction.
- (bbbb) "**Purchaser's Required Consents**" has the meaning specified in Section 5.1(e).
- (cccc) "**Purchaser's Responsible Persons**" means **REDACTED**.
- (dddd) "**Reasonable Efforts**" means the efforts that a prudent Person who desires to complete the Transaction and fulfill the covenants referenced herein would use in similar circumstances to ensure that Closing occurs and the covenants are fulfilled as expeditiously as possible without the necessity of assuming any material obligations or paying any material amounts to an unrelated third party.
- (eeee) "**Release**" has the meaning prescribed in any Environmental Law and includes any release, spill, leak, discharge, migration, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage, placement or introduction.
- (ffff) "**Restricted Cash**" means the **REDACTED** of restricted cash in SCI's bank account that is securing a letter of credit issued by the Bank of Montreal to the AER in respect of certain regulatory approvals granted to SCI.
- (gggg) "**Royalty Agreement**" means the royalty agreement to be entered into between Maxim and SCLP at or prior to Closing, in the form attached hereto as Exhibit C.

- (hhhh) "**SCI**" means Summit Coal Inc., an Alberta corporation and the general partner of SCLP.
- (iiii) "**SCLP**" means Summit Coal Limited Partnership, an Alberta limited partnership.
- (jjjj) "**Securities**" means collectively, the Shares and the Units.
- (kkkk) "**Shares**" means all of the issued and outstanding shares in the capital of SCI, as further described in Part 1 of Schedule A.
- (llll) "**Summit Assets**" means all of the assets of SCI and SCLP, including the Summit Coal Leases, the Summit Contracts, the Summit Permits, the Summit Pending Applications, the GP Unit, the Restricted Cash and the Summit Books and Records (including the Summit Reports).
- (mmmm) "**Summit Balance Sheet Date**" means December 31, 2024.
- (nnnn) "**Summit Bank Accounts**" has the meaning specified in Section 4.1(kk).
- (oooo) "**Summit Books and Records**" means all books, records, books or account, financial statements, tax records, audit working papers, general ledgers, minute books, business reports, plans, projections, research and development reports and records, equipment logs, core samples, logs, operating guides and manuals, purchase records, lists of suppliers, prospective suppliers and referral sources and all other documents, files, records, correspondence and other data and information, owned or held by SCI or SCLP, including the Summit Reports.
- (pppp) "**Summit Coal Leases**" means collectively, the coal leases described in Schedule B.
- (qqqq) "**Summit Contracts**" has the meaning specified in Section 4.1(y).
- (rrrr) "**Summit Financial Statements**" means the unaudited financial statements of SCI and SCLP for the fiscal year ended December 31, 2024, consisting of an unaudited statement of financial position and the accompanying statement of income, changes in equity and cash flows, but excluding the notes thereto, for the fiscal year, prepared in each case in accordance with GAAP.
- (ssss) "**Summit Pending Applications**" has the meaning specified in Section 4.1(aa).
- (tttt) "**Summit Permits**" has the meaning specified in Section 4.1(z).
- (uuuu) "**Summit Permitted Liens**" means those Liens listed in Schedule G.
- (vvvv) "**Summit Reports**" means all of the third party feasibility studies, regulatory reports, technical reports and marketing assessment reports and similar studies or reports owned or held by SCI or SCLP, including as listed and described in Schedule F.
- (wwww) "**Survival Period**" has the meaning specified in Section 11.5.
- (xxxx) "**Surviving Obligations**" has the meaning specified in Section 10.2.
- (yyyy) "**Tax**" or "**Taxes**" means all taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Entity, together with all interest, penalties, fines, additions to tax or other additional amounts imposed in respect thereof (and whether disputed or not), including those levied on, or measured by, or referred to as income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, ad

valorem, use, value-added, excise, stamp, withholding, business, franchising, property (both real and personal), payroll, employee withholding, employment, occupation, health, social service, environmental, alternative, add-on, minimum, education, flat tax and social security taxes, all surtaxes, all customs duties and import and export taxes, all license, franchise and registration fees and taxes, and other obligations of the same or of a similar nature of any of the foregoing.

(zzzz) "**Tax Returns**" includes all returns, reports, declarations, elections, filings, information returns and statements required to be filed in respect of Taxes.

(aaaa) "**Third Party**" means a Person who is at arm's length from Maxim or the Purchaser, as the context requires.

(bbbb) "**Transaction**" means the transactions contemplated by this Agreement.

(cccc) "**Transfer Taxes**" means all transfer Taxes (excluding Taxes measured by net income or net gain resulting from the Transaction), including sales, goods and service, use, excise, stock, stamp, documentary, filing, recording, permit, license, authorization and similar Taxes, filing fees and similar charges.

(dddd) "**Units**" means all of the issued and outstanding units in the capital of SCLP owned by Maxim, as further described in Part 2 of Schedule A.

(eeee) "**Work Product**" has the meaning specified in the Option Agreement.

1.2 Knowledge.

- (a) Where any representation or warranty of Maxim is expressly qualified by reference to knowledge or awareness (or similar qualification) it will be deemed to refer to the actual knowledge of the Maxim Responsible Persons and the knowledge that the Maxim Responsible Persons would have had they conducted a reasonable inquiry into the relevant subject matter, but otherwise does not include constructive or imputed knowledge of such individuals, or the knowledge, information or belief of any other Person.
- (b) Where any representation or warranty of the Purchaser is expressly qualified by reference to knowledge or awareness (or similar qualification) it will be deemed to refer to the actual knowledge of the Purchaser's Responsible Persons and the knowledge that the Purchaser's Responsible Persons would have had they conducted a reasonable inquiry into the relevant subject matter, but otherwise does not include constructive or imputed knowledge of such individuals, or the knowledge, information or belief of any other Person.

1.3 Rules of Interpretation

In this Agreement, unless a clear contrary intention appears:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person includes such Person's successor and assignee but, if applicable, only if the succession by such successor or assignment to such assignee is permitted hereby;
- (c) use of the masculine, feminine or neuter gender includes all genders;

- (d) a grammatical variation of a defined term will have a corresponding meaning;
- (e) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended, restated or modified and in effect from time to time in accordance with the terms thereof;
- (f) reference to any applicable Law, rule or regulation means such applicable Law, rule or regulation as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any section or other provision of any applicable Law, rule or regulation means that provision of such applicable Law, rule or regulation from time to time in effect and constituting the substantive amendment, modification, codification, replacement or re-enactment of such section or other provision;
- (g) reference to any Section, Schedule or Exhibit means the specified Section or Schedule or Exhibit to this Agreement;
- (h) "**hereunder**", "**hereof**", "**hereto**", "**herein**" and words of similar import are references to the whole of this Agreement and not, unless a particular Section or other part thereof is referred to, to any particular Section or other part;
- (i) "**including**" (and, with correlative meanings, "**include**" and "**includes**") means including without limiting the generality of any description preceding or succeeding such term and for purposes hereof the rule of *ejusdem generis* will not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned;
- (j) unless expressly otherwise provided, accounting terms will be construed and interpreted, and accounting determinations and computations will be made, in accordance with GAAP;
- (k) unless otherwise indicated, all references to currency are deemed to mean lawful money of Canada;
- (l) references to time of day or date means the local time or date in Calgary, Alberta, Canada;
- (m) where any payment or calculation is to be made, or any other action is to be taken, on or as of a day that is not a Business Day, that payment or calculation is to be made, or that other action is to be taken, as applicable, on or as of the next following Business Day, unless such next following Business Day falls in the next calendar month in which event the payment or calculation is to be made, or that other action is to be taken, as applicable, on or as of the immediately preceding Business Day;
- (n) any obligation of a Party, however expressed, including a statement that it must or will do or refrain from doing anything, will be construed as a covenant by that Party;
- (o) a reference to a misrepresentation or breach of warranty includes an inaccuracy of a representation or warranty; and
- (p) an undertaking by a Party not to do or to omit to do any act or thing includes an undertaking not to allow, cause or assist in the doing or omission of such act or thing, in so far as such act is within the control of such Party.

**ARTICLE 2
PURCHASE AND SALE**

2.1 Purchase and Sale.

Upon the terms and subject to the conditions contained in this Agreement, at the Closing Maxim agrees to sell, assign, transfer, convey and deliver to the Purchaser and the Purchaser agrees to purchase, assume and accept from Maxim, the Shares and the Units, in each case free and clear of all Liens, except for Summit Permitted Liens.

**ARTICLE 3
PURCHASE PRICE**

3.1 Purchase Price, Payment and Allocation.

- (a) The aggregate purchase price payable by the Purchaser to Maxim for the Securities is an amount equal to \$14,150,000.00 (the "**Purchase Price**"), subject to adjustment in accordance with Section 11.10.
- (b) The Purchase Price will be payable by the Purchaser at Closing by way of:
 - (i) a wire transfer of immediately available funds by the Purchaser in the amount of \$10,150,000.00 (the "**Cash Consideration**") to such bank account or accounts as are designated by Maxim to the Purchaser on or prior to the Closing Date; and
 - (ii) issuance and delivery by the Purchaser of a duly executed share certificate (or other valid evidence of ownership) or note representing the Convertible Note, in each case evidencing the applicable Closing Consideration Securities to which Maxim has elected pursuant to Section 3.1(c), which shall be issued and registered in the name of Maxim.
- (c) Not less than three (3) Business Days prior to Closing, Maxim shall advise the Purchaser in writing of its election to accept either Purchaser Common Shares, or a Convertible Note in satisfaction of the portion of the Purchase Price payable pursuant to Section 3.1(b)(ii).
- (d) The Purchase Price will be allocated as to \$REDACTED for the Units and \$REDACTED for the Shares. The Purchase Price will, if applicable, be further adjusted as provided in Section 11.10.
- (e) If the Purchaser does not complete an initial public offering or a Go Public Transaction within 12 months of Closing, and Maxim receives Purchaser Common Shares pursuant to Sections 3.1(b)(ii) and 3.1(c) above, Maxim shall have the right to require the Purchaser to repurchase all of the Purchaser Common Shares for cash at a valuation of \$4,000,000.00, subject to compliance with applicable Laws.

**ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF MAXIM**

4.1 Representations and Warranties of Maxim.

Maxim represents and warrants as follows to the Purchaser, and acknowledges and confirms that the Purchaser is relying upon such representations and warranties in completing the Transaction. The representations and warranties of Maxim set out in Article 4 are subject to the matters

disclosed in the disclosure schedule attached as Schedule J to this Agreement (the "**Maxim Disclosure Schedule**"), and all facts and items disclosed by Maxim in the Maxim Disclosure Schedule shall be considered to be exceptions to all of the representations and warranties of Maxim set out in Article 4.

- (a) **Existence and Qualification.** Each of Maxim, SCI and Milner is a corporation duly organized and validly existing and in good standing with respect to the filing of annual returns under the Laws of the Province of Alberta. Each of SCLP and MPLP is a limited partnership duly organized and validly existing under the Laws of the Province of Alberta. Each of Maxim, Milner, SCI, SCLP and MPLP:
- (i) has full power, capacity and authority to own its property and to carry on its business in each jurisdiction in which it operates;
 - (ii) has full power, capacity and authority to enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is a party, as applicable; and
 - (iii) is duly qualified, licensed or registered to carry on business in all jurisdictions where the nature of the property owned by it or the business carried on by it makes such qualification necessary, and has full legal right under the Laws of all such jurisdictions to own its property and to carry on the business carried on by it.
- (b) **Validity of Agreement.** The execution, delivery and performance by Maxim of this Agreement and by Maxim, Milner, SCI, SCLP and MPLP of each of the Ancillary Agreements to which it is a party:
- (i) have, or at the Closing Time will have, been duly authorized by all necessary corporate or limited partnership action, as the case may be, on their part;
 - (ii) do not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach of, default under or a violation of, or conflict with, or allow any other Person to exercise any rights under any of the terms or provisions of, its constating documents or by-laws, if applicable, or any material contracts or instruments to which it, SCI or SCLP is a party or pursuant to which the Securities or the Summit Assets may be affected, other than the Maxim Required Consents which have been obtained or will be obtained by Maxim on or prior to Closing;
 - (iii) will not result in the violation of any Law;
 - (iv) will not result in a breach of, or cause the termination or revocation of, any Summit Permit necessary to the ownership of the Securities or the Summit Assets;
 - (v) will not constitute a default under, or result in a violation of any judgment, order, writ, injunction or decree of any Governmental Entity to which Maxim, or SCLP are subject; and
 - (vi) will not result in any right of first refusal becoming effective or the imposition of a Lien on any of the Securities or the Summit Assets.
- (c) **Execution and Binding Obligation.** This Agreement and each of the Ancillary Agreements to which Maxim, SCI, SCLP, MPLP or Milner are a party have been, or will be, duly executed and

delivered by them and constitute, or will constitute, legal, valid and binding obligations of them enforceable against them in accordance with their respective terms subject only to any limitation under applicable Laws relating to: (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights; and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

- (d) **Board Approval.** The requisite approval from Maxim's board of directors approving the Agreement and the consummation of the Transaction, as described in paragraph 1 of Schedule H, has been obtained.
- (e) **Maxim Required Consents.** There is no requirement for Maxim, Milner, MPLP, SCI or SCLP to make any filing with, give any notice to, or obtain any consent, approval or authorization of, any Governmental Entity or Third Party as a condition to the lawful closing of the Transaction, other than those set forth in Schedule H (the "**Maxim Required Consents**").
- (f) **No Finder's Fee.** None of Maxim, SCI or SCLP have taken any action that would cause the Purchaser, SCI or SCLP or any of their Affiliates to become liable for any claim or demand for a brokerage commission, finder's fee or other similar payment in connection with the Transaction.
- (g) **No Insolvency or Bankruptcy Proceedings.** None of Maxim, Milner, MPLP, SCI or SCLP are insolvent nor have they committed any act of bankruptcy, proposed any compromise or arrangement or taken any proceeding with respect thereto and no encumbrances or receiver has taken possession of any of Maxim's, SCI's or SCLP's property, nor is any of the foregoing pending or, to the knowledge of Maxim, threatened.
- (h) **Authorized and Issued Share Capital of SCI.**
 - (i) The authorized share capital of SCI is as set forth in Part 1 of Schedule A.
 - (ii) The issued and outstanding shares in the capital of SCI are as set forth in Part 1 of Schedule A, and there are no other shares or securities of SCI issued or outstanding.
 - (iii) All of the shares set forth in Part 1 of Schedule A as issued and outstanding have been duly and validly issued and are fully paid and non assessable and have not been issued in violation of any pre-emptive or similar rights and are registered as set forth in Part 1 of Schedule A.
- (i) **Authorized and Issued Unit Capital of SCLP.**
 - (i) The authorized unit capital of SCLP is as set forth in Part 2 of Schedule A.
 - (ii) The issued and outstanding units in the capital of SCLP are as set forth in Part 2 of Schedule A, and there are no other units or securities of SCLP issued or outstanding.
 - (iii) All of the units set forth in Part 2 of Schedule A as issued and outstanding have been duly and validly issued and are fully paid and have not been issued in violation of any pre-emptive or similar rights and are registered as set forth in Part 2 of Schedule A.
- (j) **Title to Shares and Units.**

- (i) Maxim is the beneficial owner of record, with good and marketable title, of the Shares, free and clear of any Liens except for the Summit Permitted Liens, and there are no actions, suits, proceedings or claims pending or, to the knowledge of Maxim, threatened with respect to or in any manner challenging the ownership or disposition of such securities or the exercise of any rights which are derived or attached thereto. The Shares are all of the shares owned by Maxim in the capital of SCI. The Shares have been fully paid and were validly issued.
- (ii) Maxim is the beneficial owner of record, with good and marketable title, of the Units, free and clear of any Liens except for the Summit Permitted Liens, and there are no actions, suits, proceedings or claims pending or, to the knowledge of Maxim, threatened with respect to or in any manner challenging the ownership or disposition of such securities or the exercise of any rights which are derived or attached thereto. The Units are all of the units owned by Maxim in the capital of SCLP. The Units have been fully paid and were validly issued.
- (iii) Maxim has the exclusive right to dispose of the Securities as provided in this Agreement.
- (k) **Pre Emptive Rights – Issued Shares and Units.** Except pursuant to this Agreement, the Option Agreement and as disclosed in the Maxim Disclosure Schedule, no Person has any agreement or option or any right or privilege (whether by law, pre-emptive right, contract or otherwise) capable of becoming an agreement, option, right or privilege for the purchase or other acquisition from Maxim of any of the Securities or any interest therein.
- (l) **Pre Emptive Rights – Unissued Shares.** Except pursuant to this Agreement, the Option Agreement and as disclosed in the Maxim Disclosure Schedule, no Person has any agreement or option or any right or privilege (whether by law, pre-emptive right, contract or otherwise) capable of becoming an agreement, option, right or privilege, including, without limitation, any convertible security, warrant or convertible obligation of any nature, for the purchase, subscription, allotment or issuance of any of the unissued shares of SCI or unissued units of SCLP.
- (m) **Insider Debt.** Neither Maxim, nor the directors, former directors, officers, former officers, shareholders or former shareholders of SCI or SCLP or any Person not dealing at arm's length with any of the foregoing is or will be indebted to SCI or SCLP as at the Closing Date nor will SCI or SCLP be indebted to any of such Persons as at the Closing Date.
- (n) **Transferability.** There will be on the Closing Date no restrictions in the constating documents of SCI or in the limited partnership agreement of SCLP, nor are there any collateral agreements, including without limitation any unanimous shareholders agreement or voting trust agreement or pre-emptive rights or any similar agreements or rights which would arise by reason of the execution of this Agreement or completion of the Transaction, which would affect the transferability of the Securities from Maxim to the Purchaser, other than the Maxim Required Consents as set forth in Schedule H.
- (o) **No Agreements to Acquire or Sell Interests.** Neither SCI nor SCLP is a party to any contract or agreement to merge or consolidate with any other Person, to acquire substantially all of the assets or shares of any other Person or to sell all or any part of its interest in the Summit Assets.
- (p) **Subsidiaries.** Neither SCI (other than with respect to its ownership interest in SCLP) or SCLP owns any interest of any nature whatsoever in any shares or ownership interests or options, warrants or securities convertible into shares or ownership interests of any other Person, and will not be

obligated to acquire any shares or ownership interests or options, warrants or securities convertible into shares or ownership interests of any other Person.

- (q) **Private Issuer.** Both SCI and SCLP are Private Issuers.
- (r) **Accredited Investor.** Maxim is an "accredited investor", within the meaning of NI 45-106.
- (s) **Minute Books.** The minute books of SCI and SCLP are true and correct in all material respects.
- (t) **Partnerships or Joint Ventures.** Neither SCI nor SCLP is a partner or participant in any partnership (except that SCI is the general partner of SCLP), joint venture, profit sharing arrangement or other association of any kind.
- (u) **Compliance with Laws.** SCI and SCLP are in compliance in all material respects with all applicable Laws relating to the Summit Assets. No written or other notice or warning from any Governmental Entity with respect to any failure or alleged failure of, or necessity for, SCI or SCLP or the Summit Assets to comply with any Law has been received by Maxim, SCI or SCLP nor, to the knowledge of Maxim, is any such notice or warning proposed or threatened.
- (v) **Title to the Summit Assets.** The property and assets included in the Summit Assets include all of the property and assets set forth in or reflected in the balance sheet forming part of the Summit Financial Statements, other than assets acquired since the Summit Balance Sheet Date in the Ordinary Course or sold, transferred or otherwise disposed of in the Ordinary Course since the Summit Balance Sheet Date. Except in respect of Liens listed and described in Schedule G (the "**Summit Permitted Liens**") and the Summit Coal Leases (in which SCI has, subject to Summit Permitted Liens, only a leasehold interest), SCI or SCLP has good and marketable title to, and is the legal and beneficial owner of the Summit Assets free and clear of all Liens. Neither SCI nor SCLP has any assets other than the Summit Assets. None of the Summit Assets are owned, leased or operated by Maxim or any Person other than SCI or SCLP.
- (w) **No Options, etc.** Other than the Option provided to the Purchaser under the Option Agreement, no Person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming such for the purchase from either SCI or SCLP of any of the Summit Assets, other than inventory sold in the Ordinary Course, or that would restrict the ability of either SCI or SCLP to directly or indirectly transfer any of the Summit Assets, other than in accordance with applicable Laws.
- (x) **Summit Coal Leases.** True and complete copies of the Summit Coal Leases have been provided to the Purchaser and are listed in Schedule B. Except as disclosed in the Maxim Disclosure Schedule and subject to the Summit Permitted Liens:
 - (i) to the knowledge of Maxim, there are no adverse claims with respect to the Summit Coal Leases, and, to the knowledge of Maxim, no other Person owns or holds directly or indirectly, in whole or in part, any interest, in the Summit Coal Leases other than SCI;
 - (ii) SCI is not in default with respect to any term or condition of any of the Summit Coal Leases, nor has any event occurred which, through the passage of time or the giving of notice, or both, would constitute a default thereunder, would cause the acceleration of any obligation of SCI under any such lease or would result in the creation of any Lien, other than a Summit Permitted Lien, upon any asset thereof; and

- (iii) all rental payments required to be paid, and all obligations and covenants required to be observed and performed by SCI to keep the Summit Coal Leases in full force and effect have been duly paid, observed and performed by SCI.
- (y) **No Breach of Summit Contracts.** All contracts, agreements, commitments, entitlements, engagements, licenses and leases (other than the Summit Coal Leases), whether written or oral, to which either SCI or SCLP is a party to or is bound by are listed in Schedule C (the "**Summit Contracts**"). True, correct and complete copies of all Summit Contracts have been made available to the Purchaser. Each of the Summit Contracts has been duly authorized, executed and delivered by SCI or SCLP, as the case may be, and, to the knowledge of Maxim, each of the other parties thereto and constitutes legal, valid and binding obligations of SCI or SCLP and, to the knowledge of Maxim, each of the other parties thereto and are enforceable against them, subject only to limitations under applicable Laws relating to: (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights; and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction. SCI or SCLP, as the case may be, has performed in all material respects all of the obligations required to be performed by it, and is entitled to all material benefits under, and is not in material breach or default of any Summit Contract. Each of the Summit Contracts is in full force and effect and is unamended, and there exists no breach, default or event of default or event, occurrence, condition or act (including the purchase of the Securities) which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a breach, default or event of default under any Summit Contract.
- (z) **Summit Permits.** The Authorizations owned or held by SCI or SCLP are listed in Schedule D (the "**Summit Permits**"). Maxim has made available to the Purchaser copies of all of the Summit Permits. SCI or SCLP, as the case may be, is in compliance in all material respects with all of the Summit Permits held in its name. All activities conducted by or at the direction of Maxim on or in relation to the Project up to the date hereof (including performance of minimum assessment work and filing of reports with respect to minimum assessment work) have been in compliance, in all material respects, with all applicable Laws, as such Laws existed at all applicable times prior to and as at the date hereof. Neither SCI nor SCLP has been subjected to or is as of the date hereof subject to any bond forfeiture, permit suspension or revocation proceedings instituted by any Governmental Entity related to the Summit Permits. No facts exist that presently or upon the giving of notice or the lapse of time or otherwise would render SCI or SCLP, as the case may be, ineligible to receive the benefits of the Summit Permits held in its name. Neither SCI nor SCLP is subject to any citation, notice of non-compliance, cessation order, notice of violation, consent decree, cease and desist order or show cause orders relating to Environmental Laws that were outstanding as of the date of this Agreement. No proceeding is pending or, to the knowledge of Maxim, threatened to revoke or limit any Summit Permit. To the knowledge of Maxim, there are no grounds that would justify any Governmental Entity or Person amending, suspending, cancelling, revoking or invalidating any such Summit Permit or would justify any charge, administrative or monetary penalty, order or other proceeding against SCI, SCLP or the Summit Assets.
- (aa) **Summit Pending Applications.** The applications prepared and submitted by or on behalf of SCI or SCLP to various Governmental Entities in connection with pending Authorizations are listed in Schedule E (the "**Summit Pending Applications**").
- (bb) **Environmental Matters.** Each of SCI and SCLP have complied in all material respects with all applicable Environmental Laws, including material reporting and monitoring requirements. Neither Maxim, SCI nor SCLP have received any notice of any non-compliance with any Environmental Laws in relation to SCI, SCLP or the Summit Assets, and have never been convicted

of an offence for non-compliance with any Environmental Laws in relation to SCI, SCLP or the Summit Assets or been fined or otherwise sentenced or settled such prosecution short of conviction in relation to SCI, SCLP or the Summit Assets, nor, to the knowledge of Maxim, is there any basis therefor. No litigation or regulatory action is pending or underway, or, to the knowledge of Maxim, threatened in respect of non-compliance with Environmental Laws, any Hazardous Substance or any Release in relation to SCI, SCLP or the Summit Assets, and to the knowledge of Maxim, there is no basis for any such action. To the knowledge of Maxim, no conditions exist as of the date hereof which could give rise to the making of a remediation order or similar order in respect of the Project or which could subject the Purchaser to liability for any remediation obligations, except for remediation or reclamation obligations arising under this Agreement, the Ancillary Agreements, the Summit Coal Leases, the Summit Contracts, the Summit Permits, the Summit Pending Applications or otherwise arising in the Ordinary Course with respect to the development and operations carried out on the Project.

- (cc) **Litigation.** There are no: (i) actions, complaints, suits, or proceedings, at Law or in equity, by any Person; (ii) grievances, arbitrations or alternative dispute resolution processes; or (iii) administrative or other proceedings by or before or any investigation by any Governmental Entity, pending, or, to the knowledge of Maxim, threatened against, or affecting Maxim (with respect to its ownership of the Securities), SCI, SCLP, the Securities or the Summit Assets, and Maxim does not know of any valid basis or grounds for any such action, complaint, grievance, suit, proceeding, arbitration or investigation. None of Maxim (with respect to its ownership of the Securities), SCI, SCLP, the Securities or the Summit Assets is subject to any judgment, order or decree entered in any lawsuit or proceeding nor has Maxim (with respect to its ownership of the Securities) SCI or SCLP settled any claim prior to being prosecuted in respect thereof. None of Maxim, SCI or SCLP are the plaintiff or complainant in any action, suit or proceeding arising out of or connected with the Securities or the Summit Assets.
- (dd) **Summit Books and Records.** All accounting and financial Summit Books and Records have been fully, properly and accurately kept and completed in all material respects and in accordance with good business practice, and have been delivered or made available to the Purchaser.
- (ee) **Summit Financial Statements.** The Summit Financial Statements have been prepared in accordance with GAAP applied on a basis consistent with those of previous fiscal years and present fairly:
- (i) the assets, liabilities (whether accrued, absolute, contingent or otherwise) and the financial position and condition of SCI and SCLP as at the dates of the Summit Financial Statements; and
 - (ii) the sales and earnings and results of operations of SCI and SCLP, during the periods covered by the Summit Financial Statements.

Copies of the Summit Financial Statements have been provided by Maxim to the Purchaser.

- (ff) **No Undisclosed Liabilities.** Except as disclosed in the Summit Financial Statements, or as incurred in the Ordinary Course and which are not material, neither SCI nor SCLP has any liabilities (whether accrued, absolute, contingent or otherwise) nor any outstanding material commitments or obligations of any kind whatsoever.
- (gg) **No Maxim Material Adverse Change.** Since the Summit Balance Sheet Date, there has not been any Maxim Material Adverse Change.

- (hh) **Conduct of Business in Ordinary Course.** Since the Summit Balance Sheet Date neither SCI nor SCLP has:
- (i) incurred or assumed or paid or discharged any material obligation or material liability (direct or contingent), except for current obligations and liabilities incurred in the Ordinary Course;
 - (ii) directly or indirectly, engaged in any transaction, made any loan or entered into any arrangement with any officer, director, partner, shareholder, consultant, independent contractor or agent of Maxim or any other Person not dealing at arm's length with it;
 - (iii) waived or cancelled any rights or claims or made any gift;
 - (iv) except in the Ordinary Course, sold or otherwise disposed of any fixed or capital assets (other than dispositions having a fair market value, in the case of any single sale or disposition, of less than \$50,000.00);
 - (v) except in the Ordinary Course, made, or made any commitments to make, any capital expenditures (other than capital expenditures, in the case of any single capital expenditure, of less than \$25,000.00);
 - (vi) incurred or assumed any obligation or liability (fixed or contingent), except those unsecured current obligations and liabilities incurred in the Ordinary Course;
 - (vii) discharged or satisfied any Lien, or paid any obligation or liability (fixed or contingent) other than liabilities included in the Summit Financial Statements and liabilities incurred since the Summit Balance Sheet Date in the Ordinary Course;
 - (viii) transferred, assigned, sold or otherwise disposed of any of the Summit Assets, including the assets shown or reflected in the Summit Financial Statements or cancelled any debts or entitlements except, in each case, in the Ordinary Course;
 - (ix) mortgaged, pledged, subjected to Lien, granted a Lien, or permitted to exist any Lien or otherwise encumbered any of the Securities or the Summit Assets, other than a Summit Permitted Lien;
 - (x) amended or terminated any Summit Contract or Summit Permit;
 - (xi) suffered an extraordinary loss, or waived or omitted to take any action in respect of any rights of material value, or entered into any material commitment or transaction not in the Ordinary Course;
 - (xii) entered into, assumed or become subject to any contract out of the Ordinary Course;
 - (xiii) made any change in its accounting policies; or
 - (xiv) authorized or agreed or otherwise became committed to do any of the foregoing.
- (ii) **Employees.** SCI and SCLP do not have any employees, nor have SCI or SCLP ever had any employees.

(jj) **Taxes.**

- (i) All Tax Returns required to be filed by SCI or SCLP have been duly filed on a timely basis and all such Tax Returns were complete and correct in all material respects. All federal, provincial, local and foreign income, profits, franchise, sales, use, occupancy, excise and other Taxes and assessments (including interest and penalties) that are or may become payable by or due from SCI or SCLP have been fully paid or fully disclosed and fully provided for in the Summit Financial Statements and Summit Books and Records, and no other Taxes are payable with respect to items or periods covered by the Tax Returns filed by SCI or SCLP.
 - (ii) There are no outstanding agreements or waivers extending the statutory period or providing for an extension of time for the assessment or reassessment of tax or the filing of any Tax Return by, or any payment of any Tax by SCI or SCLP.
 - (iii) To the knowledge of Maxim, no audit or examination of any Tax Return of SCI or SCLP is currently in progress or, to the knowledge of Maxim, threatened.
 - (iv) There are no claims, actions, suits or proceedings (or, to the knowledge of Maxim any investigation) pending, or, to the knowledge of Maxim, threatened against SCI or SCLP relating to Taxes and Maxim knows of no valid basis for any such claim, action, suit, proceeding, investigation or discussion.
 - (v) Each of SCI and SCLP has withheld from each payment made by it the amount of all Taxes and other deductions required to be withheld therefrom and has paid the same to the proper taxing or other authority within the time prescribed under any applicable Law.
 - (vi) Neither SCI nor SCLP has any liability to pay any Tax, or is assessable in respect of any Tax, at Closing.
 - (vii) The Purchaser will not be subject to any Liabilities or obligations, direct or indirect, contingent or otherwise, relating to any assessment or reassessment for Taxes or duties on imports of any kind whatsoever of SCI or SCLP relating to the completion of the Transactions.
 - (viii) SCLP is registered for purposes of the Tax imposed under the GST Legislation, having registration number **REDACTED**.
 - (ix) SCI is not registered for purposes of the Tax imposed under the GST Legislation.
 - (x) Maxim is not a non-resident of Canada within the meaning of the ITA.
- (kk) **Bank Accounts.** The name and address of each bank, trust, company or similar institution with which SCI and SCLP has one (1) or more accounts (the "**Summit Bank Accounts**"), the number of each such Summit Bank Account and the names of all persons authorized to draw thereon or to have access thereto are set forth in Schedule L.
- (ll) **Anti-Corruption and Anti-Bribery Laws.** Neither SCI or SCLP, nor any officer, director, employee, agent, representative, consultant, or other Person associated with or acting for or on behalf of either SCI or SCLP has, directly or indirectly:

- (i) made, offered or promised to make or offer any payment, loan or transfer of anything of value, including any reward, advantage or benefit of any kind, to or for the benefit of any government official, candidate for public office, political party or political campaign, for the purpose of: (i) influencing any act or decision of such government official, candidate, party or campaign; (ii) inducing such government official, candidate, party or campaign to do or omit to do any act in violation of a lawful duty; (iii) obtaining or retaining business for or with any Person; (iv) expediting or securing the performance of official acts of a routine nature; or (v) otherwise securing any improper advantage;
- (ii) paid, offered or promised to pay or offer any bribe, payoff, influence payment, kickback, unlawful rebate, or other similar unlawful payment of any nature;
- (iii) made, offered or promised to make or offer any unlawful contributions, gifts, entertainment or other unlawful expenditures;
- (iv) established or maintained any unlawful fund of corporate monies or other properties;
- (v) created or caused the creation of any false or inaccurate Summit Books and Records of either SCI or SCLP related to any of the foregoing; or
- (vi) otherwise violated any provision of the *Corruption of Foreign Public Officials Act*, S.C. 1998, c.34, or any other applicable anti-corruption or anti-bribery Law.

For purposes of this provision, "**government official**" includes any officer or employee of a government or any department, agency or instrumentality thereof (including wholly or partially owned enterprises or institutions), or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency or instrumentality, or for or on behalf of any such public international organization.

- (mm) **Insurance.** At Closing, there will be no insurance policies maintained by SCI and SCLP.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

5.1 Representations and Warranties of the Purchaser.

The Purchaser represents and warrants as follows to Maxim and acknowledges and confirms that Maxim is relying upon such representations and warranties in completing the Transaction. The representations and warranties of the Purchaser set out in Article 5 are subject to the matters disclosed in the disclosure schedule attached as Schedule M to this Agreement (the "**Purchaser's Disclosure Schedule**"), and all facts and items disclosed by the Purchaser in the Purchaser's Disclosure Schedule shall be considered to be exceptions to the representations and warranties of the Purchaser set out in Article 5.

- (a) **Existence and Qualification.** The Purchaser is a corporation duly organized and validly existing and in good standing with respect to the filing of annual returns under the Laws of the Province of British Columbia. The Purchaser:
 - (i) has full power, capacity and authority to own its property and to carry on its business in each jurisdiction in which it operates;

- (ii) has full power, capacity and authority to enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is a party, as applicable; and
 - (iii) is duly qualified, licensed or registered to carry on business in all jurisdictions where the nature of the property owned by it or the business carried on by it makes such qualification necessary, and has full legal right under the Laws of all such jurisdictions to own its property and to carry on the business carried on by it.
- (b) **Validity of Agreement.** The execution, delivery and performance by the Purchaser of this Agreement and each of the Ancillary Agreements to which it is a party:
 - (i) have, or at the Closing Time will have, been duly authorized by all necessary corporate action on its part;
 - (ii) do not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach of, default under or a violation of, or conflict with, or allow any other Person to exercise any rights under any of the terms or provisions of, its constating documents or by-laws, if applicable, or any material contracts or instruments to which it is a party, other than the Purchaser's Required Consents which have been obtained or will be obtained by the Purchaser on or prior to Closing;
 - (iii) will not result in the violation of any Law; and
 - (iv) will not constitute a default under, or result in a violation of any judgment, order, writ, injunction or decree of any Governmental Entity to which the Purchaser is subject.
- (c) **Execution and Binding Obligation.** This Agreement and each of the Ancillary Agreements to which the Purchaser is a party have been, or will be, duly executed and delivered by it and constitute, or will constitute, legal, valid and binding obligations of it enforceable against it in accordance with its respective terms subject only to any limitation under applicable Laws relating to: (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights; and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (d) **Board Approval.** The requisite approval from the Purchaser's board of directors approving the Agreement and the consummation of the Transaction, as described in Part 1 of Schedule K, has been obtained.
- (e) **Purchaser's Required Consents.** There is no requirement for or on the Purchaser to make any filing with, give any notice to, or obtain any consent, approval or authorization of, any Governmental Entity or Third Party as a condition to the lawful closing of the Transaction, other than those set forth in Part 2 of Schedule K (the "**Purchaser's Required Consents**").
- (f) **No Finder's Fee.** The Purchaser has not taken any action that would cause Maxim or any of its Affiliates to become liable for any claim or demand for a brokerage commission, finder's fee or other similar payment in connection with the Transaction.
- (g) **No Insolvency or Bankruptcy Proceedings.** The Purchaser is not insolvent nor has it committed any act of bankruptcy, proposed any compromise or arrangement or taken any proceeding with respect thereto and no encumbrances or receiver has taken possession of any of the Purchaser's

property, nor is any of the foregoing pending or, to the knowledge of the Purchaser's Responsible Persons, threatened.

(h) **Authorized and Issued Share Capital of Purchaser.**

- (i) The authorized share capital of the Purchaser is as set forth in Part 4 of Schedule K.
- (ii) The issued and outstanding shares in the capital of the Purchaser are as set forth in Part 4 of Schedule K, and there are no other shares or securities of the Purchaser issued or outstanding.
- (iii) All of the shares set forth in Part 4 of Schedule K as issued and outstanding have been duly and validly issued and are fully paid and non assessable and have not been issued in violation of any pre-emptive or similar rights and are registered as set forth in Part 4 of Schedule K.

(i) **Purchaser Common Shares.**

- (i) The Purchaser Common Shares that may be issued pursuant to Sections 3.1(b)(ii) and 3.1(c) have been duly and validly authorized and reserved for issuance and in the event Purchaser Common Shares are issued at Closing pursuant to Sections 3.1(b)(ii) and 3.1(c), such Purchaser Common Shares shall be duly and validly issued and will be fully paid and non assessable and will not be issued in violation of any pre-emptive or similar rights and will, at Closing, be registered in the name of Maxim. Upon Closing, Maxim will be the legal and beneficial owner of record, with good and marketable title, of such Purchaser Common Shares, free and clear of any Liens, and there will be no actions, suits, proceedings or claims pending or, to the knowledge of the Purchaser's Responsible Persons, threatened with respect to or in any manner challenging the ownership or disposition of such securities or the exercise of any rights which are derived or attached thereto.
- (ii) The Purchaser has the exclusive right to issue the Purchaser Common Shares as provided in this Agreement.

(j) **Convertible Note.**

- (i) The Convertible Note that may be issued pursuant to Sections 3.1(b)(ii) and 3.1(c), will be at Closing duly and validly authorized will be duly and validly issued and will not be issued in violation of any pre-emptive or similar rights and will, at Closing, be registered in the name of Maxim. Upon Closing, Maxim will be the legal and beneficial owner of record, with good and marketable title, of the Convertible Note, free and clear of any Liens, and there will be no actions, suits, proceedings or claims pending or, to the knowledge of the Purchaser's Responsible Persons, threatened with respect to or in any manner challenging the ownership or disposition of such securities or the exercise of any rights which are derived or attached thereto. The Purchaser Common Shares issued on conversion of the Convertible Note have been duly and validly authorized and reserved for issuance and, upon conversion in accordance with the terms of the Convertible Note, will be duly and validly issued and will be fully paid and non assessable and will not be issued in violation of any pre-emptive or similar rights and will, at Closing, be registered in the name of Maxim and Maxim will be the legal and beneficial owner of record, with good and marketable title, of such Purchaser Common Shares, free and clear of any Liens, and there

will be no actions, suits, proceedings or claims pending or, to the knowledge of the Purchaser's Responsible Persons, threatened with respect to or in any manner challenging the ownership or disposition of such securities or the exercise of any rights which are derived or attached thereto.

- (ii) The Purchaser has the exclusive right to issue the Convertible Note, and underlying Common Shares on conversion thereof (as applicable) as provided in this Agreement.
- (k) **Issuance.** Other than standard hold periods mandated by securities Laws or any escrow requirements pursuant to the rules of the ASX (or such other exchange on which the Purchaser Common Shares are listed and which forms the primary trading market for such shares), there will be on the Closing Date no restrictions in the constating documents of the Purchaser, nor are there any collateral agreements, including without limitation any unanimous shareholders agreement or voting trust agreement or pre-emptive rights or any similar agreements or rights which would arise by reason of the execution of this Agreement or completion of the Transaction, which would affect the issuance of the Purchaser Common Shares, the Convertible Note (including any Purchaser Common Shares issuable on conversion of the Convertible Note) by the Purchaser to Maxim, other than the Purchaser's Required Consents as set forth in Part 3 of Schedule K.
- (l) **No Purchaser's Material Adverse Change.** Since the date of the Purchaser Financial Statements, there has not been any Purchaser's Material Adverse Change.
- (m) **Minute Book.** The minute books of the Purchaser are true and correct in all material respects.
- (n) **Compliance with Laws.** The Purchaser is in compliance in all material respects with all applicable Laws relating to the assets of the Purchaser. No written or other notice or warning from any Governmental Entity with respect to any failure or alleged failure of, or necessity for the Purchaser or the assets of the Purchaser to comply with any Law has been received by the Purchaser, nor, to the knowledge of the Purchaser's Responsible Persons, is any such notice or warning proposed or threatened.
- (o) **Litigation.** There are no: (i) actions, complaints, suits, or proceedings, at Law or in equity, by any Person; (ii) grievances, arbitrations or alternative dispute resolution processes; or (iii) administrative or other proceedings by or before or any investigation by any Governmental Entity, pending, or, to the knowledge of the Purchaser, threatened against, or affecting the Purchaser, the Purchaser Common Shares, the Convertible Note, or the assets of the Purchaser, and the Purchaser does not know of any valid basis or grounds for any such action, complaint, grievance, suit, proceeding, arbitration or investigation. None of the Purchaser, the Closing Consideration Shares, the Convertible Note or the assets of the Purchaser is subject to any judgment, order or decree entered in any lawsuit or proceeding nor has the Purchaser settled any claim prior to being prosecuted in respect thereof. The Purchaser is not the plaintiff or complainant in any action, suit or proceeding arising out of or connected with the Closing Consideration Shares the Convertible Note or the assets of the Purchaser.
- (p) **Purchaser Financial Statements.** The Purchaser Financial Statements have been prepared in accordance with GAAP applied on a basis consistent with those of previous fiscal years and present fairly:
 - (i) the assets, liabilities (whether accrued, absolute, contingent or otherwise) and the financial position and condition of the Purchaser as at the dates of the Purchaser Financial Statements; and

- (ii) the sales and earnings and results of operations of the Purchaser during the periods covered by the Purchaser Financial Statements.

Copies of the Purchaser Financial Statements have been provided by the Purchaser to Maxim.

- (q) **No Undisclosed Liabilities.** Except as incurred in the Ordinary Course and which in the aggregate do not exceed \$100,000.00, the Purchaser does not have any liabilities (whether accrued, absolute, contingent or otherwise) nor any outstanding material commitments or obligations of any kind whatsoever.
- (r) **Taxes.**
 - (i) All Tax Returns required to be filed by the Purchaser have been duly filed on a timely basis and all such Tax Returns were complete and correct in all material respects. All federal, provincial, local and foreign income, profits, franchise, sales, use, occupancy, excise and other Taxes and assessments (including interest and penalties) that are or may become payable by or due from the Purchaser have been fully paid or fully disclosed and fully provided in the Purchaser Financial Statements and no other Taxes are payable with respect to items or periods covered by the Tax Returns filed by the Purchaser.
 - (ii) There are no outstanding agreements or waivers extending the statutory period or providing for an extension of time for the assessment or reassessment of tax or the filing of any Tax Return by, or any payment of any Tax by the Purchaser.
 - (iii) To the knowledge of the Purchaser's Responsible Persons, no audit or examination of any Tax Return of the Purchaser is currently in progress or, to the knowledge of the Purchaser's Responsible Persons, threatened.
 - (iv) There are no claims, actions, suits or proceedings (or, to the knowledge of the Purchaser's Responsible Persons, any investigation) pending, or, to the knowledge of the Purchaser, threatened against the Purchaser relating to Taxes and the Purchaser knows of no valid basis for any such claim, action, suit, proceeding, investigation or discussion.
 - (v) The Purchaser has withheld from each payment made by it the amount of all Taxes and other deductions required to be withheld therefrom and has paid the same to the proper taxing or other authority within the time prescribed under any applicable Law.
 - (vi) The Purchaser is registered for the purposes of Tax imposed under the GST Legislation has registration number **REDACTED**.
 - (vii) The Purchaser is not a non-resident of Canada within the meaning of the ITA.
 - (viii) The Purchaser and its issued and outstanding shares are not "tax shelter investments" for purposes of the ITA.
- (s) **Investment Canada Act.** The Purchaser is not a non-resident for the purposes of and within the meaning of the *Investment Canada Act*.
- (t) **Not an Indirect Buyer.** The Purchaser is not acquiring any of the Units as part of a transaction or event or series of transactions or events whereby an interest in SCLP will be acquired by: (i) a Person exempt from tax under section 149 of the ITA; (ii) a non-resident Person for the purposes

of the ITA, or if the interest in SCLP is being acquired by a non-resident Person for purposes of the ITA, then the Purchaser or such non-resident Person, as the case may be, will use 90% or more of the fair market value of Summit Assets held by SCLP, upon and immediately after the acquisition of the interests in SCLP, in carrying on business through one or more permanent establishments in Canada; (iii) another partnership to the extent that the interest can reasonably be considered to be held, at the time of its acquisition by the other partnership, indirectly through one or more partnerships, by a Person that is exempt from tax under section 149 of the ITA or a non-resident Person for the purposes of the ITA; or (iv) a trust resident in Canada (other than a mutual fund trust for the purposes of the ITA) if an interest as a beneficiary under the trust is held, directly or indirectly through one or more partnerships, by a Person that is exempt from tax under section 149 of the ITA or that is a trust (other than a mutual fund trust for the purposes of the ITA).

- (u) **Foreign Ownership of Land Regulations.** The Purchaser is not a foreign controlled corporation for the purposes of and within the meaning of the *Foreign Ownership of Land Regulations* (Alberta).
- (v) **Availability of Funds.** The Purchaser has sufficient funds available to pay the Cash Consideration pursuant to Section 3.1.
- (w) **Accredited Investor.** The Purchaser is an accredited investor, within the meaning of NI 45-106.
- (x) **Private Issuer.** The Purchaser is a Private Issuer.

ARTICLE 6 PRE-CLOSING COVENANTS OF THE PARTIES

6.1 Interim Period.

- (a) During the Interim Period Maxim will, and Maxim will cause each of SCI and SCLP to:
 - (i) preserve intact each of SCI's and SCLP's current business organization and maintain good relations with, and the goodwill of, suppliers, creditors, lessors, Governmental Entities and all other Persons having business relationships with SCI or SCLP;
 - (ii) use Reasonable Efforts to preserve, protect and maintain the Summit Assets in the Ordinary Course and in accordance with applicable Law;
 - (iii) confer with the Purchaser concerning operational matters of a material nature relating to SCI or SCLP;
 - (iv) retain possession and control of the Summit Assets and preserve the confidentiality of any proprietary or confidential information of SCI and SCLP;
 - (v) not cause or permit to exist a breach of any representations and warranties of Maxim contained in this Agreement;
 - (vi) provide the Purchaser with reasonable access to the Project and any documents, records or materials related to the Project, upon the reasonable request of the Purchaser; and
 - (vii) not, without the prior written consent of the Purchaser, take any of the actions, do any of the things or perform any of the acts described in Section 4.1(gg).

- (b) During the Interim Period Maxim will not, and will cause each of SCI and SCLP to not:
- (i) grant a Lien (other than a Summit Permitted Lien) or otherwise encumber any of the Securities or the Summit Assets;
 - (ii) do any act or thing or suffer or permit any omission in contravention of any Law;
 - (iii) enter into any contract involving total expenditure in excess of \$50,000, not capable of termination on 30 days' notice or less;
 - (iv) purchase or sell any assets for more than \$50,000 or total assets for more than \$100,000;
 - (v) assume any liability in an amount of more than \$50,000 or total liabilities in excess of \$100,000;
 - (vi) permit the amendment of the constituent documents of SCI or the limited partnership agreement of SCLP;
 - (vii) undertake any reduction or distribution of its share or partnership capital, share buy-back, listing on a securities exchange or repurchase or capital return or any restructure of the capital of SCI or SCLP;
 - (viii) take any action or refrain from taking any action which will or may result in the appointment of a liquidator, receiver, manager, administrator, or other external controller to SCI, SCLP or to any of the material assets of SCI or SCLP;
 - (ix) enter into any pre-emptive rights, voting agreements or other similar arrangements; or
 - (x) agree to (whether in writing or otherwise) or attempt any of the above.
- (c) During the Interim Period the Purchaser will:
- (i) preserve intact the Purchaser's current business organization and maintain good relations with, and the goodwill of, suppliers, creditors, lessors, Governmental Entities and all other Persons having business relationships with the Purchaser;
 - (i) use Reasonable Efforts to preserve, protect and maintain the assets of the Purchaser in the Ordinary Course and in accordance with applicable Law;
 - (ii) provide Maxim with reasonable access to any documents, records or materials related to the Purchaser, upon the reasonable request of Maxim; and
 - (iii) not cause or permit to exist a breach of any representations and warranties of the Purchaser contained in this Agreement.
- (d) The Parties hereby acknowledge and agree that Maxim's investigation and due diligence of the property, assets, undertaking and financial condition of the Purchaser, and the Purchaser's investigation and due diligence of the property, assets, undertaking and financial condition of Maxim, SCI, SCLP, Milner and MPLP (including any information related to the Project) is complete.

6.2 Actions to Satisfy Closing Conditions.

- (a) Maxim agrees to take, and agrees to cause each of SCI and SCLP to take, all such actions as are within their power to control and use their Reasonable Efforts to cause other actions to be taken which are not within their power to control, so as to ensure compliance with all of the conditions set forth in Sections 8.1 and 8.3 including, without limitation, ensuring that there has been no breach of any representations, warranties or covenants or agreements contained in this Agreement.
- (b) The Purchaser agrees to take all such actions as are within its power to control and use its Reasonable Efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of the conditions set forth in Sections 8.2 and 8.3 including, without limitation, ensuring that there has been no breach of any representations, warranties or covenants or agreements contained in this Agreement.

6.3 Filings and Authorizations.

Each of the Parties, as promptly as practicable after the execution of this Agreement, will:

- (a) make, or cause to be made, all such filings and submissions under all Laws applicable to it, as may be required for it to consummate the Transaction; and
- (b) use its Reasonable Efforts to take, or cause to be taken, all other actions which are necessary or advisable in order for it to fulfil its obligations under this Agreement. The Parties will coordinate and cooperate with one another in exchanging such information and supplying such assistance as may be reasonably requested by each in connection with the foregoing including, without limitation, providing each other with all notices and information supplied to or filed with any Governmental Entity (except for notices and information which any Party, in each case acting reasonably, considers highly confidential and sensitive which may be filed on a confidential basis), and all notices and correspondence received from any Governmental Entity.

6.4 Notice of Untrue Representation or Warranty.

Maxim will promptly notify the Purchaser, and the Purchaser will promptly notify Maxim, upon any representation or warranty made by them contained in this Agreement becoming untrue or incorrect during the Interim Period. Any such notification will set out particulars of the untrue or incorrect representation or warranty and details of any actions being taken by the relevant Party to rectify that state of affairs.

ARTICLE 7 TAX MATTERS

7.1 Transfer Taxes.

The Purchaser shall be responsible for the payment of all Transfer Taxes and *ad valorem* Taxes arising out of, resulting from, attributable to or connected with the Transaction. The Purchaser shall prepare and timely file all Tax Returns or other documentation relating to such Transfer Taxes; provided, however, that to the extent required by applicable Law, Maxim will join in the execution of any such Tax Returns or other documents relating to such Taxes. The Purchaser shall provide Maxim with copies of each such Tax Return or other document at least thirty (30) days prior to the date on which such Tax Return or other document is required to be filed.

7.2 Stub Period Returns.

- (a) Maxim shall cause each of SCI and SCLP to duly and timely make or prepare all Tax Returns required to be made or prepared by them and to duly and timely file all Tax Returns required to be filed by them for any period which ends on or before the Closing Date and for which Tax Returns have not been filed as of such date. The Purchaser shall cause each of the SCI and SCLP to duly and timely make or prepare all Tax Returns required to be made or prepared by them and to duly and timely file all Tax Returns required to be filed by them for periods beginning before and ending after the Closing Date.
- (b) Maxim and the Purchaser shall co-operate fully with each other and make available to each other in a timely fashion such data and other information as may reasonably be required for the preparation of any Tax Return of SCI or SCLP for a period ending on, before or including the Closing Date and shall preserve such data and other information until the expiration of any applicable limitation period under any applicable law with respect to Taxes.
- (c) Tax Returns required to be prepared by Maxim for periods ending on or before the Closing Date and Tax Returns to be prepared by the Purchaser for periods beginning before and ending after the Closing Date shall be submitted in draft form to the other Party at least 30 days before the date on which such Tax Returns are required by Law to be filed with the relevant Governmental Authority. Before filing any such Tax Returns, each Party shall consult with the other Party, and take into account, acting reasonably, any comments that the other Party may have in respect of such Tax Returns.

7.3 Subsection 85(1)

If Maxim elects in accordance with Section 3.1(c) to receive Purchaser Common Shares, Maxim and the Purchaser will jointly elect in accordance with the provisions of Section 85(1) of the ITA, in prescribed form and within the time period referred to in Section 85(6) of the ITA, and make revised, amended or refiled elections, if requested by Maxim, and generally take all such steps as may be considered desirable so as to effect the sale by Maxim to the Purchaser of the Securities for the purposes of the ITA at such amounts as are determined by Maxim (within the parameters set forth in Section 85(1) of the ITA).

ARTICLE 8 CONDITIONS OF CLOSING

8.1 Conditions for the Benefit of the Purchaser.

The obligation of the Purchaser to complete the Transaction, including the purchase of the Securities, is subject to the following conditions to be fulfilled or performed at or prior to the Closing, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion:

- (a) **Truth of Representations and Warranties.** The representations and warranties of Maxim contained in this Agreement and in any Ancillary Agreement must be true and correct in all material respects as of the Closing Date (except in each case, for those representations and warranties that are subject to a materiality qualification, which must be true and correct in all respects) with the same force and effect as if such representations and warranties had been made on and of such date, and Maxim must have delivered to the Purchaser a signed certificate to that effect signed by a senior officer. The receipt of such certificate and the Closing will not constitute a waiver by the Purchaser of any of the representations and warranties of Maxim that are contained in this Agreement and the

Ancillary Agreements. Upon the delivery of such certificate, the representations and warranties of Maxim in Article 4 will be deemed to have also been made on and as of the Closing Date with the same force and effect as if made on and as of such date (qualified as to materiality and knowledge where stated).

- (b) **Performance of Covenants.** Maxim must have fulfilled or complied with all covenants contained in this Agreement and in every Ancillary Agreement to be fulfilled or complied with by it at or prior to the Closing, and Maxim must have delivered to the Purchaser a signed certificate to that effect signed by a senior officer. The receipt of such certificate and the Closing will not constitute a waiver by the Purchaser of any of the covenants of Maxim that are contained in this Agreement and the Ancillary Agreements.
- (c) **Maxim Required Consents.** All Maxim Required Consents shall have been obtained by Maxim, on terms satisfactory to the Purchaser, acting reasonably.
- (d) **Deliverables.** Maxim shall have delivered to the Purchaser the documents contemplated in Section 9.2, in each case in form and substance satisfactory to the Purchaser, acting reasonably.
- (e) **No Legal Action.** No action or proceeding will be pending or threatened by any Person (other than the Purchaser) in any jurisdiction, to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement.
- (f) **No Maxim Material Adverse Change.** Since the date of this Agreement, there will not have been any Maxim Material Adverse Change.
- (g) **Intercompany Debt.** Any indebtedness owing as between Maxim or any of its Affiliates and SCI or SCLP will have been extinguished.

8.2 Conditions for the Benefit of Maxim.

The obligation of Maxim to complete the Transaction, including the sale of the Securities, is subject to the following conditions to be fulfilled or performed at or prior to the Closing, which conditions are for the exclusive benefit of Maxim and may be waived, in whole or in part, by Maxim in its sole discretion:

- (a) **Truth of Representation and Warranties.** The representations and warranties of the Purchaser contained in this Agreement and the Ancillary Agreements must be true and correct in all material respects as of the Closing Date (except in each case, for those representations and warranties that are subject to a materiality qualification, which must be true and correct in all respects) with the same force and effect as if such representations and warranties had been made on and as of such date, and the Purchaser must have delivered to Maxim a certificate to that effect signed by a senior officer. The receipt of such certificate and the Closing will not constitute a waiver by Maxim of the representations and warranties of the Purchaser that are contained in this Agreement and the Ancillary Agreements. Upon the delivery of such certificate, the representations and warranties of the Purchaser in Article 5 will be deemed to have been made on and as of the Closing Date with the same force and effect as if made on and as of such date (qualified as to materiality and knowledge where stated).
- (b) **Performance of Covenants.** The Purchaser must have fulfilled or complied with all covenants contained in this Agreement and in the Ancillary Agreements to be fulfilled or complied with by it at or prior to Closing and the Purchaser must have delivered to Maxim a certificate to that effect

signed by a senior officer. The receipt of such certificate and the Closing will not constitute a waiver by Maxim of the covenants of the Purchaser that are contained in this Agreement and the Ancillary Agreements.

- (c) **Purchaser's Required Consents.** All Purchaser's Required Consents shall have been obtained by the Purchaser, on terms satisfactory to Maxim, acting reasonably.
- (d) **Deliverables.** The Purchaser shall have delivered to Maxim the documents contemplated in Section 9.3, in each case in form and substance satisfactory to Maxim, acting reasonably.
- (e) **No Legal Action.** No action or proceeding will be pending or threatened by any Person (other than Maxim) in any jurisdiction, to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement.
- (f) **No Purchaser's Material Adverse Change.** Since the date of this Agreement, there will not have been any Purchaser's Material Adverse Change.

8.3 Mutual Conditions

The obligation of the Parties to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing, which conditions are for the benefit of Maxim and the Purchaser and may only be waived, in whole or in part, by all of Maxim and the Purchaser:

- (a) **Outside Date.** The Closing will have occurred on or before the Outside Date.
- (b) **No Legal Action.** The Closing must not violate any final order, decree or judgment of any Governmental Entity having competent jurisdiction for which the time for filing a notice of appeal has expired (absent a discretionary extension) and in respect of which no appeal is pending.

ARTICLE 9 CLOSING

9.1 Date, Time and Place of Closing.

The completion of the Transaction will take place remotely via electronic delivery of documents at 10:00 a.m. (Calgary time) on the Closing Date, or at such other place, on such other date and at such other time as may be agreed upon in writing between Maxim and the Purchaser. The Closing will be deemed to be effective as of the Effective Time.

9.2 Maxim Deliverables at Closing.

At Closing, Maxim will deliver, or cause to be delivered, to the Purchaser the following:

- (a) a receipt for payment of the Cash Consideration;
- (b) a share certificate representing the Shares accompanied by a duly executed instrument of transfer by Maxim to the Purchaser;
- (c) a share certificate evidencing the Shares registered in the name of the Purchaser;

- (d) a unit certificate representing the Units accompanied by a duly executed instrument of transfer (in the form attached as Appendix "C" to the SCLP Limited Partnership Agreement dated September 1, 2011) by Maxim;
- (e) a unit certificate evidencing the Units registered in the name of the Purchaser;
- (f) documentation in form customary for transactions of the type contemplated hereby establishing the due authorization by Maxim, SCI and SCLP (as applicable) of the sale of the Securities, the execution, delivery and performance of this Agreement and the Ancillary Agreements and the documents, agreements or instruments respecting the consummation of the Transaction, and the taking of all corporate and limited partnership proceedings in connection herewith and therewith;
- (g) certified copies of the articles of incorporation and by-laws of SCI and the limited partnership agreement of SCLP;
- (h) a certificate of status, compliance, good standing or like certificate with respect to SCI and Maxim issued by the appropriate governmental officials of their jurisdiction of incorporation;
- (i) the certificates referred to in Section 8.1(a) and Section 8.1(b);
- (j) Maxim Required Consents referred to in Section 8.1(c);
- (k) the Lease Agreement signed by Milner;
- (l) the Royalty Agreement signed by Maxim and SCLP;
- (m) resignations of each director and officer of SCI;
- (n) the Purchaser Guarantee signed by Maxim;
- (o) a duly executed assignment and conveyance agreement, assigning and conveying the Work Product to SCLP or SCI, as applicable;
- (p) releases from each of SCI and SCLP in favour of each of the directors and officers of SCI holding such positions as of the date hereof, in the form attached as Exhibit B (the "**D&O Releases**");
- (q) all Liens, other than the Summit Permitted Liens, shall as regards to the Securities and the Summit Assets, be discharged and evidence of such discharges or duly executed no-interest letters shall have been delivered to the Purchaser in a form and content satisfactory to the Purchaser, acting reasonably;
- (r) the Purchaser has been provided a no interest letter in form and content satisfactory to the Purchaser, acting reasonably, in respect of the ATB Security;
- (s) the Purchaser has been provided a copy of the release addressed to Maxim and previously delivered by Alpine Capital Corp. in respect of the security granted by Maxim to Alpine Capital Corp. in connection with a convertible loan credit agreement provided to Maxim by Alpine Capital Corp.;
- (t) the authorized signatories of SCI and SCLP for their Summit Bank Accounts shall have been removed and replaced with those authorized signatories as directed by the Purchaser; and
- (u) copies of the Summit Books and Records.

9.3 Purchaser Deliverables at Closing.

At Closing, the Purchaser will deliver or cause to be delivered to Maxim the following:

- (a) the Cash Consideration, in accordance with Section 3.1(b)(i);
- (b) either a duly executed (i) note representing the Convertible Notes; or (ii) share certificate (or other valid evidence of ownership) evidencing the applicable Closing Consideration Securities registered in the name of Maxim in accordance with Section 3.1(b)(ii) and Section 3.1(c);
- (c) a duly executed instrument of transfer (in the form attached as Appendix "C" to the SCLP Limited Partnership Agreement dated September 1, 2011) by the Purchaser;
- (d) an assignment and conveyance agreement, assigning and conveying the Work Product to SCLP or SCI, as applicable, duly executed by the Purchaser;
- (e) the Purchaser Guarantee signed by the Purchaser;
- (f) the Lease Agreement signed by **REDACTED**;
- (g) documentation in form customary for transactions of the type contemplated hereby establishing the due authorization by the Purchaser (as applicable) of the acquisition of the Securities, the execution, delivery and performance of this Agreement and the Ancillary Agreements and the documents, agreements or instruments respecting the consummation of the Transaction, and the taking of all corporate and limited partnership proceedings in connection herewith and therewith;
- (h) certified copies of the articles of incorporation and by-laws of the Purchaser;
- (i) a certificate of status, compliance, good standing or like certificate with respect to the Purchaser issued by the appropriate governmental officials of its jurisdiction of incorporation;
- (j) the certificates referred to in Section 8.2(a) and Section 8.2(b); and
- (k) the Purchaser's Required Consents referred to in Section 8.2(c).

ARTICLE 10 TERMINATION

10.1 Termination.

This Agreement may be terminated, upon written notice being given by the terminating Party or Parties (as the case may be) to the other Party or Parties (as the case may be), at any time prior to the Closing Date:

- (a) by the mutual written agreement of the Parties;
- (b) by Maxim or by the Purchaser if:
 - (i) the Closing has not occurred by the Outside Date for reasons not solely attributable to the default of the Party or Parties (as the case may be) purporting to terminate this Agreement;
or

- (ii) the consummation of the Transactions would violate any final order, decree or judgment of any Government Entity having competent jurisdiction for which the time for filing a notice of appeal has expired (absent a discretionary extension) and in respect of which no appeal is pending.

10.2 Effect of Termination.

If this Agreement is terminated as permitted under Section 10.1 the Parties shall remain liable for all liabilities and obligations of the Parties arising or accruing in respect of the period up to and including the date of termination, and continue to be bound by their obligations set forth in Sections 10.2, 14.3, and 14.5 and the Confidentiality Agreement (the "**Surviving Obligations**"). The Parties acknowledge and agree that any provisions of this Agreement that are necessary in order to give effect to the Surviving Obligations and this section 10.2 shall also survive any termination of this Agreement until all such liabilities and obligations are satisfied and/or discharged in full. Each Party's right of termination under this Section 10.2 is in addition to any other rights it may have under applicable Laws, this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. Nothing in this Section 10.2 will limit or affect any other rights or causes of action (under applicable Laws or in equity, including an action for damages or specific performance) any of the Parties may have with respect to the representations, warranties, covenants and indemnities in its favour in this Agreement.

ARTICLE 11 LIABILITY AND INDEMNIFICATION

11.1 Disclaimer of Representations and Warranties by Maxim.

- (a) Except for the representations and warranties of Maxim set out in this Agreement or any Ancillary Agreement, nothing in this Agreement shall imply or be construed to mean that Maxim or any of its representatives are making or have made any representation or warranty whatsoever, express, implied, at common law, statutory or otherwise, concerning Maxim, Milner, MPLP, SCI, SCLP, the Securities or the Summit Assets. The Purchaser further acknowledges that, subject to the representations and warranties of Maxim set out in Section 4.1 and as otherwise expressly set out in this Agreement, the Purchaser takes SCI, SCLP, the Securities and the Summit Assets "AS IS" and "WHERE IS". Without limiting the generality of the foregoing, subject to the representations and warranties of Maxim set out in this Agreement or any Ancillary Agreement, Maxim hereby disclaims and negates any representation or warranty, express or implied, at common law, statutory or otherwise, relating to:
 - (i) the truth, accuracy or completeness of the Summit Reports, including any information, records or data contained therein; and
 - (ii) the success (or likelihood of success) of the Project.
- (b) The provisions contained in this Agreement are the result of extensive negotiations between the Purchaser and Maxim and no other assurances, representations or warranties about the quality, condition or state of SCI, SCLP, the Securities or the Summit Assets were made by Maxim or any of their representatives in the inducement thereof, except as provided in the representations and warranties of Maxim set out in Section 4.1 or as otherwise expressly set out in this Agreement.
- (c) The Purchaser acknowledges and confirms to Maxim that, except as expressly provided in this Agreement:

- (i) the Purchaser has performed its own due diligence and has not relied on any data, information, statement or advice provided to the Purchaser by Maxim or any of its Affiliates or representatives; and
- (ii) in agreeing to enter into and to consummate the Transaction, the Purchaser has relied on its own inspections and evaluations of SCI, SCLP, the Securities and the Summit Assets.

11.2 Disclaimer of Representations and Warranties by Purchaser.

- (a) Except for the representations and warranties of the Purchaser set out in this Agreement or any Ancillary Agreement, nothing in this Agreement shall imply or be construed to mean that the Purchaser or any of their representatives are making or have made any representation or warranty whatsoever, express, implied, at common law, statutory or otherwise, concerning the Purchaser, the Closing Consideration Securities or the assets of the Purchaser. Maxim further acknowledges that, subject to the representations and warranties of the Purchaser set out in Section 5.1 and as otherwise expressly set out in this Agreement, Maxim take the Closing Consideration Securities and the assets of the Purchaser "AS IS" and "WHERE IS".
- (b) The provisions contained in this Agreement are the result of extensive negotiations between the Purchaser and Maxim and no other assurances, representations or warranties about the quality, condition or state of the Purchaser, the Closing Consideration Securities or the assets of the Purchaser were made by the Purchaser or any of their representatives in the inducement thereof, except as provided in the representations and warranties of the Purchaser set out in Section 5.1 or as otherwise expressly set out in this Agreement.
- (c) Maxim acknowledges and confirms to the Purchaser that, except as expressly provided in this Agreement:
 - (i) Maxim has performed its own due diligence and it has not relied on any data, information, statement or advice provided to Maxim by the Purchaser or their representatives; and
 - (ii) in agreeing to enter into and to consummate the Transaction, Maxim has relied on its own inspections and evaluations of the Purchaser, the Closing Consideration Securities and the assets of the Purchaser.

11.3 Responsibility of Maxim.

Subject to the limitations set forth in this Article 11, Maxim will:

- (a) be liable to the Purchaser and its Additional Indemnitees for all Indemnified Losses which any one or more of them may suffer, sustain, pay or incur; and
- (b) indemnify and save harmless the Purchaser and its Additional Indemnitees from and against all Indemnified Losses which may be brought against or suffered by any one or more of them or which any one or more of them may sustain, pay or incur;

as a result of any act, omission, circumstance or other matter arising out of, resulting from, attributable to or connected with (whether before, on or after the Closing Date) any Agreement Default made by Maxim.

11.4 Responsibility of Purchaser.

Subject to the limitations set forth in this Article 11, the Purchaser will:

- (a) be liable to Maxim and its Additional Indemnitees for all Indemnified Losses which any one or more of them may suffer, sustain, pay or incur; and
- (b) indemnify and save harmless Maxim and its Additional Indemnitees from and against all Indemnified Losses which may be brought against or suffered by any one or more of them or which any one or more of them may sustain, pay or incur;

as a result of any act, omission, circumstance or other matter arising out of, resulting from, attributable to or connected with (whether before, on or after the Closing Date) any Agreement Default made by the Purchaser.

11.5 Survival Period.

No claim by a Person for indemnification pursuant to this Agreement will be made or be enforceable whether by legal proceedings or otherwise, unless written notice of such claim (in the form of an Indemnification Notice) is given by such Person to the Party from whom indemnification is sought within the applicable Survival Period; provided, however, that a claim for indemnification will survive to the extent of any Indemnified Losses incurred if an Indemnification Notice with respect to such claim has been given within the Survival Period until such time as such claim set forth in such Indemnification Notice has been fully resolved and paid, as applicable. For the purposes of this Agreement, "**Survival Period**" means:

- (a) for: (i) the representations and warranties set forth in Sections 4.1(a), 4.1(b), 4.1(c), 4.1(e), 4.1(h), 4.1(i), 4.1(j), 4.1(k), 4.1(l) and 4.1(v), and Sections 5.1(a), 5.1(b), 5.1(c), 5.1(d) and 5.1(h), (the "**Fundamental Representations**"); or (ii) the failure to perform or observe any covenant or agreement under this Agreement, a period of four (4) years following the Closing Date;
- (b) for the representations and warranties set forth in Section 4.1(jj), and Sections 5.1(r) and 5.1(t), a period ending on:
 - (i) sixty (60) days after the expiry of the reassessment period in respect of any Tax year, or similar reporting periods, of SCI or SCLP, as the case may be, which end on or prior to the Closing Date without taking into account any extension to such periods resulting from any agreement, waiver, act or omission after Closing; or
 - (ii) if there is no such reassessment period, until sixty (60) days after the expiration of the applicable statute of limitations; and
- (c) for all other representations and warranties of Maxim and the Purchaser set forth in this Agreement, a period of twelve (12) months following the Closing Date.

11.6 Claim Limitations

The following limitations will apply, where applicable, to any claim by a Party for indemnification pursuant to this Article 11 (a "**Claim**"):

(a) In no event will the Purchaser or its Additional Indemnitees be entitled to make any Claim against Maxim, and Maxim will not be liable in respect of any Claims:

- (i) unless the aggregate amount of liability arising from all Claims exceeds \$100,000.00, in which case the Purchaser and its Additional Indemnitees may only claim the amount in excess of such threshold amount; and
- (ii) where the amount of liability arising from any individual Claim is less than \$20,000.00, in which case such Claim will not be aggregated for the purpose of Section 11.6(a)(i),

provided that this Section 11.6(a) will not apply to Claims in respect of breach of any of the Fundamental Representations or the failure to perform or observe any covenants or agreements under this Agreement.

(b) In no event will Maxim or its Additional Indemnitees be entitled to make any Claim against the Purchaser and the Purchaser will not be liable in respect of any Claims:

- (i) unless the aggregate amount of liability arising from all Claims exceeds \$100,000.00, in which case Maxim and its Additional Indemnitees may only claim the amount in excess of such threshold amount; and
- (ii) where the amount of liability arising from any individual Claim is less than \$20,000.00, in which case such Claim will not be aggregated for the purpose of Section 11.6(b)(i),

provided that this Section 11.6(b) will not apply to Claims in respect of breach of any of the Fundamental Representations or the failure to perform or observe any covenants or agreements under this Agreement.

(c) The aggregate amount of liabilities for all Claims against Maxim will not exceed an amount equal to:

- (i) the Purchase Price for Claims relating to Fundamental Representations; and
- (ii) 30% of the Purchase Price for all Claims other than Claims relating to Fundamental Representations,

provided that this Section 11.6(c) will not apply to Claims in respect of failure to performance or observe any covenants or agreements under this Agreement.

(d) The aggregate amount of liabilities for all Claims against the Purchaser will not exceed an amount equal to:

- (i) \$4,000,000 for Claims relating to Fundamental Representations; and
- (ii) \$1,000,000 for all Claims other than Claims relating to Fundamental Representations,

provided that this Section 11.6(d) will not apply to Claims in respect of failure to perform or observe any covenants or agreements under this Agreement.

(e) Notwithstanding any other provision of this Agreement, the amount the Purchaser and their Additional Indemnitees or Maxim and its Additional Indemnitees, as the case may be, is entitled to

recover under this Agreement shall be limited to \$1.00 for Claims written notice of which are made after the expiry of the Survival Periods set forth in Section 11.5.

- (f) Notwithstanding any other provision of this Agreement, the amount Maxim and its Additional Indemnitees, or the Purchaser and their Additional Indemnitees, as the case may be, is entitled to recover under this Agreement shall be limited to \$1.00 for Claims written notice of which are made after the expiry of the Survival Periods set forth in Section 11.5.

11.7 Liability and Remedies.

No individual representative of any Party shall be personally liable for any claim for indemnification pursuant to this Article 11.

11.8 Other Limitations on Liability.

Notwithstanding any provision of this Agreement, no Party shall be liable for a claim for indemnification pursuant to this Article 11:

- (a) for indirect, consequential or special damages hereunder, including loss of profit, revenue or business opportunity;
- (b) for punitive or aggravated damages;
- (c) to the extent of any related reasonably determinable tax benefit available to a Party as a result of the matters giving rise to a claim;
- (d) to the extent that the indemnified Party or its Additional Indemnitees is entitled to recover under any insurance policy or from some other Person with respect to any Indemnified Losses forming the subject matter of the Claim;
- (e) to the extent that any Indemnified Losses could reasonably have been minimized or avoided had the indemnified Party or its Additional Indemnitees exercised reasonable diligence and ordinary care in attempting to minimize or avoid aggravating any such Indemnified losses;
- (f) to the extent that a reserve or provision for the individual fact, matter or circumstance was made in the Summit Financial Statements, in which case the indemnified Party or its Additional Indemnitees shall be entitled, subject to the provisions of this Agreement, only to make a claim in respect of such item for the amount which exceeds such reserve or provision; or
- (g) to the extent that such liability arises or the amount thereof is increased as a result of a change after the Closing Date in the accounting policies or practices of either Party or its Additional Indemnitees, SCI or SCLP, or a change in the Laws.

11.9 Exclusive Remedy.

Except as provided in Article 10, the rights and remedies of the Parties under this Article 11 are exclusive and in lieu of any and all other rights and remedies which the Parties may have under this Agreement or otherwise for monetary relief, with respect to any Agreement Default.

11.10 Indemnification Payments are Adjustments to Purchase Price.

Any payments arising out of a Claim for indemnification under Article 11 will be treated as an adjustment to the Purchase Price for Tax purposes.

11.11 Procedure – Indemnities.

Any Person seeking indemnification (the "**Indemnified Party**") will give reasonably prompt notice thereof to the Person (the "**Indemnifying Party**") from whom indemnification is sought (the "**Indemnification Notice**"). The Indemnification Notice shall provide detailed particulars as to the nature and amount of the claim, the basis upon which it is sought and the provisions of this Agreement applicable to such claim. If the Indemnified Party fails to give such prompt notice, such failure shall not, subject to Section 11.5, preclude such Person from obtaining such indemnification but its right to indemnification may be reduced to the extent that such delay prejudiced the defence of the claim or increased the amount of liability or cost of defence. In the event that the Indemnifying Party objects in good faith to the claim for indemnification, the Indemnifying Party shall so advise the Indemnified Party by delivery to the Indemnified Party of a written notice (the "**Indemnification Objection Notice**") within fifteen (15) Business Days after the delivery to the Indemnifying Party of the Indemnification Notice. The Indemnification Objection Notice shall set out the reasons for objection. The Parties shall attempt to settle any dispute with respect to a claim for indemnification in accordance with Section 13.1, and failing which may initiate litigation in accordance with Section 14.14.

11.12 Indemnification Procedures for Third Party Claims.

- (a) In the case of claims made by a third party with respect to which indemnification is sought, the Indemnified Party shall give prompt notice to the Indemnifying Party of any such claims made upon it. If the Indemnified Party fails to give such prompt notice, such failure shall not preclude the Indemnified Party from obtaining such indemnification but its right to indemnification may be reduced to the extent that such delay prejudiced the defence of the claim or increased the amount of liability or cost of defence.
- (b) The Indemnifying Party shall have the right, by notice to the Indemnified Party given not later than thirty (30) days after receipt of the notice described in Section 11.12(a), to assume the control of the defence, compromise or settlement of the claim, provided that such assumption shall, by its terms, be without cost to the Indemnified Party and provided the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in accordance with the terms contained in this Section in respect of that claim.
- (c) Upon the assumption of control of any claim by the Indemnifying Party as set out in Section 11.12(b), the Indemnifying Party shall diligently proceed with the defence, compromise or settlement of the claim at its sole expense, including if necessary, employment of counsel and experts reasonably satisfactory to the Indemnified Party and, in connection therewith, the Indemnified Party shall cooperate fully, but at the expense of the Indemnifying Party with respect to any out-of-pocket expenses incurred, to make available to the Indemnifying Party all pertinent information and witnesses under the Indemnified Party's control, make such assignments and take such other steps as in the opinion of counsel for the Indemnifying Party are reasonably necessary to enable the Indemnifying Party to conduct such defence. The Indemnified Party shall also have the right to participate in the negotiation, settlement or defence of any claim at its own expense. The Indemnifying Party shall not settle any claim without the prior written consent of the Indemnified Party, such consent not to be unreasonably withheld. If the Indemnified Party, acting reasonably, determines that there is conflict of interest in having the counsel retained by the

Indemnifying Party act on behalf of both the Indemnifying Party and the Indemnified Party in connection with the claim, then the Indemnified Party shall be entitled to retain its own legal counsel at the sole expense of the Indemnifying Party.

- (d) The final determination of any claim pursuant to this Section, including all related costs and expenses, shall be binding and conclusive upon the Parties as to the validity or invalidity, as the case may be, of such claim against the Indemnifying Party.
- (e) If the Indemnifying Party does not assume control of a claim as permitted in Section 11.12(b), the Indemnified Party shall be entitled to litigate the claim to final judgment (including appeals) or make such settlement of the claim as in its sole discretion may appear advisable, and such settlement or any other final determination of the claim shall be binding upon the Indemnifying Party.

11.13 No Merger of Legal Responsibilities.

The liabilities and indemnities created in this Article 11 will be deemed to apply to, and will not merge in, all assignments, transfer and other documents conveying the Securities to the Purchaser notwithstanding the terms of such assignments, transfers and other documents, applicable Law or any rule of Law or equity to the contrary, and all such rules are hereby waived.

11.14 Non-Applicability of Limitations on Liability.

None of the limitations on liability contained in this Agreement (including the time limitations set out in Section 11.5 or the claim limitations set out in Section 11.6) shall apply to any Agreement Default arising out of, resulting from, attributable to or connected with any dishonest or fraudulent conduct or deliberate concealment on the part of any Party or its respective directors, officers, employees, agents or representatives.

11.15 Exclusion of Article 11.

The Purchaser and Maxim acknowledge and agree that this Article 11 (including the time limitations set out in Section 11.5 and the claim limitations set out in Section 11.6) shall not apply in respect of any claims arising under the Lease Agreement, the Royalty Agreement, the D&O Releases or the Confidentiality Agreement, including in respect of any misrepresentation, breach of warranty or breach of covenant arising thereunder.

ARTICLE 12 POST-CLOSING COVENANTS

12.1 Development of the Coal Leases.

- (a) The Purchaser covenants and agrees that in connection with any post-Closing development of the Summit Coal Leases (or any portion thereof) it will, and it will cause each of SCI and SCLP to, discharge, perform and fulfill all of the obligations, responsibilities, undertakings and commitments of Maxim arising on or after the Closing as set out in Schedule I.
- (b) **REDACTED**

(c) **REDACTED**

(d) **REDACTED**

12.2 Confidentiality.

(a) From and after the Closing, Maxim will keep confidential all information, documents and other tangible items which record information, whether on paper, in computer readable format or

otherwise, in their possession or under their control concerning SCI, SCLP and the Summit Assets (collectively, "**Confidential Information**"), unless:

- (i) such information is or becomes generally available to the public other than as a result of a disclosure by Maxim; or
 - (ii) as required by applicable Law, provided that Maxim will promptly notify the Purchaser thereof, consult with the Purchaser and cooperate with the Purchaser in any attempt by the Purchaser (in its discretion) to resist or narrow such disclosure or to obtain an order or other assurance that such Confidential Information will be accorded confidential treatment.
- (b) After Closing, Maxim will not use or otherwise exploit, in whole or in part, directly or indirectly, any of the Confidential Information without the prior written consent of the Purchaser, which consent may not be unreasonably withheld by the Purchaser.

12.3 Further Assurances.

From time to time after the Closing Date, each Party, at its own expense, will at the request of the other Party execute and deliver such additional conveyances, transfers and other assurances as may be reasonably required to effectively carry out the intent of this Agreement and each Ancillary Agreement.

ARTICLE 13 DISPUTES

13.1 Reasonable Commercial Efforts to Settle Disputes.

If any controversy, dispute, claim, question or difference arises with respect to this Agreement or the Certificates referred to in Sections 8.1(a), 8.1(b), 8.2(a) or 8.2(b) (a "**Dispute**"), a Party hereto shall be entitled to deliver to any other Party or Parties a written notice (a "**Dispute Notice**"), which notice shall include detailed particulars describing the nature of the Dispute. Upon receipt of a Dispute Notice, the Parties shall use all reasonable commercial efforts to settle the Dispute and to this end, they shall consult and negotiate with each other in good faith and understanding of their mutual interests to reach a just and equitable solution satisfactory to the Parties. If the Parties do not reach a mutually acceptable solution to the Dispute pursuant to this Section 13.1 within a period of ten (10) Business Days following receipt of a Dispute Notice, then any Party shall be entitled to commence litigation in accordance with Section 14.14.

ARTICLE 14 MISCELLANEOUS

14.1 Notices.

Any notice, direction or other communication given under this Agreement or any Ancillary Agreement (a "**Notice**") will be in writing, in English, and made by personal delivery, pre-paid ordinary and registered mail or email transmission and given by delivering it:

- (a) to Maxim at:

Maxim Power Corp.
REDACTED

Attention: **REDACTED**
Email: [REDACTED](#)

(b) to the Purchaser at:

Valory Resources Inc.
REDACTED

Attention: **REDACTED**
Email: [REDACTED](#)

or to such other address or email address as either party may from time to time designate, by notice to the other. Any notice personally delivered to the Party to whom it is addressed as provided for in this Section shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day then the notice shall be deemed to have been given and received on the Business Day next following such day. Any notice mailed to the address and in the manner provided for in this Section shall be deemed to have been given and received on the fifth Business Day next following the date of its mailing. Any notice transmitted by email shall be deemed to have been given and received on the first Business Day after its transmission.

14.2 Time of the Essence.

Time will be of the essence in this Agreement.

14.3 Announcements.

Any press release or public statement or announcement (a "**Public Statement**") with respect to the Transaction will be made only with the prior written consent and joint approval of Maxim and the Purchaser (the "**Approving Parties**"), not to be unreasonably withheld or delayed, unless such Public Statement is required by Law or by any stock exchange, in which case the Party required to make the Public Statement will give the other Approving Parties prompt notice of the information to be disclosed and reasonable opportunity to review and comment on the proposed disclosure.

14.4 Third Party Beneficiaries.

Except as otherwise provided in Section 11.2(a) and Section 11.4, the Parties intend that this Agreement will not benefit or create any right or cause of action in, or on behalf of, any Person, other than the Parties to this Agreement and no Person, other than the Parties to this Agreement, will be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum. The Purchaser acts as trustee and agent on behalf of each of its Additional Indemnitees, and Maxim acts as trustee and agent on behalf of each of its Additional Indemnitees, and holds for their benefit their rights under Section 11.2(a) and Section 11.4, as applicable. Each Party agrees that the other Parties may enforce the indemnity for and on behalf of such Additional Indemnitees and, in such event, the Indemnifying Party will not in any proceeding to enforce the indemnity by or on behalf of such Additional Indemnitees assert any defence thereto based on the absence of authority or consideration or privity of contract and irrevocably waives the benefit of any such defence. The Parties to this Agreement reserve their right to vary or rescind

the rights at any time and in any way whatsoever granted by or under this Agreement to any Person who is not a Party to this Agreement, without notice to or consent of that Person, including any Additional Indemnitee.

14.5 Expenses.

Except as otherwise expressly provided in this Agreement, all costs and expenses (including the fees and disbursements of legal counsel, investment advisers and accountants) incurred in connection with this Agreement, the Ancillary Agreements and the Transaction will be paid by the Party incurring such expenses.

14.6 Amendments.

This Agreement may only be amended, supplemented or otherwise modified by written agreement executed by the Parties.

14.7 Waiver.

- (a) No provision of this Agreement shall be deemed waived by any course of conduct unless such waiver is in writing and has been signed by all Parties, specifically stating that it is intended to modify this Agreement.
- (b) No waiver of any of the provisions of this Agreement or any Ancillary Agreement will be deemed to constitute a waiver of any other provision (whether or not similar), nor will such waiver be binding unless executed in writing and signed by the Party to be bound by the waiver.
- (c) No failure on the part of any Party to exercise, and no delay in exercising any right under this Agreement will operate as a waiver of such right, nor will any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

14.8 Relationship

Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the Parties.

14.9 Non-Merger.

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties will not merge on and will survive the Closing and, notwithstanding such Closing and any investigation made by or on behalf of any Party, will continue in full force and effect. Closing will not prejudice any right of one Party against any other Party in respect of anything done or omitted under this Agreement or in respect of any right to damages or other remedies.

14.10 Authorship.

The Parties hereto agree that the terms and language of this Agreement and all Ancillary Agreements are the result of negotiations between the Parties and, as a result, there will be no presumption that any ambiguity in this Agreement or any Ancillary Agreement will be resolved against any Party.

14.11 Entire Agreement.

This Agreement and the Ancillary Agreements constitute the entire agreement between the Parties with respect to the transactions contemplated in this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, including the Option Agreement, excluding the Confidentiality Agreement, which Confidentiality Agreement remains in full force and effect, unamended. 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 herein and therein and no Party has relied or is relying on any other information, discussion or understanding in entering into and completing the Transaction. Unless specifically stated otherwise in any Ancillary Agreement, if there is any conflict or inconsistency between the provisions of this Agreement and the provisions of any Ancillary Agreement, the provisions of this Agreement will govern.

14.12 Successors and Assigns.

- (a) This Agreement will become effective when executed by each of the Parties and after that time will be binding upon and enure to the benefit of each Party and its respective successors and permitted assigns.
- (b) Neither this Agreement nor any of the Ancillary Agreements, nor any of the rights or obligations hereunder or thereunder, will be assignable or transferable by a Party without the prior written consent of the other Party.

14.13 Severability.

If any provision of this Agreement or any Ancillary Agreement is determined by an arbitrator or any court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be severed from this Agreement or the Ancillary Agreement, as the case may be, and the remaining provisions will remain in full force and effect. Each of the provisions of this Agreement is hereby declared to be separate and distinct. The Parties shall use Reasonable Efforts to replace the invalid or unenforceable provisions by a valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

14.14 Specific Performance.

The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity. No Party shall have any requirement to post a bond or other security, including security for costs, before it can obtain specific performance of this Agreement. Each party hereby expressly waives any defences it may have in any Action for specific performance, including the defence that monetary damages would be an adequate remedy.

14.15 Governing Law; Attornment.

- (a) This Agreement, the Ancillary Agreements, and all matters arising out of or relating to this Agreement will be governed by and interpreted and enforced in accordance with the Laws of the Province of Alberta and the federal Laws of Canada applicable therein.

- (b) Any Action arising out of or based upon this Agreement, the other Ancillary Agreements or the transactions contemplated hereby or thereby may be brought in the Courts of the Province of Alberta, and each of the Parties irrevocably attorns and submits to the non-exclusive jurisdiction of the Courts of the Province of Alberta. The Parties irrevocably and unconditionally waive any objection to the venue of any Action or proceeding in those Courts and irrevocably waive and agree not to plead or claim in those Courts that such Action has been brought in an inconvenient forum.

14.16 Counterparts.

This Agreement may be executed in any number of counterparts (including counterparts by facsimile, pdf, or other electronic means), each of which shall be deemed to be an original and all of which counterparts taken together will be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Such executed counterparts may be delivered by facsimile transmission or in emailed PDF form or by other electronic means and, when so delivered, shall constitute a binding agreement of the Parties hereto.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the Parties have executed and delivered this Purchase and Sale Agreement.

MAXIM POWER CORP.

Per: (Signed) "Kyle Mitton"
Name: Kyle Mitton
Title CFO & Vice President, Corporate Development

Per: _____
Name:
Title

VALORY RESOURCES INC.

Per: (Signed) "V Wishart"
Name: V Wishart
Title: Executive Co Chair

[Signature page for Purchase and Sale Agreement]

SCHEDULE A
SECURITIES

Part 1 – The Shares – as of the date of the Agreement and Closing

1. The authorized share capital of SCI consists of:
 - a) an unlimited number of Class A Voting Common Shares;
 - b) an unlimited number of Class B Non-Voting Common Shares;
 - c) an unlimited number of Class C Voting Preferred Shares, issuable in series, with the issue price per share of the shares of each series to be fixed by the Board of Directors, without limitation as to the aggregate amount of the consideration for which all Class C Voting Preferred Shares or any series thereof may be issued; and
 - d) an unlimited number of Class D Non-Voting Preferred Shares, issuable in series, with the issue price per share of the shares of each series to be fixed by the Board of Directors, without limitation as to the aggregate amount of the consideration for which all Class D Non-Voting Preferred Shares or any series thereof may be issued.
2. The issued and outstanding shares in the capital of SCI consist of 100 Class A Voting Common Shares represented by Share Certificate No. A-1 registered in the name of Maxim.

Part 2 – The Units – as of the date of the Agreement

1. The authorized unit capital of SCLP consists of an unlimited number of LP Units and 1 GP Unit.
2. The issued and outstanding units in the capital of SCLP are as follows:
 - a) 1 GP Unit represented by Unit Certificate No. GP-1 registered in the name of SCI; and
 - b) 69,171,700 LP Units represented by Unit Certificate No. LP-13 registered in the name of Maxim.

Part 3 – The Units – as of the date of Closing

1. The authorized unit capital of SCLP consists of an unlimited number of LP Units and 1 GP Unit.
2. The issued and outstanding units in the capital of SCLP are as follows:
 - a) 1 GP Unit represented by Unit Certificate No. GP-1 registered in the name of SCI; and
 - b) 69,171,700 LP Units represented by Unit Certificate No. LP-13 registered in the name of Maxim.

SCHEDULE B
SUMMIT COAL LEASES

1. Coal Lease No. 1319090196

Lessee: SCI

Term Commencement Date: September 26, 2019

Term: 15 years

Description of Location:

The subsurface area or areas underlying the surface area of the following tract or tracts of land:

6-08-057: 10N,SE;11;12N;13S,NW;14;23S,NW

2. Coal Lease No. 1319090197

Lessee: SCI

Term Commencement Date: September 26, 2019

Term: 15 years

Description of Location:

The subsurface area or areas underlying the surface area of the following tract or tracts of land:

6-08-057: 15;16N,SE,20S;21;22

3. Coal Lease No. 1319090198

Lessee: SCI

Term Commencement Date: September 26, 2019

Term: 15 years

Description of Location:

The subsurface area or areas underlying the surface area of the following tract or tracts of land:

6-08-057: 27;28;33

4. Coal Lease No. 1312050624

Lessee: SCI. Coal Lease No. 1312050624 held in the name of Milner was transferred to SCI on May 23, 2012 pursuant to Registration No. 1201757.

Term Commencement Date: May 3, 2012

Term: 15 years

Description of Location:

The subsurface area or areas underlying the surface area of the following tract or tracts of land:

6-07-057: 17W;18;19SW

6-08-057: 13NE;23NE;24;25SW;26;34SW,L1,L2,L7,L11,L12;35L3,L4

5. Coal Lease No. 1312050625

Lessee: SCI

Term Commencement Date: May 3, 2012

Term: 15 years

Description of Location:

The subsurface area or areas underlying the surface area of the following tract or tracts of land:

6-08-057: 8E;9;10SW;16SW;17

6. Coal Lease No. 1312050632

Lessee: SCI

Term Commencement Date: May 3, 2012

Term: 15 years

Description of Location:

The subsurface area or areas underlying the surface area of the following tract or tracts of land:

6-10-059: 17-20;29;30;32

SCHEDULE C
SUMMIT CONTRACTS

1. **REDACTED**

SCHEDULE D
SUMMIT PERMITS

REDACTED

SCHEDULE E
SUMMIT PENDING APPLICATIONS

REDACTED

SCHEDULE F
SUMMIT REPORTS

REDACTED

SCHEDULE G
SUMMIT PERMITTED LIENS

REDACTED

SCHEDULE H
MAXIM REQUIRED CONSENTS

1. Consent from ATB Financial in respect of the ATB Loan to be provided in the form of a release or no interest letter.

2. Consent from ATB Financial in respect to: (a) the Lease Agreement (including any registration(s) to be effected against the Leased Lands or mortgaging of the tenant's interests in accordance with the terms thereof); and (b) the issuance of the Convertible Note or the Purchaser Common Shares, as applicable, in satisfaction of a portion of the Purchase Price.

SCHEDULE I
DEVELOPMENT OF THE COAL LEASES

REDACTED

SCHEDULE J
MAXIM DISCLOSURE SCHEDULE

REDACTED

SCHEDULE K
PURCHASER'S REQUIRED CONSENTS

Part 1 – Purchaser Board Approval

1. Consent of the Board of Directors of the Purchaser

Part 2 – Purchaser's Required Consents

None.

SCHEDULE L
SUMMIT BANK ACCOUNTS

Account Holder	Bank	Account Number
Summit Coal Inc.	REDACTED	REDACTED
Summit Coal LP	REDACTED	REDACTED

SCHEDULE M
PURCHASER'S DISCLOSURE SCHEDULE

REDACTED

SCHEDULE N
LANDS

Firstly:

PLAN 2567TR
PLANT SITE ADDITION
CONTAINING 16.774 HECTARES (41.45 ACRES) MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

Secondly:

PLAN 3618RS
PLANT SITE
COMPRISING PARTS OF:
MERIDIAN 6 RANGE 8 TOWNSHIP 58
THEOR SECTIONS: HECTARES (ACRES) MORE OR LESS
N 1/2-10 & S 1/2-15 12.99 32.10
EXCEPTING THEREOUT:
HECTARES (ACRES) MORE OR LESS
A) PLAN 0024924 - SITE 0.765 1.89
(POWER SUBSTATION)
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

Thirdly:

PLAN 8622136
PLANT SITE ADDITION
CONTAINING 0.810 HECTARES, MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

EXHIBIT A
LEASE AGREEMENT

See attached.

MILNER POWER INC.

as Landlord

- and -

REDACTED

as Tenant

GROUND LEASE

[•], 2025

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GROUND LEASE

GROUND LEASE dated as of [●], 2025 between MILNER POWER INC. (the "**Landlord**") and **REDACTED** (the "**Tenant**").

WHEREAS the Landlord is the registered owner of the Lands (as hereinafter defined).

AND WHEREAS the Tenant wishes to lease the Leased Lands (as hereinafter defined) for the purpose of constructing, operating and maintaining the Facility (as hereinafter defined).

NOW THEREFORE in consideration of the sum of ONE (\$1.00) DOLLAR and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The terms defined in this Section 1.1, for all purposes of this Lease unless otherwise specifically provided, have the following meanings:

- (a) "**Additional Rent**" means the amounts, if any, payable by the Tenant which are expressed herein to be added to and made part of Additional Rent, including those amounts set forth in Section 3.3 hereof;
- (b) "**Adverse Environmental Conditions**" means the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release of any Environmental Contaminants from or on to the Leased Lands;
- (c) "**Applicable Laws**" means all federal, provincial, regional, local and municipal statutes, laws including Environmental Laws, by-laws, codes, rules, orders (including court orders) and regulations in effect from time to time during the Term and made or issued by Governmental Authorities having jurisdiction over the parties hereto, the Lands, the Leased Lands, the Leasehold Improvements, the Other Improvements and associated equipment and property or any of these;
- (d) "**Approvals**" means certifications, approvals, permits, authorizations, licences, consents or similar orders issued by one or more Governmental Authorities related to or affecting the Lands, the Leased Lands, the Leasehold Improvements, the Other Improvements, and associated equipment and property or any of these, and in each case, any operations thereon or ancillary thereto, or any part thereof;
- (e) "**Architect**" means the independent architect appointed by the Tenant, and approved by the Landlord, acting reasonably, which architect shall be qualified and licensed in the province of Alberta;
- (f) "**Basic Rent**" as of any particular time means the net basic rental provided for herein as specified in Section 3.2 hereof;
- (g) "**Business Day**" has the meaning set forth in Section 20.1 hereof;

- (h) **"Coal"** has the meaning set out in the Royalty Agreement;
- (i) **"Commencement Date"** has the meaning set forth in Section 2.1 hereof;
- (j) **"CPI"** means the Consumer Price Index, annual, not seasonally adjusted, Product and Product Groups: All-items; Geography: Alberta, Baseline: 2002=100 (Table 18-10-0005-01; formerly CANSIM 326-0020) as reported by Statistics Canada.
- (k) **"Dust Control Handbook"** means the dust control handbook attached as Schedule "E" hereto;
- (l) **"Engineer"** means the independent engineer appointed by the Tenant, and approved by the Landlord, acting reasonably, which engineer shall be qualified and licensed in the province of Alberta;
- (m) **"Entry Environmental Report"** has the meaning set forth in Subsection 21.4(a) hereof;
- (n) **"Entry Environmental Baseline Condition"** has the meaning set forth in Subsection 21.4(a) hereof;
- (o) **"Environmental Contaminants"** means any contaminants, pollutants, hazardous, corrosive or toxic substances, flammable materials, explosive materials, radioactive materials, dangerous goods, microwaves, waste, urea formaldehyde, asbestos, noxious substances, compounds known as chlorobiphenyls, special waste, and any other substance or material the storage, manufacture, disposal, treatment, generation, use, transport, remediation, or release of which into the environment is prohibited, regulated, controlled, or licensed under Environmental Laws;
- (p) **"Environmental Laws"** means any laws, statutes, regulations, orders, bylaws, permits or lawful requirements of any governmental authority with respect to environmental protection, or regulating, controlling, licensing, or prohibiting Environmental Contaminants;
- (q) **"Events of Default"** has the meaning set forth in Section 15.1 hereof;
- (r) **"Exit Environmental Report"** has the meaning set forth in Subsection 21.4(b) hereof;
- (s) **"Extension Term"** has the meaning set forth in Section 22.1 hereof;
- (t) **"Facility"** means, a coal processing facility which will receive and treat the Coal, including a rail off-loading facility which itself may include coal truck dump hoppers, crusher(s), coal stockpiles, reclaim hoppers, power supply and conveyors, to be constructed upon the Leased Lands in accordance with the provisions of this Lease, including without limitation, Article 5 hereof;
- (u) **"Final Site Plan"** means the plan attached as Schedule "B" hereto;
- (v) **"Good Industry Practice"** means the practices, methods and acts that would be adopted at the relevant time by a commercially reasonable and prudent Person undertaking decommissioning and reclamation activities of a similar facility and lands to the Leased Lands and the Leasehold Improvements, under the same or similar circumstances, which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, would have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Industry Practice is not restricted to the optimum or most

expensive practice, method or act to the exclusion of all others, but rather comprises practices, methods or acts generally accepted in the environmental industry;

- (w) "**Governmental Authority**" means any federal, provincial, municipal, county or regional government or governmental authority or other law, regulation or rule making entity, and includes any court, department, commission, bureau, board, administrative agency or regulatory body of any of the foregoing;
- (x) "**GST**" means the goods and services tax payable pursuant to the *Excise Tax Act* (Canada) or such other similar, amended or replacement legislation in force from time to time;
- (y) "**Holdover Period**" has the meaning set forth in Subsection 5.10(c) hereof;
- (z) "**Initial Leasehold Improvements**" means the initial construction and installation of the Facility and all other Leasehold Improvements as are reasonably necessary to enable the Tenant to commence its operations from the Leased Lands;
- (aa) "**Indemnifier**" means VALORY RESOURCES INC.;
- (bb) "**Indemnity Agreement**" means the indemnity agreement attached to this Lease as Schedule "D";
- (cc) "**Landlord's Agents**" means the Landlord's servants, agents, employees, contractors or anyone for whom the Landlord is responsible in law;
- (dd) "**Landlord's Mortgagee**" has the meaning set forth in Section 18.3 hereof;
- (ee) "**Lands**" means those lands legally described in Schedule "A" hereto;
- (ff) "**Lease**" means this lease, including all schedules attached hereto;
- (gg) "**Leased Lands**" means that portion of the Lands shown outlined in black on the Final Site Plan, being approximately (4.60) hectares (11.37 acres);
- (hh) "**Leasehold Improvements**" means the Facility and any other improvements to the Leased Lands from time to time constructed upon the Leased Lands by or for the benefit of the Tenant;
- (ii) "**Maxim**" means Maxim Power Corp.;
- (jj) "**Mortgage**" means a mortgage or mortgages upon or in respect of and specifically charging the leasehold interest of the Tenant in the Leased Lands and the Leasehold Improvements or any part thereof and includes any debenture or deed of trust and mortgage to secure any bonds or debentures issued thereunder, and any assignment of rents made to the Mortgagee as security;
- (kk) "**Mortgagee**" means a mortgagee or mortgagees under a Mortgage;
- (ll) "**Non-Modular Improvements**" means the Leasehold Improvements excluding the Removable Equipment and Modular Improvements;
- (mm) "**Other Improvements**" means all improvements to the Lands other than the Leasehold Improvements;

- (nn) **"Person"** or any word or expression descriptive of a person, includes any body corporate and politic, the heirs, executors, administrators, or other legal representatives of such person;
- (oo) **"Prime Rate"** means the prime lending rate of interest for any day expressed as a rate per annum which the Royal Bank of Canada establishes for that day as the reference rate of interest in order to determine interest rates it will charge for commercial loans in Canadian dollars to its Canadian customers as the same may fluctuate and change from time to time;
- (pp) **"Quarter"** means a calendar quarter;
- (qq) **"Quarterly Variable Throughput Reconciliation Payment"** has the meaning set forth in Subsection 3.2(e) hereof;
- (rr) **"Quarterly YTD Variable Throughput Payment Amount"** has the meaning set forth in Subsection 3.2(d) hereof;
- (ss) **"Real Property Taxes"** means all real estate taxes, local improvement rates, school taxes, levies, rates, duties, assessments and charges from time to time imposed against real property, buildings and structures and improvements by Governmental Authorities having jurisdiction, sales or other like taxes and all taxes, levies, rates, duties, assessments and charges which may at any time be substituted therefor or replace the same;
- (tt) **"Remediation Baseline Report"** has the meaning set forth in Subsection 21.5(a) hereof;
- (uu) **"Removable Equipment and Modular Improvements"** means those of the Leasehold Improvements consisting of equipment and modular improvements which, in each case, are located above ground and above concrete foundations and shall include, the wash plant, conveyors, and bins;
- (vv) **"Rent"** means Basic Rent and Additional Rent, and all other amounts payable hereunder by the Tenant to the Landlord excepting Sales Taxes;
- (ww) **"Review Period"** has the meaning set out in Section 4.10(b) hereof;
- (xx) **"Road Use and Access Agreement"** means the Road Use and Access Agreement attached as Schedule "C" hereto;
- (yy) **"Royalty Agreement"** means the royalty agreement dated [●], 2025 between Maxim and the Tenant in respect of certain royalties and other payments payable to Maxim;
- (zz) **"Sales Taxes"** has the meaning set out in Section 4.3 hereof;
- (aaa) **"Substantially Completed"** the Facility shall be deemed to be Substantially Completed when the Architect or Engineer of the Tenant has issued a certificate to the Landlord, signed and sealed by the Architect or Engineer, certifying that: (i) the Facility is substantially complete in all material respects in a proper and workmanlike manner and in accordance with the applicable plans, specifications, and supporting documents submitted to and accepted by the Landlord upon which the issuance, by the Governmental Authorities having jurisdiction of any development permit and building permits for the Facility has been based, except for deficiencies the correction of which, in the opinion of the Architect or Engineer, is adequately ensured; (ii) all building bylaws and regulations of the Governing Authorities having jurisdiction have been complied with by the Tenant

except for deficiencies the correction of which, in the opinion of the Architect or Engineer, is adequately ensured; (iii) all permits for occupancy and operation which may be required by the Governing Authorities having jurisdiction, or otherwise, have been obtained; and (iv) the Facility is ready for occupancy and use;

- (bbb) **"Tenant's Agents"** means the Tenant's servants, agents, employees, contractors or anyone for whom the Tenant is responsible in law;
- (ccc) **"Tenant's Remediation Work"** has the meaning set forth in Subsection 21.1(f) hereof;
- (ddd) **"Tenant's Remediation Work Quote"** has the meaning set forth in Subsection 21.5(a) hereof;
- (eee) **"Tenant's Remediation Work Security"** has the meaning set forth in Subsection 21.5(c) hereof;
- (fff) **"Tenant's Security Deposit"** has the meaning set forth in Section 4.6 hereof;
- (ggg) **"Term"** means the means the initial term of this Lease set forth in Section 2.1 hereof;
- (hhh) **"Trustee"** means a trust company duly authorized to carry on business in the Province of Alberta appointed by the Landlord for the purposes of Article 7;
- (iii) **"Updated Remediation Budget Report"** has the meaning set forth in Subsection 21.5(b) hereof;
- (jjj) **"Variable Throughput Payment"** means the total amount for any applicable period calculated by multiplying the total metric tonnes of raw coal received at the Leased Lands during such period by the Variable Throughput Rate; and
- (kkk) **"Variable Throughput Rate"** means the amount of **REDACTED** per metric tonne of raw coal that is received at the Leased Lands. The Variable Throughput Rate will be subject to adjustment in accordance with Subsection 3.2(g) hereof.

1.2 Interpretation

- (a) All of the provisions of this Lease shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants or conditions were used in each separate section hereof.
- (b) The words "herein", "hereby", "hereunder", and words of similar import refer to this Lease as a whole, including all schedules, and not to any particular article, section, or subsection of the Lease.
- (c) The captions and headings throughout this Lease are for convenience and reference only and the words and phrases used in the captions and headings shall in no way be held or deemed to define, limit, describe, explain, modify, amplify, or add to the interpretation, construction, or meaning of any section or the scope or intent of this Lease, nor in any way affect this Lease.
- (d) The necessary grammatical changes required to make the provisions of this Lease apply in the plural where a party comprises more than one entity and to corporations, associations, partnerships or individuals will be assumed in all cases as though in each case they were fully expressed.

ARTICLE 2 DEMISE AND TERM

2.1 Grant of Lease

The Landlord does hereby lease and demise to the Tenant, and the Tenant does hereby lease from the Landlord, the Leased Lands for a term of **REDACTED** commencing on the date of this Lease (the "**Commencement Date**") until [•] (the "**Term**") in exchange for the payment of Rent by the Tenant and subject to the covenants, terms and conditions hereof. **[NTD – Update to reflect closing date.]**

2.2 Termination of Lease – Substantial Completion

Notwithstanding anything to the contrary contained herein, in the event that the Facility is not Substantially Completed on or before the **REDACTED** of the Commencement Date, this Lease shall automatically terminate and the Tenant shall thereupon surrender the Leased Lands to the Landlord in accordance with the terms and conditions of this Lease, including the Tenant's remediation obligations set out in Section 21.1(f) hereof.

2.3 Termination of Lease – Tenant Option

The Tenant may terminate this Lease at any time prior to the expiry of the Term by providing written notice to the Landlord (the "**Tenant Termination Notice**") in respect of its election to terminate the Lease. The Lease shall terminate on the date that is **REDACTED** following delivery of the Tenant Termination Notice to the Landlord and thereupon, the Tenant shall surrender the Leased Lands to the Landlord in accordance with the terms and conditions of this Lease, including the Tenant's remediation obligations set out in Section 21.1(f) hereof.

2.4 Access Over, Maintenance and Repair of Lands

The Tenant shall be entitled to use, and shall have non-exclusive access to, any existing or future roads located on the Lands, as may be reasonably necessary for vehicular access to and from the Leased Lands, provided that any such use and access shall be in accordance with the Road Use and Access Agreement attached hereto as Schedule "C" (which the Tenant shall execute and deliver concurrently with the Lease and from time to time upon request by the Landlord) and shall not interfere with the Landlord's or any other occupant's use and enjoyment of the balance of the Lands, including without limitation, the operation of the power plant situate thereon and the Other Improvements.

2.5 Utilities

All issues and matters (including any and all costs and expenses associated therewith) related to or in any way connected with: (a) utilities and/or services; or (b) the provision thereof to the Leased Lands or the Leasehold Improvements, shall be the sole and exclusive responsibility of the Tenant. The parties, each acting reasonably, shall cooperate to establish a utility right-of-way over the Lands to the extent necessary to provide utilities to the Leased Lands (the "**Utility Right-of-Way**"), provided that the Utility Right-of-Way shall be in a location so as to minimize any adverse impact on the Landlord's or any other occupant's use and enjoyment of the balance of the Lands, including without limitation, the operation of the power plant situate thereon and the Other improvements. Upon request by the Landlord, the Tenant shall promptly execute and return the Landlord's form of right-of-way agreement which shall govern the parties' rights and obligations with respect to the Utility Right-of-Way.

**ARTICLE 3
PAYMENT OF RENT**

3.1 Rent

The Landlord reserves and the Tenant covenants and agrees to pay to the Landlord during the Term as rent when due and payable hereunder, each of the following:

- (a) Basic Rent; and
- (b) Additional Rent.

If the Term commences or ceases on a day other than the first or last day of a month or calendar year, the monthly or annual instalment of Basic Rent and Additional Rent (as the case may be) for such month or calendar year, as applicable, shall be determined on a per diem basis.

3.2 Basic Rent

- (a) The Tenant shall pay to the Landlord as basic rent (plus GST) for each calendar year during the Term (or the applicable portion thereof with respect to the first and last calendar years of the Term) and every extension thereof the greater of:
 - i. **REDACTED** Dollars per annum (the "**Fixed Rent**"); and
 - ii. the Variable Throughput Payment for such calendar year;

(the "**Basic Rent**"), at the times and in the manner set out in this Section 3.2.

- (b) The Fixed Rent (plus GST) shall be payable by the Tenant in advance commencing on the Commencement Date and thereafter on or before January 1st of each year during the Term.
- (c) The Variable Throughput Payment shall be paid in accordance with Subsections 3.2(d) and 3.2(e) hereof.
- (d) No later than ten (10) days following the end of each Quarter during the Term, the Tenant shall provide the Landlord with:
 - (i) **REDACTED** and
 - (ii) **REDACTED**

- (e) Following the delivery of a statement referenced in Subsection 3.2(d)(ii), the Tenant shall pay to the Landlord **REDACTED**
- (f) If the Term commences or ceases on a day other than the first or last day of a calendar year, the annual installment of Fixed Rent for such calendar year shall be prorated or calculated on a per diem basis (as applicable) and the provisions of Section 3.2 shall apply to such partial calendar year *mutatis mutandis*. For the calendar year in which the Lease expires or is otherwise terminated, the adjustment to Basic Rent described in Section 3.2(e) shall occur following the expiration or earlier termination of the Lease.
- (g) The Fixed Rent and the Variable Throughput Rate shall be subject to an annual increase on January 1 of each year based on the annual percentage change, if positive, in the CPI over the previous calendar year. If the table or index referenced in the definition of "CPI" is discontinued or replaced by another table or index, the parties will agree on a substitute table or index (as the case may be) and the adjustment will be based on that table or index. If the parties cannot agree on a substitute table or index (as the case may be), the adjustment will be based on the most closely related table or index available. The parties acknowledge and agree that the first adjustment to Fixed Rent and the Variable Throughput Rate as aforesaid will occur on January 1, 2026 for the 2025 calendar year, notwithstanding that the Lease: (i) may not have commenced or may not have been executed by January 1, 2025; or (ii) may have only been in effect for a portion of the 2025 calendar year.

3.3 Additional Rent

The Tenant covenants to pay the Landlord, or to applicable third parties as the case may be, all charges, expenses, payments, taxes, levies, assessments or costs of every nature and kind whatsoever which in any way relate to the Leased Lands or the Leasehold Improvements or as required to be paid by the Tenant pursuant to any provision of this Lease including, without limiting the foregoing:

- (a) REDACTED
- (b) REDACTED
- (c) REDACTED
- (d) REDACTED
- (e) REDACTED
- (f) REDACTED

provided that the Tenant shall not be responsible for: (i) **REDACTED** or (ii) **REDACTED**.

The Landlord shall have the right to make reasonable estimates of the amount of any or all items of Additional Rent for any period, which amounts shall be reconciled within a reasonable period of time following the end of any such period. Unless otherwise stipulated by the Landlord, any estimated amounts of Additional Rent shall be payable in advance in consecutive monthly instalments on the first day of each and every month in each and every year of the Term, commencing on the Commencement Date and continuing until and including the first day of the month in which the Expiry Date falls. With respect to any items of Additional Rent which the Landlord does not estimate in accordance with this Section 3.3, unless otherwise set out herein or payable by the Tenant directly to the applicable third party, such amounts will be paid by the Tenant to the Landlord within thirty (30) days of the Landlord providing an invoice in respect thereof.

3.4 Payments to Constitute Rent

All the payments set out in this Article 3 shall constitute Rent and shall be deemed to be and shall be paid as rent, without any deduction abatement or set-off whatsoever, whether or not any payment is payable to the Landlord or otherwise and whether or not as compensation to the Landlord for expenses to which it has been put. In the event of non-payment or late payment thereof, the Landlord shall have the same remedies as it is entitled to under this Lease and by law for non-payment of rent. If any such payments are also due to third parties, the Landlord shall have the right to make such payments to the third parties and the Tenant shall promptly reimburse the Landlord for such payments, as Additional Rent. The obligation of the Tenant to pay any of the rents or other amounts expressed to be payable the Tenant pursuant to this Lease (including, without limitation, Basic Rent and Additional Rent) owing or accrued but unpaid at the end of the Term shall survive the expiration of the Term or sooner termination of this Lease.

3.5 Net Lease

It is the intention of the parties that this Lease shall be a net lease and that the Basic Rent provided to be paid to the Landlord hereunder shall be net to the Landlord and shall yield to the Landlord the entire such rental during the Term and any extension thereof without abatement for any cause whatsoever except as may be set forth herein. Save as specifically set forth in this Lease, all costs, expenses, and obligations of every kind and nature whatsoever relating to the Leased Lands, the Leasehold Improvements or the use of the Lands by the Tenant, whether or not herein referred to and whether or not of a kind now existing or within the contemplation of the parties, shall be paid by the Tenant.

3.6 Interest on Amounts in Arrears

When the Rent shall be in arrears, such amounts shall bear interest, including interest on overdue interest, at the **REDACTED** per annum calculated monthly not in advance from the date due until paid, irrespective of whether or not the Landlord demanded payment. The Landlord shall have all the remedies for the collection of such interest, if unpaid after demand, as in the case of Rent in arrears, but this stipulation for interest shall not prejudice or affect any other remedy of the Landlord under this Lease. If a court declares or holds the Prime Rate to be void or unenforceable for any reason including uncertainty, then the rate of interest payable on amounts in arrears hereunder shall be **REDACTED** per annum calculated monthly not in advance from the date due until paid.

ARTICLE 4 ADDITIONAL TENANT COVENANTS

4.1 Payment of Real Property, Business and Other Taxes

The Tenant agrees to pay all Real Property Taxes assessed or attributable to the Leased Lands or the Leasehold Improvements as determined by the Landlord, acting reasonably, and all taxes with respect to the business of the Tenant carried on upon or within the Leased Lands and the Leasehold Improvements and any franchise or other tax with relation to such business as and when such taxes become due and payable including, without limitation, all floor space taxes in the nature of business taxes and all taxes levied on the improvements, equipment, machinery or fixtures upon or within the Leased Lands and the Leasehold Improvements.

4.2 Payment of Utility Services

The Tenant covenants with the Landlord to pay for or cause to be paid when due to the providers thereof all charges for gas, electricity, light, heat, power, telephone, cable, water, compressed air and any and all other utilities and services used in or supplied to the Leased Lands and the Leasehold Improvements throughout the Term, and will indemnify and keep indemnified the Landlord from and against payment of all losses, costs, charges, and expenses occasioned by or arising from any and all such charges, and any such loss, costs, charges, and expenses which relate to such charges suffered by the Landlord may be collected by the Landlord as Additional Rent.

4.3 Goods and Services Tax

Notwithstanding any other provision contained in this Lease to the contrary, the Tenant shall pay to the Landlord an amount equal to any and all GST, sales taxes, value added taxes, business transfer taxes or any other taxes imposed on the Landlord with respect to Rent payable by the Tenant under this Lease, or in respect of the leasing of the Leased Lands under this Lease, whether characterized as a goods and services tax, sales tax, value added tax, business transfer tax or otherwise (collectively, the "**Sales Taxes**"), it being the intention of the parties that the Landlord shall be fully reimbursed by the Tenant with respect to any and all Sales Taxes payable by the Landlord. Notwithstanding any other provision contained in this Lease to the contrary, the amount payable by the Tenant under this Section 4.3 shall be deemed not to be rent but the Landlord shall have all of the same remedies for and rights of recovery of such amount as it has for recovery of Rent under this Lease.

4.4 Tenant's Share

Wherever any tax, charge or other amount which the Tenant is responsible for under this Lease is assessed against the Lands only and not specifically against the Leased Lands or the Leasehold Improvements, then the Landlord, acting reasonably, shall apportion such tax, charge or other amount among the Lands, the Leased Lands, the Leasehold Improvements and the Other Improvements and the Tenant shall be responsible to pay as Additional Rent, and otherwise in the manner as provided for in this Article 4, all those amounts so apportioned to the Leased Lands and the Leasehold Improvements as if such amounts were assessed against the Leased Lands or the Leasehold Improvements directly.

4.5 Authority to Lease

The Tenant covenants with the Landlord that it now has in itself good right, full power, and authority to lease the Leased Lands from the Landlord in the manner and according to the true intent of this Lease.

4.6 Indemnity Agreement

The Tenant shall cause the Indemnifier to execute and deliver the Indemnity Agreement concurrently with the execution of this Lease.

4.7 Additional Security

The Tenant shall be responsible for posting and maintaining such security as may be requested or required by any Governmental Authority or third party who has a legal right, entitlement or authority to require such security, from the Landlord, Maxim, the Tenant, or otherwise from time-to-time in connection with or in any way related to the Leased Lands (including, the reclamation or remediation of the Leased Lands) or the Tenant's use and occupation thereof and/or the construction, ownership, operation, repair and maintenance of the Leasehold Improvements, including, without limitation, any security required to be provided by the Landlord or Maxim to the Balancing Pool or Alberta Environment in connection with the Tenant's operations or proposed operations on the Leased Lands.

4.8 Observance of Regulations

The Tenant covenants with the Landlord that, notwithstanding any other provision of this Lease to the contrary, throughout the Term the Tenant will comply with all permitting conditions, Applicable Laws and Approvals affecting the Leased Lands, the Tenant's operations on the Leased Lands, the Leasehold Improvements and the Tenant's use thereof.

4.9 Quantification of Variable Throughput Payment

- (a) All raw coal entering the Leased Lands shall be weighed by the Tenant, at its sole cost and expense, in accordance with good industry practice and standards or as otherwise agreed between the parties, calculated in its unprocessed state, prior to washing or other forms of processing. The Landlord or its designate may be present at such measuring.
- (b) The Tenant shall ensure that all scales used for weighing raw coal produced from the Lands, are correctly certified, inspected, operated and maintained in accordance with good coal mining industry standards and applicable law. The accuracy and performance of scale equipment shall be verified at an interval frequency consistent with industry standards, not greater than every three (3) months, and the results of such verification tests shall be retained by the Tenant and shared with the Landlord upon request.
- (c) All scales and measuring equipment used in connection with weighing the raw coal shall be open to inspection and verification at reasonable times by the Landlord. If the Landlord questions the accuracy of any measurement, any scale and measuring equipment shall be tested upon request of the Landlord, and if found to be correct, or to be in error of not more than one percent (1%), the expense of such testing shall be borne by the Landlord, but the expense of such testing shall be for the Tenant's account if found to be incorrect by more than one percent (1%).
- (d) If, upon any test, a scale or measuring equipment is found to be in error of not more than one percent (1%), previous readings of such equipment shall be considered correct in computing the volumes being metered, but such equipment shall be adjusted properly at once to record accurately. If upon any test, measuring equipment shall be found to be inaccurate by a known amount exceeding one percent (1%), then any previous readings of such equipment shall be corrected to zero error for any period which is known definitely or agreed upon, but in case the period is not

known definitely or agreed upon, such correction shall be for a period covering the last half of the time elapsed since the date of the last test of such measuring equipment.

4.10 Accounting Matters.

- (a) Tenant shall, from and after the date hereof, keep and maintain true and correct books, records and accounts showing the tonnage of raw coal received on the Leased Lands, and other records, as appropriate, related to the determination of any matter referenced in Section 3.2(d) and (e), including the Variable Throughput Payment, for the minimum period required by applicable laws or for two (2) years plus the current year for audit purposes, whichever is longer.
- (b) Any Quarterly Variable Throughput Reconciliation Payment made hereunder shall be considered final and in full satisfaction of all obligations of the party required to make such payment unless within twenty-four (24) months (the "Review Period") after the receipt by the Landlord of the last quarterly statement described in Subsection 3.2(d)(ii) for the applicable calendar year, the Landlord provides a written notice of its objection (describing in detail the specific objection and its basis therefor) to the Tenant.
- (c) Upon not less than thirty (30) business days' prior written request within the Review Period, from the Landlord, duly authorized representatives of the Landlord or the Landlord's chartered accountants shall be entitled, at the Landlord's cost and expense, to inspect and audit such books of account, records and supporting materials related to any matters referenced in Sections 3.2(d) and 3.2(e), including, the determination of the Variable Throughput Payment, any Quarterly Variable Throughput Reconciliation Payment or otherwise confirming the rights and obligations of the Landlord and the Tenant hereunder.
- (d) Any discrepancies disclosed by such audit shall be identified in writing to the Tenant within sixty (60) days following the completion of such audit, and the Tenant shall respond in writing to any claims or discrepancies within sixty (60) days of the receipt of such notice of claim or discrepancies. If the Tenant does not respond in such sixty (60) day period, a credit for the disputed amount shall be deemed to be made in favour of the Landlord.
- (e) To the extent that the Tenant and the Landlord are unable to resolve any outstanding claims or discrepancies disclosed by such audit within thirty (30) days of the response of the Tenant, such audit exceptions shall be resolved by a nationally or internationally recognized firm of chartered accountants as may be selected by the Tenant and the Landlord, which shall be requested to render its decision without qualifications, other than the usual qualifications relating to engagements of this nature, within fourteen (14) days after the dispute is referred to it.
- (f) The decision of the accounting firm shall be final and binding upon the parties and shall not be subject to appeal by any party. The costs and expenses of the accounting firm shall be borne by the unsuccessful party to any dispute referred to dispute resolution pursuant to this Section 4.10. Notwithstanding the foregoing audit period limitation, the Landlord's audit rights under this Section 4.10, shall be extended for the time period, and in respect of those books, records and accounts, as may be reasonably necessary to permit the Landlord to verify refunds or payments to be received or made by it pursuant to this Lease.

4.11 Right to Inspect.

Upon not less than five (5) days' notice to the Tenant, the Landlord or its authorized representatives may enter upon the Leased Lands (subject to complying with all of the Tenant's policies

and procedures relating to access to the Leased Lands), to inspect and copy all records and data pertaining to any matters referenced in Sections 3.2(d) and 3.2(e), including, the determination of the Variable Throughput Payments, Quarterly YTD Variable Throughput Payment Amounts and Quarterly Variable Throughput Reconciliation Payments, and further including such records and data which are maintained electronically. The Landlord or its authorized representatives shall enter the Leased Lands at its own risk and may not unreasonably hinder operations on or pertaining to the Leased Lands.

ARTICLE 5 LEASEHOLD IMPROVEMENTS

5.1 Construction of Leasehold Improvements

- (a) All construction and installations, including without limitation, alterations, improvements, replacements, substitutions and additions, made by the Tenant from time to time on the Leased Lands: (i) shall be performed at the Tenant's sole cost and in accordance with all Approvals, Applicable Laws and this Lease; and (ii) shall not commence without the Tenant first having: (A) submitted to the Landlord and Maxim, at least sixty (60) days in advance of any construction or installations, such drawings, plans and specifications as the Landlord or Maxim may reasonably require; and (B) obtained the prior written approval of the Landlord and Maxim in respect of any such construction or installations (including, the Landlord's and Maxim's approval of the drawings, plans and specifications provided in Subsection 5.1(a)(ii)(A)), such approval not to be unreasonably withheld. The Tenant shall, upon the request of the Landlord from time to time, provide the Landlord with such drawings, plans and specifications as the Landlord may reasonably require to monitor compliance of the Tenant with its obligations under this Section 5.1.
- (b) Following completion of the Initial Leasehold Improvements, the Tenant shall not make any Leasehold Improvements to the Leased Lands without first complying with Section 5.1(a).
- (c) Upon the request of the Landlord from time to time, the Tenant shall provide:
 - (i) structural, electrical, mechanical, telecommunication, utility or other similar or applicable plans, including details as to materials, elevation, location and tie-ins to any existing infrastructure or improvements on the Lands (if applicable) of the proposed or constructed Leasehold Improvements;
 - (ii) performance and payment bonds as well as proof of workers compensation, all risks, builders' risk, and contractors' public liability and property damage insurance coverage, with the Landlord to be named as an additional insured, in amounts, with insurers and in form reasonably satisfactory to the Landlord, which shall remain in effect during the entire period in which the construction of Leasehold Improvements will be carried out;
 - (iii) a complete list identifying every contractor and sub-contractor, accompanied by an up-to-date valid clearance certificate for each of them issued by the Governing Authorities having jurisdiction; and
 - (iv) a copy of the contract for the construction of the Leasehold Improvements and evidence satisfactory to the Landlord as to the existence of all necessary permits and approvals.
- (d) The Landlord may inspect the construction of the Leasehold Improvements as it proceeds.

- (e) If the Tenant fails to observe any of the requirements of this Article 5, the Landlord may, in addition to any other remedy available to it pursuant to this Lease or otherwise, require that construction of Leasehold Improvements stop and that the Leased Lands be restored to their prior condition.
- (f) Notwithstanding any approval by or notice to the Landlord or the submission of any drawings, plans and specifications pursuant to this Article 5 or otherwise, the Tenant shall be solely responsible for the sufficiency of its Leasehold Improvements for its purposes and for compliance with its obligations under this Lease, including without limitation compliance of any construction or installations with all Approvals, Applicable Laws and this Lease.
- (g) The Tenant shall work diligently and use reasonable efforts to complete the construction and installation of the Initial Leasehold Improvements as soon as is reasonably practicable following Commencement Date.

5.2 Approvals, Access Rights, Rights of way, Easements

The Tenant shall be responsible for obtaining, at its sole cost and expense, any and all approvals, permits, authorizations, licences, consents, access rights, rights of way, easements and all other required or desirable rights, from any Governmental Authorities or other third party Persons, required pursuant to all Applicable Laws or otherwise, in connection with the construction, alteration, replacement, substitution and addition of any Leasehold Improvements and the operation, repair and maintenance of the Leased Lands and the Leasehold Improvements.

5.3 Liens

The Tenant shall pay before delinquency all costs for work done upon or within the Leased Lands which could result in any lien or encumbrance on the Lands, shall keep the title to the Lands free and clear of any lien or encumbrance and shall indemnify and hold harmless the Landlord from and against any claim, loss, cost, demand and legal or other expense, whether in respect of any lien or otherwise, arising from the supply of material, services or labour for such work or otherwise. The Tenant shall immediately notify the Landlord of any such lien or encumbrance of which it has or reasonably should have knowledge, and shall cause the same to be removed or vacated within five (5) days failing which the Landlord may take such action as the Landlord deems necessary to remove or vacate the same and the Tenant shall pay to the Landlord on demand the entire cost thereof plus an administration fee of fifteen percent (15%) of such cost.

5.4 Ownership of Leasehold Improvements

The parties agree that, save and except as otherwise set out herein, the Tenant shall own the Leasehold Improvements notwithstanding any rule or law as to the immediate vesting of the title to and ownership of the Leasehold Improvements in the Landlord as owner of the Lands. The title to and ownership of the Leasehold Improvements shall not pass to or become vested in the Landlord except on the expiration or earlier termination of this Lease, in which case all or a portion of the Non-Modular Improvements shall, at the election of the Landlord, in its sole discretion, become the absolute property of the Landlord. If the Lease is terminated as a result of an Event of Default, then at the election of the Landlord, in its sole discretion, all or a portion of the Leasehold Improvements (including, the Removable Equipment and Modular Improvements) shall become the absolute property of the Landlord.

5.5 Maintenance and Repair

Throughout the Term the Tenant shall, at its sole cost and expense, keep and maintain the Leased Lands and the Leasehold Improvements, in good condition and repair to the same extent as would

a reasonably prudent owner, and in compliance with all Approvals, Applicable Laws and this Lease. For clarity, the Landlord shall not be obliged to furnish any services or facilities or to make repairs or alterations in or to the Leased Lands or the Leasehold Improvements, the Tenant hereby assuming the full and sole responsibility for the condition, operation, repair, replacement, maintenance, and management of the Leased Lands and the Leasehold Improvements.

5.6 Repairs by Landlord

If at any time during the Term the Tenant fails to maintain and repair the Leased Lands and the Leasehold Improvements in the condition required by the provisions of Section 5.5, the Landlord through its agents, servants, contractors, and subcontractors may, but shall not be obliged, to enter upon those parts of the Leased Lands and the Leasehold Improvements required for the purpose of maintaining or making the repairs required by Section 5.5. The Landlord will maintain or make such repairs, only after giving the Tenant thirty (30) days' written notice of its intention to do so, except in the case of an emergency when no notice to the Tenant is required. Any amount paid by the Landlord in maintaining or making such repairs to the Leased Lands and the Leasehold Improvements or any part or parts thereof, together with all costs and expenses of the Landlord, shall be reimbursed to the Landlord by the Tenant on demand plus a 15% administration fee together with interest at the rate set forth in Section 3.6.

5.7 Replacement, Changes, Alterations and Substitutions

The Tenant shall not make or permit to be made any alterations, replacements, substitutions, or additions affecting the Leasehold Improvements and/or the Leased Lands unless it complies with the terms, conditions and obligations set forth in this Article 5.

5.8 Tenant Not to Commit Waste or Injury

The Tenant shall not commit or suffer waste to the Leased Lands or any part thereof.

5.9 Suppression of Fugitive Dust

The Tenant covenants and agrees to comply with the provisions of the Dust Control Handbook and otherwise utilize its reasonable efforts to minimize any fugitive dust arising as a result of its use and occupation of the Leased Lands or its exercise of any access or other rights provided for herein, it being acknowledged by the Tenant that such fugitive dust may detrimentally affect surrounding landowners and occupants. The Tenant must comply with all permitting conditions relating to its use of the Leased Lands and the Leasehold Improvements and its operations, including any permitting conditions relating to dust suppression and the Landlord, acting reasonably, may review and approve the Tenant's dust mitigation plans.

5.10 Removal of Leasehold Improvements

- (a) (i) Subject to Subsection 5.10(a)(ii), on the expiration of the Term or earlier termination of this Lease, the Tenant shall, at the option of the Landlord, in its sole discretion: (A) leave the Non-Modular Improvements (or those of the Non-Modular Improvements as the Landlord may direct) on the Leased Lands in the condition and state of repair that the Tenant was required to maintain the Leasehold Improvements in hereunder, reasonable wear and tear only excepted; or (B) at its sole cost and expense, subject to and in accordance with the terms of this Lease, dismantle and remove from the Leased Lands all Non-Modular Improvements (or those of the Non-Modular Improvements as the Landlord may direct) and any other assets or things owned by the Tenant (including, the Removable Equipment and Modular Improvements) or brought onto the Leased

Lands by the Tenant or its employees, officer, directors, contractors, subcontractors, agents and representatives, together with the repair of any damage to the Leased Lands in connection with such dismantling or removal, all at least to the condition thereof as at the Commencement Date, and the Tenant shall vacate and surrender the Leased Lands to the Landlord.

- (ii) Upon a termination of this Lease as a result of an Event of Default, the Tenant shall, at the option of the Landlord, in its sole discretion: (A) leave all Leasehold Improvements (or those of the Leasehold Improvements as the Landlord may direct) on the Leased Lands in the condition and state of repair that the Tenant was required to maintain the Leasehold Improvements in hereunder, reasonable wear and tear only excepted; or (B) at its sole cost and expense, subject to and in accordance with the terms of this Lease, dismantle and remove from the Leased Lands all Leasehold Improvements (or those of the Leasehold Improvements as the Landlord may direct) and any other assets or things owned by the Tenant or brought onto the Leased Lands by the Tenant or its employees, officer, directors, contractors, subcontractors, agents and representatives, together with the repair of any damage to the Leased Lands in connection with such dismantling or removal, all at least to the condition thereof as at the Commencement Date, and the Tenant shall vacate and surrender the Leased Lands to the Landlord.
- (b) Upon the expiration of the Term or earlier termination of the Lease, the Tenant shall, as the Landlord may direct, be responsible for the decommissioning, reclamation, restoration, mitigation and other similar obligations and liabilities arising under all Approvals, Applicable Laws and this Lease in respect of the Leased Lands and the Leasehold Improvements (the "**Decommissioning and Reclamation Obligations**"), all at least to the condition thereof as at the Commencement Date. The Tenant shall, at its sole cost and expense, conduct all activities required to be undertaken to discharge the Decommissioning and Reclamation Obligations in accordance with the standards required by the Approvals, Applicable Laws (including, without limitation, the standards required by Environmental Laws), this Lease and Good Industry Practice.
- (c) The Tenant shall carry out the Decommissioning and Reclamation Obligations and the Tenant's Remediation Work in accordance with the terms and conditions contained herein, without delay and as expeditiously as reasonably possible and if necessary, shall have a period of up to **REDACTED** from the date of expiration or termination of this Lease (the "**Holdover Period**") to occupy and use the Leased Lands solely for such purposes, provided that, if the Tenant completes the performance of said obligations in accordance with this Lease on a date earlier than **REDACTED** after expiration or termination of this Lease, then the Holdover Period shall be deemed to have ended on such earlier date.
- (d) If the Tenant defaults in its obligation to remove any or all of the Leasehold Improvements and any other assets or things owned by the Tenant or brought onto the Leased Lands by the Tenant or its employees, officer, directors, contractors, subcontractors, agents and representatives, then, in addition to any other rights or remedies of the Landlord, and without limiting the Tenant's obligations under this Section:
- (i) the Landlord may elect to treat any or all of the Leasehold Improvements and any other assets or things owned by the Tenant or brought onto the Leased Lands by the Tenant or its employees, officer, directors, contractors, subcontractors, agents and representatives as having been abandoned and, if the Landlord so elects, such Leasehold Improvements and other assets or things in respect of which such election was made shall automatically become the property of the Landlord without further action or consideration by the Landlord; and

- (ii) the Landlord may (but shall not be obligated to) remove any or all of such Leasehold Improvements and any other assets or things owned by the Tenant or brought onto the Leased Lands by the Tenant or its employees, officer, directors, contractors, subcontractors, agents and representatives at the Tenant's expense, in which event the Landlord shall have no liability to the Tenant for any consequences of such removal and shall have no obligation to account to the Tenant for any proceeds of disposition of such Leasehold Improvements and other assets or things.
- (e) The provisions of this Section shall survive the expiry or earlier termination of this Lease.

ARTICLE 6 PERMITTED USE

6.1 Permitted Use

- (a) The Tenant covenants and agrees with the Landlord that neither the Leased Lands, nor any part of thereof, shall be used for any purposes except for the development, construction, operation and maintenance of the Facility, the stockpile storage of the Coal, the decommissioning and removal of the Leasehold Improvements, the performance of the Decommissioning and Reclamation Obligations and the remediation of the Leased Lands to the extent required pursuant to this Lease, and such activities as are reasonably incidental or ancillary thereto, in all cases, as would a reasonably prudent owner and operator of a similar Facility and in accordance with the terms and provisions of this Lease, and that such use shall not cause any interference with the Landlord's or any other occupant's use and occupation of the balance of the Lands, including without limitation, the operation of the power plant situate thereon and the Other Improvements. Notwithstanding anything to the contrary contained herein, unless otherwise agreed to by the Landlord, in its sole discretion, the Tenant acknowledge and agree that the Leased Lands and the Facility shall not be used to receive, treat, process, store or otherwise handle any coal other than the Coal.
- (b) The Tenant shall deliver to the Landlord, on the Commencement Date the sum of **REDACTED** (the "**Impact Deposit**") which amount shall be held by the Landlord without interest and dealt with in accordance with this Subsection 6.1(b).
 - i. If after one (1) year of Commercial Production (as defined in the Royalty Agreement) the parties, each acting reasonably, determine that the Landlord's operations on or use and enjoyment of the Lands (other than the Leased Lands) is adversely impacted by the Tenant's operations on or use of the Lands, then all or a portion of the Impact Deposit will be used to mitigate such adverse impact in the most cost-effective way possible as agreed to by the parties, each acting reasonably.
 - ii. If after one (1) year of Commercial Production (as defined in the Royalty Agreement) the parties, each acting reasonably, determine that the Landlord's operations on or use and enjoyment of the Lands (other than the Leased Lands) is not adversely affected by the Tenant's operations on or use of the Lands, then the Impact Deposit shall be returned to the Tenant without interest.

6.2 No Unlawful Purpose

The Tenant shall not use or occupy or permit to be used or occupied the Leased Lands or any part thereof for any illegal or unlawful purpose or in any manner which may cause a nuisance or result

in the cancellation of any insurance, or in the refusal of any insurers generally to issue any insurance as requested.

ARTICLE 7 INSURANCE

7.1 Property Insurance

- (a) At all times during the Term, the Tenant shall at its expense, insure and keep insured or cause to be insured the Leased Lands and the Leasehold Improvements with one or more companies entitled to do business in the Province of Alberta, against loss or damage by fire and other perils now or hereafter from time to time included in the form of all risk or all perils insurance coverage applicable to similar properties as the Leased Lands and the Leasehold Improvements and effected in the Province of Alberta by prudent owners from time to time during the Term, including, without restricting the generality of the foregoing, the hazards of lightning, earthquake, explosion, wind storm, cyclone, tornado, hail, riot, civil commotion, malicious damage, aircraft, smoke, and vehicle damage to the extent that insurance against such risk or perils, or any of them, may be obtained in an amount equal to the full replacement value of the property being insured.
- (b) Any of the policies of insurance referred to in Subsection 7.1(a) may, with the approval of the Landlord, which approval shall not be unreasonably withheld, provide that the amount payable in the event of any loss shall be reduced by a deductible amount designated by the Tenant and approved by the Landlord, such approval not to be unreasonably withheld. The Tenant shall be a co-insurer to the extent of the amount deducted from the insurance monies paid in the event of any loss, and the said amount shall, for the purpose of Section 7.2, be included as part of the insurance monies payable and paid.
- (c) If any of the policies of insurance referred to in Section 7.1 contain any co-insurance clauses, the Tenant shall maintain at all times a sufficient amount of insurance to meet the requirements of such co-insurance clause so as to prevent the Landlord or the Tenant from becoming a co-insurer under the terms of such policy or policies and to permit full recovery from the insurer in the event of loss.
- (d) Any and all policies of insurance referred to in Section 7.1 shall:
 - (i) be written in the name of the Tenant and the Landlord as the insureds with loss payable to the Landlord, the Tenant, and the Mortgagee, if any, as their respective interests may appear;
 - (ii) contain a cross liability clause and a waiver of subrogation clause in favour of the Landlord;
 - (iii) contain a clause to the effect that any release from liability entered into by the Tenant prior to any loss shall not affect the right of the Tenant, the Mortgagee, or the Landlord to recover; and
 - (iv) contain a provision or shall bear an endorsement that the insurer will not cancel such policy without first giving the Landlord and the Mortgagee at least thirty (30) days' notice in writing of its intention to cancel.

7.2 Payment of Loss Under Insurance

- (a) The insurance monies payable under any or all of the policies of insurance referred to in Section 7.1 shall, notwithstanding the terms of the policy or policies, be paid to the order of the Mortgagee, or to the order of the Trustee if there is no Mortgagee.
- (b) Subject to Article 9, the Landlord and the Tenant agree that the Mortgagee or Trustee (as the case may be) shall use such insurance monies for the restoration, reconstruction, or replacement of the loss or damage in respect of which such insurance monies are payable hereunder against certificates of the Architect engaged by the Tenant or such other person as the Landlord and the Tenant may agree upon who is in charge of such restoration, reconstruction, or replacement.

7.3 Landlord's Right to Repair and Receive the Insurance Proceeds

Should the Tenant fail to effect the restoration, reconstruction, or replacement of the loss or damage in respect of which insurance monies are payable, without unreasonable delay, the Landlord shall be entitled to effect such restoration, reconstruction, or replacement and the Mortgagee or Trustee to whom such insurance monies are payable shall pay or cause to be paid to the Landlord such insurance monies in the same manner the Mortgagee or Trustee (as the case may be) would have done had the Tenant effected such restoration, reconstruction, or replacement.

7.4 Workers' Compensation Coverage

- (a) At all times during the Term, the Tenant shall at its own expense procure and carry, or cause to be procured and carried and paid for, full workers' compensation coverage in respect of all workmen, employees, servants, and others engaged in or upon any work, non-payment of which would create a lien on the Leased Lands or the Leasehold Improvements.
- (b) The Tenant shall immediately notify the Landlord of any dispute involving third parties which may arise in connection with obtaining and maintaining the workers' compensation coverage required under this Lease if such dispute results in the requisite coverage not being in place, and the Tenant shall take all reasonable steps to ensure the resolution of such dispute forthwith. At all times the Tenant shall indemnify and save harmless the Landlord, its servants and agents from and against all damages, costs, claims, suits, judgments, and demands which the Landlord may incur or suffer as a result of any default by the Tenant of its obligation under this Section 7.4 to ensure that the said full workers' compensation coverage is maintained. The Tenant shall further ensure that no amount of the said workers' compensation coverage is left unpaid so as to create a lien on the Leased Lands or the Leasehold Improvements. If the workers' compensation coverage required by this Section 7.4 is not in place within sixty (60) days of the date of the notice to the Landlord hereinbefore mentioned, the Landlord shall be entitled to have recourse to the remedies of the Landlord specified herein or at law or equity.

7.5 Commercial General Liability

At all times during the Term, the Tenant shall at its own expense maintain with one or more companies duly authorized to carry on business within the Province of Alberta and approved by the Landlord, commercial general liability insurance against claims for bodily injury (including death at any time resulting therefrom) and personal injury sustained by any person or persons and for injury to or destruction of property (including loss of use or occupancy) or loss arising out of the use and occupation of the Leased Lands and the Leasehold Improvements, indemnifying and protecting the Landlord and its respective servants and agents and the Tenant to limits approved by the Landlord from time to time, such

approval not to be unreasonably withheld, provided that such limits shall not, in any event, be less than **REDACTED** per occurrence. Without limiting the generality of the foregoing, such coverage shall include the following:

- (a) Products/Completed Operations liability;
- (b) Tortious liability;
- (c) Blanket contractual liability;
- (d) Cross Liability / Severability of Interest;
- (e) Sudden and Accidental Pollution;
- (f) Forest Fire Fighting Expense;
- (g) Tenants Legal Liability; and
- (h) Contingent Employers Liability.

Any policy of liability insurance required to be carried by the Tenant hereunder shall be made to name Landlord as an additional insured for loss arising.

7.6 Release of Landlord

The Landlord shall not be liable for any personal injury, death, or property loss or damage sustained by the Tenant or its employees, agents, sublessees, licensees, customers, clients, students, invitees, or those doing business with it on the Lands, no matter how caused, except to the extent caused by the gross negligence or wilful misconduct of the Landlord or those persons for whom the Landlord is, in law, responsible; and the Tenant:

- (a) shall indemnify the Landlord against all actions or liabilities arising out of such personal injury, death, or property damage or loss, except to the extent caused by the gross negligence or wilful misconduct of the Landlord or those persons for whom the Landlord is, in law, responsible; and
- (b) hereby releases the Landlord and its directors, officers, agents, and employees from all claims for damages or other expenses arising out of such personal injury, death, or property loss or damage, except to the extent caused by the gross negligence or wilful misconduct of the Landlord or those persons for whom the Landlord is, in law, responsible.

7.7 Payment of Insurance Premiums

The Tenant shall pay or cause to be paid all of the premiums under the policies of insurance referred to in this Article 7 as they become due and payable; and in default of payment by the Tenant, the Landlord may pay the same and add the amount so paid to the Additional Rent.

7.8 Copies of Insurance Policies

If requested by the Landlord the Tenant shall forthwith from time to time deliver or cause to be delivered to the Landlord certified copies of all policies of insurance referred to in this Article 7 and obtained and maintained by the Tenant hereunder, accompanied by evidence satisfactory to the Landlord that the premiums thereon have been paid.

7.9 Insurance May be Maintained by Landlord

- (a) The Tenant agrees that should the Tenant at any time during the Term fail to insure or keep insured the Leased Lands and the Leasehold Improvements against loss or damage by fire and other perils as required under Section 7.1, or fail to maintain insurance against claims for personal injury, death,

or property damage or loss as required under Section 7.5, then in any of such events, the Landlord, although not obliged to do so, may obtain and maintain such insurance in such amount or amounts with such deductible amounts and for such period or periods of time as the Landlord deems advisable.

- (b) The Landlord may at any and all times during the Term maintain insurance in those amounts, and with those deductibles that a reasonably prudent owner of Lands similar to the Lands would maintain.
- (c) The Tenant shall pay to the Landlord as Additional Rent, upon the Landlord obtaining any such insurance and thereafter annually during the Term, within thirty (30) days after receipt of any invoice from the Landlord, such amounts as the Landlord has expended for insurance described in Subsection 7.9(a) and 7.9(b).

ARTICLE 8 CONDITION OF LEASED LANDS

8.1 Leased Lands Accepted "As Is"

The Tenant accepts the Leased Lands "as is" knowing the condition thereof, and agreeing that the Landlord has made no representation, warranty, or agreement with respect thereto.

ARTICLE 9 DAMAGE OR DESTRUCTION

9.1 Rent Not to Abate

The partial destruction or damage or complete destruction by fire or other casualty of the Leasehold Improvements shall not terminate this Lease or entitle the Tenant to surrender possession of the Leased Lands, or the Leasehold Improvements or to demand any abatement or reduction of the Rent or other charges payable under this Lease, any law or statute now or in the future to the contrary.

9.2 Damaged or Partially Destroyed Leasehold Improvements

The Tenant covenants and agrees with the Landlord that in the event of damage to or partial destruction of the Leasehold Improvements, the Tenant, subject to the regulations and requirements of all Governing Authorities having jurisdiction, shall promptly and without delay repair, replace, or restore any part of the Leasehold Improvements so destroyed.

9.3 Replacement, Repair, or Reconstruction of Leasehold Improvements

Any replacement, repair, or reconstruction of the Leasehold Improvements or any part thereof pursuant to the provisions of Section 9.2 shall be made or done in compliance with the provisions of this Lease, including, Article 5 and Article 10.

**ARTICLE 10
UNAVOIDABLE DELAYS**

10.1 Unavoidable Delays

If, by reason of strike, lock-out, or other labour dispute, material or labour shortage not within the control of the Tenant, stop-work order issued by any court or tribunal of competent jurisdiction provided that such order was not issued as the result of any, act or fault of the Tenant or of any one employed by it directly or indirectly, fire or explosion, flood, wind, water, earthquake, act of God, or other similar circumstances beyond the reasonable control of the Tenant and not avoidable by the exercise of reasonable effort or foresight by the Tenant, the Tenant is, in good faith and without default or neglect on its part, prevented or delayed in constructions, reconstruction, replacement or repair of the Leasehold Improvements or any part or parts of them which under the terms of this Lease the Tenant is required to do by a specified date or within a specified time or, if not specified, within a reasonable time, the date or period of time within which the work was to have been completed shall be extended by the Landlord by a reasonable period of time at least equal to that of such delay or prevention; and the Tenant shall not be deemed to be in default if it performs and completes the work in the manner required by the terms of this Lease within such extended period of time or within such further extended period of time as may be agreed upon from time to time between the Landlord and the Tenant. If the Landlord and the Tenant cannot agree as to whether or not there is a prevention or delay within the meaning of this section, or they cannot agree as to the length of such prevention or delay, then such matter shall be determined by reference to arbitration in accordance with Article 17. For the purposes of this Article 10 the inability of the Tenant to meet its financial obligations under this Lease or otherwise shall not be a circumstance beyond the reasonable control of the Tenant and not avoidable by the exercise of reasonable effort or foresight by the Tenant. This Section 10.1 shall in no way excuse the Tenant from the payment of Rent or any other amounts that it is required to pay when due under this Lease.

**ARTICLE 11
INSPECTION**

11.1 Inspection by Landlord

The Landlord and the Tenant agree that it shall be lawful for a representative of the Landlord at all reasonable times during the Term to enter the Leased Lands and the Leasehold Improvements, or any of them and to examine their condition. The Landlord shall give to the Tenant notice of any maintenance or repairs required in accordance with Section 5.5 and the Tenant shall, within thirty (30) days after every such notice, well and sufficiently repair, restore, and make good accordingly.

**ARTICLE 12
INDEMNITY**

12.1 Indemnify Landlord

The Tenant shall indemnify and save harmless the Landlord from and against any and all manner of actions or causes of action, damages, costs, loss, or expenses of whatever kind (including without limitation legal fees on a solicitor and his own client basis) which the Landlord may sustain, incur, or be put to by reason of or arising out of any act or omission of the Tenant or any persons for whom the Tenant is, at law, responsible, or from the use or occupation of the Leased Lands, the Lands, or the Facility, in whole or in part and, without limiting the generality of the foregoing, from the non-observance or non-performance by the Tenant or any persons for whom the Tenant is, at law, responsible of any of the obligations imposed under the provisions of any laws, ordinances, regulations, or requirements of any

federal, provincial, municipal, or other authority, or any of the covenants, agreements, terms, conditions, and provisos contained in this Lease to be observed and performed by the Tenant; and such liability to indemnify and save harmless shall survive any termination of this Lease and the expiry of the Term or any extension hereof, anything in this Lease to the contrary notwithstanding.

12.2 Injury, Damage, or Loss of Property

Notwithstanding the provisions of Article 7, the Tenant shall indemnify and save harmless the Landlord from any and all manner of actions, causes of action, suits, damages, loss, costs, claims, and demands of any nature whatsoever relating to and arising during the Term out of:

- (a) any injury to person or persons, including death resulting at any time therefrom, occurring in or about the Leased Lands;
- (b) any injury to Tenant or the Tenant's Agents, including death resulting at any time therefrom, occurring in or about the Lands;
- (c) any damage to or loss of property on the Leased Lands; and
- (d) any damage to or loss of the property of the Tenant or the Tenant's Agents on the Lands;

however, no section of this Lease shall require the Tenant to indemnify the Landlord against any actions, causes of actions, suits, claims, or demands for damages arising out of the gross negligence or wilful misconduct of the Landlord, its servants, agents, or contractors, unless it involves a peril against which the Tenant is obligated to place insurance, in which case the release and indemnity set forth in Section 7.6 absolves the Landlord of all liability with respect thereto.

12.3 Indemnification Survives Termination of Lease

The obligation of the Tenant to indemnify and save harmless the Landlord, its servants, agents, successors and assigns under any provision of this Lease with respect to liability by reason of any matter arising prior to the end of the Term shall survive any expiration or termination of this Lease, anything herein to the contrary notwithstanding.

ARTICLE 13 SUBLETTING AND ASSIGNING

13.1 Subletting and Assigning

Except as expressly provided in this Article 13, the Tenant shall not assign this Lease in whole or in part, nor sublease, transfer, dispose of or otherwise part with possession of the Leased Lands or the Leasehold Improvements or any part thereof, nor grant any concession or licence of any part of the Leased Lands or the Leasehold Improvements without the prior written consent of the Landlord.

13.2 Change of Control

If the Tenant is a corporation, it is acknowledged and agreed that any transfer of the shares of the capital stock of the Tenant by way of an arrangement, merger, amalgamation, sale, assignment, bequest, inheritance, trust, operation of law, other disposition, or division of any shares of the capital stock of the Tenant sufficient to transfer control to persons other than the present shareholders of the Tenant shall be deemed for all purposes of this Article 13 to be an assignment of this Lease, and accordingly a breach

of Section 13.1 unless the prior written consent of the Landlord is first obtained, such consent not to be unreasonably withheld.

13.3 Mortgaging by Tenant

The Tenant shall not mortgage its leasehold interest under this Lease and its interest in the Leased Lands and the Leasehold Improvements without the consent of the Landlord except that the Tenant may mortgage its leasehold interest and its interest in the Leased Lands without the consent of the Landlord (but upon thirty (30) days prior notice to the Landlord) for the purpose of financing and refinancing the cost of constructing the Facility but not otherwise. Any Mortgage shall be subject always to: (i) Article 14; (ii) the consent of, and the satisfaction of any requirements imposed by, any of the Landlord's Mortgagees; and (iii) the Tenant and the Mortgagee entering into a tri-party agreement with the Landlord in accordance with Section 14.4.

13.4 Tenant to Comply with All of Its Obligations in Respect of Assignments, Subleases, Tenancies, and Mortgages

The Tenant shall observe and perform all of its obligations incurred in respect of assignments, subleases, agreements for lease, and Mortgages of its leasehold interest in the Leased Lands and the Leasehold Improvements, and shall not suffer or allow any such obligations to be in default; and if any such default shall occur, the Landlord may, but shall not be obliged to, rectify such default for the account of the Tenant, and any amount paid by the Landlord in so doing, together with all costs and expenses of the Landlord, shall be reimbursed to the Landlord by the Tenant on demand plus an administration fee of 15% together with interest at the rate set forth in Section 3.6.

13.5 Sale of Fee Simple

The Landlord may sell, transfer, assign, or otherwise dispose of its fee simple estate in the Leased Lands to any person without any approval or consent of the Tenant, provided that in connection with any such sale, transfer, assignment or disposition, such purchaser executes an agreement with the Landlord assuming all of the obligations of the Landlord hereunder from and after the date of such disposition. Upon any such disposition, such purchaser shall be liable for the obligations and entitled to the benefits of the Landlord under this Lease, and the original landlord named herein shall not be liable for any such obligations thereafter.

ARTICLE 14 MORTGAGE

14.1 Rights of Mortgagee

The Mortgagee under any Mortgage referred to in Section 13.3 may enforce such Mortgage and acquire title to the Tenant's leasehold estate in the Leased Lands and the Leasehold Improvements in any lawful way and, by its representative or by a receiver, as the case may be, take possession of and manage the Leased Lands and the Leasehold Improvements, and upon foreclosure of such Mortgage may sell or assign the Tenant's leasehold estate in the Leased Lands and the Leasehold Improvements together but not individually; and the purchaser or assignee of the leasehold estate and the Leasehold Improvements shall be liable to perform the obligations imposed upon the Tenant by this Lease only so long as such purchaser or assignee has ownership or possession of such leasehold estate in the Leased Lands and Leasehold Improvements.

14.2 Notice to and Remedies of Mortgagee

- (a) No re-entry, termination, acceptance of surrender, disclaimer, or forfeiture of this Lease by the Landlord or by a receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee shall be valid against the Mortgagee who has executed and delivered to the Landlord a tri-party agreement in accordance with Section 14.4 unless the Landlord shall first have given to the Mortgagee notice of the default entitling the Landlord to re-enter, terminate, or forfeit this Lease, specifying the nature of that default and stating the Landlord's intention to take such proceedings and requiring the Mortgagee:
- (i) to cure the default specified in the notice within a period of ten (10) days from the date of receipt of that notice by the Mortgagee; or
 - (ii) if the default is other than the failure to pay Rent or any other sums required to be paid by the Tenant by any provisions of this Lease and if the default cannot reasonably be cured within such ten (10) day period, then to immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default, and the Landlord hereby grants the Mortgagee access to the Leased Lands and the Leasehold Improvements for that purpose;
- (b) If the default is cured within the period specified, the Mortgagee shall be entitled to become tenant of the Leased Lands and Leasehold Improvements for the balance of the Term remaining at the date of the notice of default or contingency, providing that the Mortgagee attorns as tenant to the Landlord and undertakes to be bound by and to perform the covenants and agreements of this Lease for so long as it remains tenant and has not assigned the balance of the Term. If there is more than one Mortgage and more than one Mortgagee wishes to cure the default or contingency specified in the notice referred to in Subsection 14.2(a), then the Landlord agrees to permit the curing of the default or contingency specified in such notice and the assumption of the balance of the Term by that Mortgagee whose Mortgage ranks higher in priority; but if any Mortgagee has commenced a foreclosure action, the provisions of Subsection 14.2(c) shall apply;
- (c)
- (i) If the Mortgagee commences foreclosure proceedings against the Tenant, whether or not the Tenant is in default of the performance of its covenants and agreements with the Landlord under this Lease at the time such foreclosure proceedings are commenced, the Landlord shall not re-enter, terminate, or forfeit this Lease after the commencement of foreclosure proceedings on the grounds of any default or contingency entitling the Landlord to re-enter, terminate, or forfeit this Lease if the Mortgagee:
 - A. first gives notice to the Landlord of the foreclosure proceedings,
 - B. is actively prosecuting the foreclosure proceedings without undue delay,
 - C. cures the default or contingency within a period of ten (10) days from the date of receipt of notice from the Landlord specifying the nature of the default or contingency, or if the default or contingency is other than the failure to pay Rent or any other sums required to be paid to the Landlord by any provision of this Lease and if such default or contingency cannot reasonably be cured within such ten (10) day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency, and

- D. performs and observes all of the Tenant's covenants and agreements under this Lease and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagee;
- (ii) If the Mortgagee acquires title to the Tenant's leasehold interest in the Leased Lands and the Leasehold Improvements pursuant to the foreclosure proceedings, the Mortgagee shall thereupon become subrogated to the rights of the Tenant under this Lease, provided it attorns to the Landlord as tenant and undertakes to be bound by and to perform the covenants and agreements of this Lease for so long as it remains tenant and has not assigned the balance of the Term. If there is more than one Mortgage and more than one Mortgagee commences foreclosure proceedings, the right to cure any default or contingency granted by this Subsection 14.2(c) to a foreclosing Mortgagee shall be granted to the Mortgagee whose Mortgage ranks higher in priority;
- (d) If this Lease shall be subject to termination or forfeiture pursuant to Article 15 by reason of the bankruptcy or insolvency of the Tenant and the Mortgagee has filed with the Landlord notice of Mortgage in favour of the Mortgagee and specified an address for notice under Article 20, the Landlord shall give to the Mortgagee notice of the bankruptcy or insolvency of the Tenant entitling the Landlord to terminate or forfeit this Lease, and stating the Landlord's intention to take such proceedings, and requiring the Mortgagee to cure any other default of the Tenant; and the Tenant's other default shall be deemed to have been sufficiently cured if the Mortgagee:
- (i) commences foreclosure proceedings against the Tenant as more particularly set out in Subsection 14.2(c);
- (ii) takes possession and control of the Leased Lands and the Leasehold Improvements, or causes a receiver to be appointed, under the terms of the Mortgage or by a court of competent jurisdiction, who takes possession and control of the Leased Lands and the Leasehold Improvements, and the Landlord hereby grants the Mortgagee or such receiver access to the Leased Lands and the Leasehold Improvements for that purpose;
- (iii) cures every default within a period of ten (10) days from the date of receipt by the Mortgagee of the notice from the Landlord of the bankruptcy or insolvency of the Tenant, or if such default or defaults are other than the failure to pay Rent or any other sums required to be paid to the Landlord by any provision of this Lease and if such default or defaults cannot reasonably be cured within such ten (10) day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or defaults; and
- (iv) attorns as tenant to the Landlord and undertakes to be bound by and to perform the covenants and agreements of this Lease for so long as it remains tenant and has not assigned the balance of the Term;
- If there is more than one Mortgagee, the right to take possession and control to cure any default and to assume the Lease shall be granted to the Mortgagee who wants to do so and whose mortgage ranks higher in priority;
- (e) Any re-entry, termination, or forfeiture of this Lease made in accordance with the provisions of this Lease as against the Tenant shall be valid and effectual against the Tenant even though made subject to the rights of any Mortgagee to cure any default of the Tenant and to continue as tenant under this Lease;

- (f) No entry upon the Leased Lands or into the Leasehold Improvements by the Mortgagee pursuant to this Section 14.2 for the purpose of curing any default or defaults of the Tenant shall release or impair the continuing obligations of the Tenant.

14.3 Mortgage Subject to Landlord's Rights Under Lease

Subject to the provisions of Section 14.2, every Mortgage shall be made expressly subject to the rights of the Landlord under this Lease.

14.4 Protection of Mortgagee (Tri-Party Agreements)

The Landlord and the Tenant agree that the obligations of the Landlord under Section 14.2 are subject to the Mortgagee entering into an agreement in a form agreed to by the parties acting reasonably, whereby the Mortgagee covenants and agrees that if it acquires title to the Tenant's interest in this Lease and the Leasehold Improvements, but only for so long as it holds such title, it shall perform and observe the covenants and agreements required of the Tenant to be performed and observed, if not performed or observed by the Tenant, whether or not the Landlord has taken any steps to enforce performance or observance of any of the covenants and agreements in this Lease to be performed or observed by the Tenant.

ARTICLE 15 DEFAULT BY TENANT

15.1 Events of Default

The following constitute "**Events of Default**" of the Tenant:

- (a) if any Rent remains unpaid after three (3) days of when such rent ought to have been paid;
- (b) if there is a breach of any of the Tenant's obligations under this Lease or any other agreement between the parties, which is not cured within ten (10) days after delivery of notice by the Landlord to the Tenant specifying such breach; provided that if any default of the Tenant can only be cured by the performance of work or the furnishing of materials, and if such work cannot reasonably be completed or such materials reasonably obtained and utilized within said ten (10) days, such default will not be deemed to continue if the Tenant proceeds promptly with such work as may be necessary to cure the default and continues diligently to complete such work;
- (c) the Tenant defaults under the Dust Control Handbook;
- (d) the Tenant defaults under the Road Use and Access Agreement;
- (e) the Tenant defaults under the Royalty Agreement;
- (f) the Indemnifier defaults under the Indemnity Agreement;
- (g) if the leasehold interest of the Tenant in the Leased Lands or the Leasehold Improvements (or any interest therein) created by this Lease or any material goods or chattels on the Leased Lands are at any time seized or taken in execution or attachment;
- (h) a receiver, trustee in bankruptcy or any other similar officer is appointed to take charge of all or any substantial part of the business or property of the Tenant or the Indemnifier;

- (i) the Tenant or Indemnifier becomes an insolvent person or commits an act of bankruptcy within the meaning of those terms in the *Bankruptcy and Insolvency Act* (Canada);
- (j) a petition is filed or any other action is taken with respect to the Tenant or the Indemnifier for reorganization or for the arrangements under any provision of the *Bankruptcy and Insolvency Act* (Canada) or any law of Canada or any province thereof or of the jurisdiction in which the Tenant or Indemnifier (as applicable) is incorporated relating to bankruptcy or insolvency then in force and providing a plan for a debtor to settle, satisfy or to extend the time for the payment of debts;
- (k) any application or petition or certificate or order is made or granted for the winding up or dissolution of the Tenant or Indemnifier, voluntarily or otherwise.

15.2 Remedies

Subject to Section 14.2, upon the happening of an Event of Default, the Landlord may, in addition to any other rights or remedies it may have under other provisions of this Lease or by law, at its option exercise all or any of the following remedies:

- (a) the Landlord may perform any obligation which the Tenant should have performed or cause the same to be performed and for such purpose may enter upon the Leased Lands and the Leasehold Improvements and do such things thereon as the Landlord may consider requisite without effecting a termination of this Lease;
- (b) the Landlord may enter the Leased Lands and the Leasehold Improvements and distrain upon the goods and chattels of the Tenant, or may remove and sell the goods, chattels and equipment of the Tenant;
- (c) in order to relet, the Landlord may take possession of the Leased Lands and the Leasehold Improvements as agent of the Tenant and effect such alterations and repairs as it may deem necessary or advisable for the purpose of such reletting, and it may relet the Leased Lands and the Leasehold Improvements or any part thereof for such term or terms (which may be for a term extending beyond the Term) and at such rental or rentals and upon such other terms and conditions as the Landlord, in its sole discretion, may deem advisable; and
- (d) the Landlord may terminate this Lease by commencing an action for possession or for termination of the Lease or by notice to the Tenant and at the option of the Landlord, the full amount of the current month's Rent and the next ensuing three (3) months' Rent shall accelerate and shall immediately become due and payable.

15.3 Remedies of Landlord are Cumulative

The remedies of the Landlord specified herein are cumulative and are in addition to any remedies of the Landlord at law or equity. No remedy shall be deemed to be exclusive, and the Landlord may from time to time have recourse to one or more or all of the available remedies specified herein or at law or equity. In addition to any other remedies provided for herein, the Landlord shall be entitled to restrain by injunction any violation or attempted or threatened violation by the Tenant of any of the covenants or agreements under this Lease.

15.4 Waiver by Landlord

The failure of the Landlord to insist upon the strict performance of any covenant or agreement contained herein shall not waive such covenant or agreement, and the waiver by the Landlord of any breach of any covenant or agreement contained herein shall not waive such covenant or agreement in respect of any other breach. The receipt and acceptance by the Landlord of rent or other monies due hereunder with knowledge of any breach of any covenant or agreement by the Tenant shall not waive such breach. No waiver by the Landlord shall be effective unless made in writing.

**ARTICLE 16
COVENANTS OF LANDLORD****16.1 Authority to Lease**

The Landlord covenants with the Tenant that it now has in itself good right, full power, and authority to lease the Leased Lands to the Tenant in the manner and according to the true intent of this Lease.

**ARTICLE 17
ARBITRATION****17.1 Referral to Arbitration**

In the event of any dispute arising between the parties as to the meaning or intent of this Lease or as to any matter arising out of this Lease or as to the performance of the activities or as to the respective rights and obligations of the parties under this Lease, then either party shall be entitled to give to the other notice of such dispute and to require that such dispute be determined by arbitration by a single arbitrator if a single arbitrator can be mutually agreed upon by the parties within fifteen (15) days of such notice.

17.2 Failure to Agree

If the parties do not agree on a single arbitrator within the aforementioned fifteen (15) day period then one person shall be selected by the party giving notice of the dispute and one person shall be selected by the remaining party to act as arbitrator and the two persons so appointed as arbitrators shall select a third arbitrator. Provided that if either party shall fail to select an arbitrator within thirty (30) days of the date of the receipt of notice of such dispute, then an arbitrator to represent such party may, upon petition of the other party, be appointed by a Judge of the Court of Queen's Bench of Alberta and provided further that if two arbitrators appointed in accordance herewith do not agree, within a period of fifteen (15) days from the date of appointment of the second such arbitrator, upon the appointment of a third arbitrator, then such third arbitrator may, upon petition by either party, be appointed by a Judge of the Court of Queen's Bench of Alberta.

17.3 Binding Decision

The determination (including as to costs) made by the arbitrators or the majority of them, or by the single arbitrator, as the case may be, shall be final and binding upon the parties and their respective successors and assigns.

17.4 Application of Act

Except as hereinbefore provided, the provisions of the *Arbitration Act* (Alberta) shall apply.

**ARTICLE 18
QUIET ENJOYMENT AND OWNERSHIP OF TENANT'S FIXTURES****18.1 Covenant for Quiet Enjoyment**

If the Tenant pays the Rent hereby reserved and the other charges, and performs the covenants hereinbefore on the Tenant's part contained, the Tenant shall and may peaceably enjoy and possess the Leased Lands for the Term, without any interruption or disturbance whatsoever from the Landlord or any other person, firm, or corporation lawfully claiming from or under the Landlord, provided however that nothing in this Section 18.1 shall limit the rights of access reserved by the Landlord under Section 5.6 or the rights of inspection conferred upon the Landlord by Section 11.1.

18.2 Landlord's Right to Further Encumber

The Landlord hereby reserves the right to further charge the Leased Lands, or any part thereof, by way of easement, right of way, or restrictive covenant in favour of a Governmental Authority; and the Tenant agrees, at the request of the Landlord, forthwith to execute and deliver to the Landlord such instrument as may be necessary to subordinate the Tenant's right and interest in the Leased Lands under this Lease to such charge.

18.3 Mortgage Subordination

In addition to Section 18.2, the Tenant agrees that it shall, if requested, postpone or subordinate this Lease to any mortgage, charge or encumbrance (each, a "**Landlord's Mortgage**"). Upon the Tenant's request, the Landlord shall use its reasonable commercial efforts to obtain from the mortgagee or holder of any such Landlord's Mortgage (each, a "**Landlord's Mortgagee**") and deliver to the Tenant a non-disturbance agreement in the Landlord's Mortgagee's standard form or such other reasonable form prepared by the Landlord's Mortgagee whereby the Landlord's Mortgagee shall agree that if it takes possession of the Lands or acquires title thereto, the Tenant shall be entitled to remain in possession of the Leased Lands so long as it is not in default under the Lease.

**ARTICLE 19
OVERHOLDING****19.1 Overholding**

The Landlord and Tenant agree that if the Tenant shall remain in possession of the Leased Lands after the expiration of the Term without any further agreement and the Landlord accepts Rent, the new tenancy created will be a month to month tenancy and not a tenancy from year to year and the Landlord may terminate such tenancy at any time on twenty-four (24) hours written notice.

**ARTICLE 20
NOTICE**

20.1 Notices

Any demand, notice or other communication to be made or given hereunder shall be in writing and may be made or given by personal delivery, pre-paid ordinary and registered mail addressed or email transmission to the respective parties as follows:

- (a) to the Landlord at:
MILNER POWER LIMITED PARTNERSHIP
REDACTED
Email: **REDACTED**
Attention: **REDACTED**

- (b) to the Tenant at:
REDACTED
REDACTED

Email: **REDACTED**
Attention: **REDACTED**

or to such other address or email address as either party may from time to time designate, by notice to the other. Any notice personally delivered to the party to whom it is addressed as provided for in this Section shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day then the notice shall be deemed to have been given and received on the Business Day next following such day. Any notice mailed to the address and in the manner provided for in this Section shall be deemed to have been given and received on the fifth Business Day next following the date of its mailing in Alberta. Any notice transmitted by fax shall be deemed to have been given and received on the first Business Day after its transmission. For the purposes of this Section, the term "**Business Day**" means every day except Saturdays, Sundays and statutory or civic holidays in the Province of Alberta.

**ARTICLE 21
ENVIRONMENTAL**

21.1 Tenant's Covenants

The Tenant covenants and agrees with the Landlord to:

- (a) develop and use the Leased Lands and the Leasehold Improvements only in compliance with all Approvals (including any environmental approval(s)), Applicable Laws and this Lease;

- (b) permit the Landlord to investigate the Leased Lands and the Leasehold Improvements, any goods thereon, and the Tenant's records at any time and from time to time to verify such compliance with all Approvals, Applicable Laws and this Lease;
- (c) at the reasonable request of the Landlord, obtain from time to time at the Tenant's cost a report from an independent consultant designated or approved by the Landlord verifying compliance with all Approvals, Applicable Laws and this Lease or the extent of any non-compliance therewith;
- (d) not store, manufacture, dispose, treat, generate, use, transport, remediate, remove or release Environmental Contaminants on or from the Leased Lands or the Leasehold Improvements except in accordance with all Approvals, Applicable Laws and this Lease;
- (e) notify the Landlord in writing of:
 - (i) any enforcement, clean-up, removal, litigation, or other governmental, regulatory, judicial, or administrative action instituted, contemplated, or threatened against the Tenant, the Leased Lands, or the Leasehold Improvements pursuant to any Approvals and/or Applicable Laws;
 - (ii) all claims, actions, orders, or investigations instituted, contemplated, or threatened by any third party against the Tenant, the Leased Lands, or the Leasehold Improvements relating to damage, contribution, cost recovery, compensation, loss, or injuries resulting from any Environmental Contaminants or any breach of the Approvals, Applicable Laws or this Lease; and
 - (iii) the discovery of any Environmental Contaminants or any occurrence or condition on the Leased Lands or the Leasehold Improvements or any real property adjoining or in the vicinity of the Leased Lands which could subject the Tenant, the Leased Lands, or the Leasehold Improvements to any fines, penalties, orders, or proceedings under any Approvals and/or Applicable Laws; and
- (f) (i) at the expiry of the Term or earlier termination of the Lease, perform all remediation and other environmental work required to restore the Leased Lands to at least the Entry Environmental Baseline Condition prior to the expiry of the Holdover Period (the "**Tenant's Remediation Work**"), in accordance with the standards required by the Approvals, Applicable Laws and this Lease; and (ii) within thirty (30) days of completion of the Tenant's Remediation Work as aforesaid, commission and provide to the Landlord a Phase II Environmental Report (or such other report as the Landlord may require) prepared by a qualified, licensed and independent engineering consultant evidencing the completion of the Tenant's Remediation Work to the Landlord's satisfaction.

21.2 Landlord May Make Enquiries

The Tenant hereby authorizes the Landlord to make enquiries from time to time of any Governing Authorities having jurisdiction with respect to the compliance by the Tenant with Approvals and/or Applicable Laws including applicable environmental approval(s), and the Tenant agrees that the Tenant will from time to time provide to the Landlord such written authorization as the Landlord may reasonably require in order to facilitate the obtaining of such information.

21.3 Environmental Indemnification

The Tenant hereby indemnifies and saves harmless the Landlord and its successors and assigns from and against any and all losses, liabilities, damages, costs and expenses of any kind whatsoever which at any time or from time to time may be paid, incurred or asserted against the Landlord as a direct or indirect result of Adverse Environmental Conditions, where such Adverse Environmental Conditions result or arise from or are related to, in any manner whatsoever, any actions or omissions of the Tenant or the Tenant's Agents. This indemnification shall survive the expiration or earlier termination of this Lease.

21.4 Entry and Exit Environmental Reports

- (a) The Tenant shall commission and provide to the Landlord, at the Tenant's sole cost and expense on or before the Commencement Date, or if unavailable on or before the Commencement Date then as soon as reasonably practical thereafter (and in any event by no later than ninety (90) days following the Commencement Date and prior to any development or construction on the Leased Lands occurring), a Phase II Environmental Assessment prepared by a qualified, licensed and independent environmental consultant (the "**Entry Environmental Report**") in respect of the Leased Lands, and the Landlord and Tenant agree that the Entry Environmental Report and all subsequent reports related thereto shall be determinative in assessing the environmental condition of the Leased Lands as at the date thereof (the "**Entry Environmental Baseline Condition**") and whether any Adverse Environmental Conditions arose prior to the Commencement Date; and
- (b) The Tenant shall commission and provide to the Landlord, at the Tenant's sole cost and expense, upon the expiration or earlier termination of this Lease, a Phase II Environmental Report prepared by a qualified, licensed and independent environmental consultant (the "**Exit Environmental Report**") in respect of the Leased Lands and, if applicable, the Leasehold Improvements, and the Landlord and the Tenant agree that the Exit Environmental Report and all subsequent reports related thereto shall be determinative in assessing the environmental condition of the Leased Lands as at the date thereof and whether any Adverse Environmental Conditions arose during the Term.
- (c) Prior to the Tenant commissioning the Entry Environmental Report, the Landlord shall be allowed access to the Leased Lands for the purpose of performing remediation work thereon.

21.5 Remediation, Remediation Cost Estimate and Security

- (a) The Tenant shall commission and provide to the Landlord, at the Tenant's sole cost and expense on or before the Commencement Date, or if unavailable on or before the Commencement Date then as soon as reasonably practical thereafter (and in any event, by no later than ninety (90) days following the Commencement Date and prior to any development or construction on the Leased Lands occurring), a report prepared by a qualified, licensed and independent environmental consultant (the "**Remediation Budget Report**") which shall provide an estimate of the costs in respect of the anticipated Tenant's Remediation Work (the "**Tenant's Remediation Work Quote**") based on the Tenant's proposed use of, and development plans (as approved by the Landlord in accordance with this Lease) for, the Leased Lands.
- (b) The Tenant, at its sole cost, shall arrange for the Remediation Budget Report to be updated (by the same environmental consultant who initially prepared the Remediation Budget Report or if such environmental consultant no longer exists, an environmental consultant mutually agreed upon by the parties, each acting reasonably) (each updated Remediation Budget Report is, an "**Updated Remediation Budget Report**") every three (3) years during the Term to reflect any changes in the Tenant's Remediation Work Quote based on the Tenant's actual use and development of the Leased

Lands and any remaining development plans. Each Updated Remediation Budget Report shall be prepared and delivered to the Landlord within sixty (60) days of the applicable anniversary of the Commencement Date.

- (c) Within fifteen (15) days of the Remediation Budget Report being issued and prior to the Tenant commencing any development or construction of Leasehold Improvements on the Leased Lands, the Tenant shall provide to the Landlord financial security (in a form acceptable to the Landlord, in its sole discretion) in the amount of **REDACTED** of the Tenant's Remediation Work Quote (the "**Tenant's Remediation Work Security**"). The Tenant's Remediation Work Security shall be adjusted from time-to-time during the Term to reflect any increases (but not decreases) in the Tenant's Remediation Work Quote based on any Updated Remediation Budget Report such that the Tenant's Remediation Work Security shall at all times be equal to at least **REDACTED** of the then adjusted Tenant's Remediation Work Quote. The Tenant shall, within fifteen (15) days following the issuance of the Updated Remediation Budget Report, pay to the Landlord the amount of any corresponding increase in the Tenant's Remediation Work Security as aforesaid. The Tenant's Remediation Work Security shall be held by the Landlord (for its own benefit and Maxim's benefit) throughout the Term as security for the prompt performance by the Tenant of all terms, covenants, conditions and provision of this Article 21 to be kept and performed by the Tenant. If the Tenant defaults in the performance of any of the terms, covenants, conditions or provisions under this Article 21, the Landlord may, but is not obligated to, appropriate and apply all or any part of the Tenant's Remediation Work Security on account of any damages, costs and expenses (including all legal fees, costs and disbursements on a solicitor and its own client basis) incurred, expended or sustained by the Landlord as a result of such default. If all or any part of the Tenant's Remediation Work Security is appropriated and applied by the Landlord, then the Tenant shall, within three (3) days after demand from the Landlord, remit to the Landlord a sufficient amount to restore the Tenant's Remediation Work Security to the amount that existed prior to the Tenant's Remediation Work Security being so appropriated and applied. If the Tenant fully discharges its obligations under Subsection 21.1(f) within the time period allotted therefor, and the Tenant is not otherwise in default under this Article 21, then the Tenant's Remediation Work Security shall be returned to the Tenant within thirty (30) days of the expiry of the Holdover Period, without interest.
- (d) Notwithstanding anything to the contrary contained herein, if, at the Landlord's option in accordance with Subsection 5.10(a), the Leasehold Improvements are to remain on the Leased Lands following the expiration of the Term or earlier termination of this Lease, then, at the Landlord's sole election, the full amount of the Tenant's Remediation Work Security shall be absolutely forfeited to the Landlord and the Tenant shall be relieved of its obligation to perform the Tenant's Remediation Work in accordance with Subsection 21.1(f).

ARTICLE 22 OPTIONS TO EXTEND

22.1 Extension

If the Tenant:

- (a) pays the Rent as and when due and punctually observes and performs the terms, covenants and conditions to be observed and performed by it in accordance with the terms of this Lease;

- (b) has commenced construction of the Facility and is diligently and in good faith working to complete construction of the Facility; and
- (c) shall have given notice to the Landlord at least **REDACTED** prior to the expiration of the initial Term;

the Tenant shall, at the expiration of the Term, have the option to extend this Lease for a further period of **REDACTED** (the "**Extension Term**") upon the same terms, conditions and covenants as are herein contained. For clarity, any reference to "Term" in this Lease during the Extension Term shall be deemed to refer to such Extension Term.

ARTICLE 23 MISCELLANEOUS

23.1 Certificate of Good Standing

The Landlord and the Tenant agree that at any time and from time to time upon not less than thirty (30) days' prior request by the other party, a Mortgagee or a Landlord's Mortgagee, each will execute, acknowledge, and deliver to the other a statement in writing certifying:

- (a) that this Lease is unmodified and in full force and effect or if there have been modifications that the same are in full force and effect as modified and identifying the modifications;
- (b) the dates to which the Rent and other charges have been paid, and the request shall specify the charges in respect of which such information is required; and
- (c) that, so far as the maker of the statement knows, without having conducted any searches or made any particular enquiries, the party who requests the statement is not in default under any provisions of this Lease, or if in default, the particulars thereof.

23.2 Registration

The Tenant will not allow or cause this Lease or any assignment or sublease or other document evidencing an interest of the Tenant in this Lease, the Leased Lands or the Leasehold Improvements to be registered except that, the Tenant may register a caveat against title to the Lands, disclosing the existence of this Lease, describing the parties, the term, and options to extend, if any, but not to disclose the rent or other financial details of this Lease. The Tenant shall obtain the Landlord's prior written consent (not to be unreasonably withheld) to the form of any such caveat prior to registering the same against title to the Lands or any portion thereof.

23.3 Non-Juridical Day

If the date for making payment or doing any act hereunder shall be a date other than a Business Day, such date shall be extended to the first Business Day following such date.

23.4 Non-Waiver

A waiver by the Landlord or the Tenant of the strict performance of any term, covenant or condition herein contained shall not of itself constitute a waiver of any such term, covenant or condition or of any subsequent breach thereof.

23.5 Not a Partnership or Joint Venture

The Landlord and the Tenant hereby expressly declare that it is neither their intention nor their agreement that this Lease or any arrangement between the parties hereto shall, or shall be deemed to, constitute the Landlord and the Tenant partners, joint venturers or principal and agent, or to create any relationship between the Landlord and the Tenant other than the relationship of landlord and tenant.

23.6 Entire Agreement

This Lease shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall not be modified, amended, or waived except by an instrument in writing duly executed and delivered by the parties or by their successors and permitted assigns.

23.7 Applicable Law

This Lease shall be governed by and construed in accordance with the laws of the Province of Alberta and each party hereto irrevocably attorns to the jurisdiction of the courts of the Province of Alberta.

23.8 Enurement

This Lease and the terms, conditions and covenants thereof shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

23.9 Severability

If any provision of this Lease is determined to be invalid or unenforceable, it shall be severable from the remainder of this Lease which shall continue to remain in full force and effect.

23.10 Time is of the Essence

Time shall be of the essence of this Lease.

23.11 Counterpart Execution

This Lease may be executed in any number of counterparts with the same effect as if all signatories to the counterparts had signed one document, all such counterparts shall together constitute, and be construed as, one instrument and each of such counterparts shall, notwithstanding the date of its execution, be deemed to bear the date first written above. A signed counterpart provided by way of facsimile transmission or in electronic portable document format (.pdf) shall be as binding upon the parties as an originally signed counterpart.

[Signature page follows]

IN WITNESS WHEREOF the Landlord and Tenant have executed this Lease as of the date first written above.

MILNER POWER INC.

Per: _____
Authorized Signatory

REDACTED

Per: _____
Authorized Signatory

SCHEDULE "A"

LANDS

Firstly:

PLAN 2567TR
PLANT SITE ADDITION
CONTAINING 16.774 HECTARES (41.45 ACRES) MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

Secondly:

PLAN 3618RS
PLANT SITE
COMPRISING PARTS OF:
MERIDIAN 6 RANGE 8 TOWNSHIP 58
THEOR SECTIONS: HECTARES (ACRES) MORE OR LESS
N 1/2-10 & S 1/2-15 12.99 32.10
EXCEPTING THEREOUT:
HECTARES (ACRES) MORE OR LESS
A) PLAN 0024924 - SITE 0.765 1.89
(POWER SUBSTATION)
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

Thirdly:

PLAN 8622136
PLANT SITE ADDITION
CONTAINING 0.810 HECTARES, MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

SCHEDULE "B"
FINAL SITE PLAN

REDACTED

SCHEDULE "C"
ROAD USE AND ACCESS AGREEMENT

See attached.

MILNER POWER LIMITED PARTNERSHIP

as Grantor

- and -

REDACTED

as Grantee

ROAD USE AGREEMENT

[•], 2025

GROUND LEASE

ROAD USE AGREEMENT dated as of [•], 2025 between MILNER POWER LIMITED PARTNERSHIP by its general partner, MILNER POWER INC. ("**Grantor**") and **REDACTED** ("**Grantee**").

WHEREAS Grantor is the registered owner of those lands legally described in Schedule "A" hereto (the "**Lands**").

AND WHEREAS Grantor, as landlord, and Grantee, as tenant, are parties to a ground lease dated [•], 2025 (the "**Lease**"), in respect of certain premises located on the Lands as more particularly described therein (the "**Leased Lands**").

AND WHEREAS Grantee wishes to use certain road(s) located on the Lands as identified on Schedule "B" (the "**Road**") for the purposes of accessing the Leased Lands.

NOW THEREFORE in consideration of the sum of ONE (\$1.00) DOLLAR and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

In this Agreement the following terms have the following meanings:

- (a) "**Agreement**" means this agreement and any schedules attached hereto which are referred to in this agreement, together with any amendment or supplement thereto;
- (b) "**Business Day**" means any day exclusive of Saturdays, Sundays or statutory holidays;
- (c) "**Force Majeure**" means any occurrence beyond the reasonable control of the Party claiming suspension of an obligation that has not been caused by that Party's negligence and that the Party was unable to prevent or provide against by the exercise of reasonable diligence at a reasonable cost and includes, without limiting the generality of the foregoing, an act of God, war, revolution, insurrection, blockage, riot, strike or lockout or other industrial disturbance, fire, lightning, unusually severe weather, storms, floods, explosion, accident, shortage of labour or materials, or government restraint, action, delay, or inaction;
- (d) "**Field Representative**" means a person named to act on behalf of a Party in matters pertaining to this Agreement and each such Field Representative has the right and authority to make, give, or receive any notice, information, direction, or decision required or provided for in this Agreement;
- (e) "**GST**" means a Goods and Services Tax administered pursuant to the *Canada Excise Tax Act*, RSC 1985, c E-15, or other legislation that imposes a tax on the recipient of goods and services;
- (f) "**Party**" means any person bound by this Agreement and "**Parties**" includes all of them;

- (g) **"Rate" or "Rates"** means the amounts Grantor shall charge Grantee for the use and maintenance of the Road; and
- (h) **"Road Bans"** means a restriction on road access due to such things as construction, maintenance, seasonal weather conditions, or wildlife constraints.

ARTICLE 2 TERMS AND CONDITIONS

2.1 Grant

Grantor, insofar as it has the right to do so, grants to Grantee, its employees, agents, servants, contractors and subcontractors, the non-exclusive right to use the Road for the purpose described in Schedule "C".

2.2 Schedules

This Agreement, including the following Schedules which are attached hereto and made part hereof, shall be the terms and conditions as agreed to by Grantor and Grantee:

- Schedule "A" - Lands
- Schedule "B" - Plan of Road
- Schedule "C" - Purpose and Rates
- Schedule "D" - Field Representatives

ARTICLE 3 INTERPRETATION

3.1 Interpretation

In this Agreement:

- (a) The headings of the articles and Schedules are inserted for convenience of reference only and shall not affect meaning or construction;
- (b) Whenever the singular or masculine or neuter is used each shall be interpreted as meaning the plural or feminine or body politic or corporate and vice versa, as the context requires;
- (c) All references to currency are references to the currency of Canada;
- (d) All claims in respect of which a Party has a claim pursuant to this Agreement include without limitations reasonable legal fees and disbursements on a solicitor and their own client basis and on a full indemnity basis;
- (e) References to a statute is a reference to such enactment as amended or re-enacted from time to time and every statute that may be substituted in whole or in part and the regulations, bylaws or other subsidiary legislation made pursuant to such statute;
- (f) If a derivative form of a term or expression that is defined in this Agreement is also used in this Agreement, such derivative form shall have a meaning that corresponds to such term or expression in the context in which it is used.

**ARTICLE 4
TERM AND TERMINATION**

4.1 Term

The term of this Agreement shall commence on the Commencement Date (as defined in the Lease) and shall thereafter, run coterminously with the Lease. Notwithstanding any provision to the contrary herein contained, it is agreed between Grantor and Grantee that if the Lease is terminated, this Agreement shall likewise be terminated.

4.2 Grantee to Repair – End of Term

Grantor shall inspect the Road within a reasonable period of time prior to or following termination or expiration of this Agreement and shall notify Grantee of any damage to the Road, excluding normal wear and tear, which shall be repaired in accordance with section 10.1.

**ARTICLE 5
CONSIDERATION**

5.1 Consideration

Grantee agrees to pay Grantor the Rates as set forth under the heading "Consideration" in Schedule "C".

5.2 Grantee Maintenance Expense

Grantor shall invoice Grantee for its share of the Road maintenance and repair costs reasonably attributable to Grantee's use thereof as determined by Grantor, acting reasonably, at such intervals as Grantor may desire and Grantee shall submit payment in the manner described on the invoice(s).

5.3 Interest

Grantor shall be entitled to charge interest on any amounts that remain outstanding after thirty (30) days from Grantee's receipt of the invoice at the rate prescribed in Section 3.6 of the Lease from the day that payment is due until the day it is paid, regardless of whether Grantor has notified Grantee in advance of its intention to charge interest with respect to that unpaid amount.

5.4 Taxes

In the event Grantor is required to collect any taxes, assessments, fees or charges on behalf of any governmental authority including, without limitation, Federal Goods and Services Taxes, from Grantee with respect to any transaction occurring as a result of this Agreement, then Grantee shall pay the amount of such taxes, assessments, fees or charges to Grantor, and Grantor shall remit those amounts to the relevant taxing authority as required by law.

5.5 GST

Rates are exclusive of GST.

**ARTICLE 6
GRANTEE RESPONSIBILITIES**

6.1 Compliance with Laws

Grantee shall at all times comply with any and all:

- (a) applicable codes, statues, laws, regulations, permits, licenses, orders and directions of any governmental authority from time to time in force; and
- (b) rules and conditions established by Grantor or Grantor's Field Representative.

6.2 Notice of Defects

Grantee shall notify Grantor of any fault or defect in the Road, or any non-conformity with obligations pursuant to this Agreement, that Grantee is required to observe or perform.

6.3 Removal of Installations

Within a reasonable period of time prior to or following termination or expiration of this Agreement, Grantee shall, if requested by Grantor, remove all culverts, installations, improvements and fixtures on the Road placed there for Grantee's purposes. If they are not removed within thirty (30) days of such request, Grantor shall have the right to remove such culverts, installations or fixtures and Grantor shall invoice Grantee the costs related thereto and Grantee shall pay the invoice in the manner described on the invoice.

6.4 No Interference

Grantee shall not cause any interference with Grantor's use and occupation of the Road or the Lands, including without limitation, the operation of the power plant situate thereon.

**ARTICLE 7
VARIATION OF ROAD LOCATION**

7.1 Variation of Road Location

- (a) The Grantor, at its sole cost and expense, may vary or amend the location or configuration of the Road from time to time, provided that there is no material adverse effect on the Grantee's ingress and egress to and from the Leased Lands and such relocated or reconfigured Road shall be reasonably suitable for the Grantee's use.
- (b) The Grantee may not vary or amend the location or configuration of the Road without the Grantor's approval, such approval not to be unreasonably withheld, provided that: (i) it shall be reasonable for the Grantor to withhold its approval if it determines that the proposed variation or amendment is material in nature or will have an adverse impact on the Grantor's use and enjoyment of the Lands; and (ii) the Grantor's approval shall be subject to such reasonable conditions as the Grantor may impose. The Grantee, at its sole cost and expense, shall be responsible for any variation or amendment in the location or configuration of the Road approved by the Grantor in accordance with the preceding sentence.

**ARTICLE 8
ROAD RESTRICTIONS**

8.1 Grantor Control & Road Bans

Grantor reserves to itself the exclusive control and operation of the Road and Grantee shall observe all load limits, speed limits, Road Bans, closures and restrictions whether imposed by governmental authority or, if it reasonably deems the Road conditions warrant such, by Grantor.

8.2 Notice of Closure

Grantor shall, on a best efforts basis, notify Grantee when anticipated closures or restrictions are to be imposed.

8.3 Release of Grantor from Liability for Closure or Road Ban

Grantor shall not be liable for any loss or damage to Grantee as a result of the imposition of any limits, bans, closures and restrictions or of any failure to give reasonable notice thereof to Grantee.

8.4 Grantor Control

Grantor reserves the right to control the entrances of any access road connected to the said Road and to control the location of signs and culvert installations at such access points.

**ARTICLE 9
MAINTENANCE**

9.1 Maintenance

Grantor shall perform and effect such maintenance and repairs to the Road as it deems necessary to maintain it in a condition acceptable for Grantor's use. Grantor has the right to enter on the Road at its discretion to effect maintenance and repairs and Grantor shall not be responsible or liable to compensate Grantee for any loss, injury, damage, inconvenience, or annoyance it may suffer from such entry.

9.2 No Representations or Warranties Relating to Suitability of the Road

Notwithstanding anything herein contained, Grantor makes no representations or warranties as to the suitability or fitness of the Road for Grantee's use, or otherwise, nor does Grantor give any undertaking to maintain the Road in useable condition.

9.3 Grantee Upgrades

Grantee shall not undertake any additions, installations or improvements with respect to the Road without the prior written approval from Grantor (which approval may be subject to such conditions as Grantor may impose). The entire cost and risk of such additions, installations or improvements, together with any incremental costs of maintaining the Road in its improved state or abandoning and reclaiming the Road, shall be borne solely by Grantee. The performance of such additions, installations or improvements shall at all times be subject to Section 6.4 hereof.

9.4 Grantee Maintenance

Where Grantor has no need to use or maintain the Road, or a portion thereof, Grantee undertakes and agrees that, at the option of Grantor, maintenance of the Road shall be the sole responsibility of Grantee.

ARTICLE 10 DAMAGES

10.1 Damage and Destruction

Grantee agrees that if damage or destruction to the Road, as determined by Grantor, acting reasonably, results from the exercise by Grantee and its servants, agents, employees, contractors and subcontractors of the rights herein granted, Grantee shall, at Grantor's request, restore the Road to its condition immediately prior to the damage. If Grantee fails to comply with such instruction within thirty (30) days, Grantor may restore the Road to its condition immediately prior to the damage at the expense of Grantee. In such event, Grantee will reimburse Grantor for its costs of the restoration within thirty (30) days of receiving Grantor's invoice. Should Grantee fail to pay such costs within thirty (30) days, Grantee shall be subject to the interest provisions set out in section 5.3.

ARTICLE 11 LIABILITY AND INDEMNITY

11.1 Injury, Damage, or Loss of Property

Grantee shall use the Road entirely at its own risk and shall be liable for any loss, damage or expense suffered by Grantor as a result of the use of the Road by Grantee, its employees, agents, servants, contractors or subcontractors, unless such loss, damage or expense is a direct result of the gross negligence or willful misconduct of Grantor, its employees, agents, servants, contractors or subcontractors.

11.2 Indemnity

Grantee shall indemnify Grantor against all actions, proceedings, claims, demands and costs suffered by Grantor resulting from the use of the Road by Grantee, its employees, agents, servants, contractors or subcontractors, unless such action, proceeding, claim, demand or cost is a direct result of the gross negligence or wilful misconduct of Grantor, its employees, agents, servants, contractors or subcontractors.

ARTICLE 12 ENVIRONMENTAL

12.1 Environmental Contamination

The environmental provisions of the Lease, including, without limitation, Article 21 thereof, shall be incorporated into this Agreement and apply to the Road and Grantee's use thereof, *mutatis mutandis*.

**ARTICLE 13
DEFAULT**

13.1 Default

- (a) If (i) Grantee fails to comply with any of the terms or conditions of this Agreement or is otherwise in default of any provisions of this Agreement and such failure to comply or default continues for a period of ten (10) days after receipt of notice from Grantor to remedy such default; or (ii) an Event of Default occurs under the Lease, then in each case Grantor may, without limiting any other remedies it may have hereunder, under the Lease, or at law, terminate this Agreement in full or in part.
- (b) Notwithstanding any term provided elsewhere in this Agreement, in the event that Grantee shall fail to perform or to carry out any of the obligations or undertakings to be performed or carried out by Grantee pursuant to this Agreement, Grantee shall pay on demand to Grantor every cost and expense incurred by Grantor in enforcing or in attempting to enforce, or both, the terms and conditions contained in this Agreement, including, without restricting the generality of the foregoing, all legal fees and disbursements incurred by Grantor on a fully indemnity basis.

**ARTICLE 14
REPRESENTATIONS**

14.1 Grantor Representations and Warranties

Grantor represents and warrants that:

- (a) it has the full power and authority to enter into this Agreement;
- (b) it is under no restrictions or obligations, contractual or otherwise, that are inconsistent with the execution of this Agreement or will interfere with its performance of any of Grantor's obligations under this Agreement;
- (c) all work to be performed by Grantor hereunder shall be performed in a competent fashion and in accordance with applicable industry standards in the area in which the Road is located.

14.2 Grantee Representation and Warranties

Grantee represents and warrants that:

- (a) it has the full power and authority to enter into this Agreement;
- (b) it is under no restrictions or obligations, contractual or otherwise, that are inconsistent with the execution of this Agreement or will interfere with its performance of any of Grantee's obligations under this Agreement;
- (c) all work to be performed by Grantee hereunder shall be performed in a competent fashion and in accordance with applicable industry standards in the area in which the Road is located.

**ARTICLE 15
INSURANCE**

15.1 Insurance

- (a) The insurance provisions of the Lease, including, without limitation, Article 7 thereof, shall be incorporated into this Agreement and apply to the Road and Grantee’s use thereof, *mutatis mutandis*, such that, without limiting the generality of the foregoing, any insurance required by Grantee to be carried under the Lease in respect of the Leased Lands and its use thereof shall also be carried by Grantee in respect of the Road and its use thereof, provided that the limit applicable to commercial liability insurance carried by the Grantee in respect of the Road and its use thereof shall be not less than **REDACTED DOLLARS** per occurrence.
- (b) In addition to the insurance described in Subsection (a), Grantee shall also maintain and keep in force during the term of this Agreement, for the benefit of Grantee, Automobile Liability Insurance covering bodily injury (including passenger hazard) and property damage arising from the operation of owned or non-owned vehicles used on the Road in the course of operations by Grantee, with inclusive limits of not less than **REDACTED DOLLARS** for any one accident or occurrence. The requirements under the Lease with respect to policies of insurance maintained by Grantee shall apply to the insurance described in this Subsection (b), *mutatis mutandis*.

**ARTICLE 16
ARBITRATION**

16.1 Arbitration

The arbitration provisions of the Lease, including, without limitation, Article 17 thereof, shall be incorporated into this Agreement and apply to this Agreement, *mutatis mutandis*.

**ARTICLE 17
NOTICES**

17.1 Notices

- (a) Notices, invoices and other communications to be given under this Agreement shall be in writing and may be delivered by hand, mailed or electronically transmitted, excluding social media, addressed to the Parties as follows:

GRANTOR: **MILNER POWER LIMITED PARTNERSHIP
REDACTED**

Email: **REDACTED**
Attention: **REDACTED**

And to Grantor's Field Representative

GRANTEE: **REDACTED
REDACTED**

Email: **REDACTED**

Attention: **REDACTED**

And to Grantee's Field

Representative

- (b) Either Party may, from time to time, change its address for service by giving written notice to the other Party and such changed address is effective five (5) Business Days after notice is deemed to be received.
- (c) Any notice, invoice or other communication shall be deemed to be received by the addressee, if delivered personally, at the time of delivery and, if mailed, on the fourth Business Day following the day on which it was mailed.
- (d) Any notice, invoice or other communication delivered or transmitted by electronic medium, including electronic mail, is deemed to be received when the notice or notification enters the recipient Party's information system and becomes capable of being retrieved and processed by that Party if those events occur during normal business hours on any Business Day or at the beginning of the next Business Day if those events are after five o'clock, local time.
- (e) In the case of a postal disruption, or an anticipated postal disruption, all notices or other communications to be given under this Agreement shall be electronically transmitted or delivered by hand.

ARTICLE 18 FORCE MAJEURE

18.1 Force Majeure

If a Party is prevented by Force Majeure from fulfilling any obligation, the obligations of the Party, insofar only as its obligations are affected by the Force Majeure, shall be suspended while the Force Majeure continues to prevent the performance of such obligations and for that time as that Party may reasonably require to commence to fulfill such obligation. A Party prevented from fulfilling any obligation by Force Majeure shall give the other Party notice of the Force Majeure and the affected obligations including reasonably full particulars as soon as reasonably possible in the circumstances. Nothing is construed to relieve either Party of its obligation to pay monies due under this Agreement.

ARTICLE 19 ASSIGNMENT

19.1 Assignment

- (a) This Agreement is not assignable in whole or in part by Grantee.
- (b) Grantor may assign this Agreement without the consent of Grantee.

**ARTICLE 20
MISCELLANEOUS**

20.1 Conflict with Laws

If compliance with any provision of this Agreement would result in violation of any applicable codes, statutes, laws, regulations, permits, licenses, orders and directions of any governmental authority, such code, statute, law, regulation, permit, license, order and direction of any governmental authority shall prevail and this Agreement shall be deemed to be amended accordingly.

20.2 Entire Agreement

This Agreement, as amended from time to time by agreement in writing of the Parties, shall be the entire agreement between Grantor and Grantee as to the matters herein and all previous promises, representations or agreements between the Parties, whether oral or written, shall be deemed to have been replaced by this Agreement.

20.3 Counterpart Execution

This Agreement may be executed in counterparts, whether originally or electronically, each of which is deemed an original, but all of which constitute one and the same instrument.

20.4 Unenforceability

If any provision of this Agreement is wholly or partially unenforceable for any reason, such unenforceability will not affect the enforceability of the balance of this Agreement and all provisions of this Agreement shall, if alternative interpretations are applicable, be construed so as to preserve the enforceability of this Agreement.

20.5 Non-Waiver

It is further understood and agreed that no failure or delay by a party in exercising any right, power or privilege under this Agreement shall operate as a waiver, nor shall any single or partial exercise preclude any other or further exercise or the exercise of any right, power, or privilege under this Agreement.

20.6 Severability

The failure of a Party to seek redress for violation of or to insist on the strict performance of any covenant or condition of this Agreement does not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

20.7 Governing Law

This Agreement shall be governed by the construed in accordance with the laws of the Province of Alberta is situated and the federal laws of Canada, as applicable, and shall be treated as a contract of the province in which the Road is situated.

20.8 Time is of the Essence

Time is of the essence throughout.

THE PARTIES have executed this Agreement as of the Effective Date.

**MILNER POWER LIMITED PARTNERSHIP
by its general partner, MILNER POWER INC.**

Per: _____
Authorized Signatory

REDACTED

Per: _____
Authorized Signatory

SCHEDULE "A"

LANDS

Firstly:

PLAN 2567TR
PLANT SITE ADDITION
CONTAINING 16.774 HECTARES (41.45 ACRES) MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

Secondly:

PLAN 3618RS
PLANT SITE
COMPRISING PARTS OF:
MERIDIAN 6 RANGE 8 TOWNSHIP 58
THEOR SECTIONS: HECTARES (ACRES) MORE OR LESS
N 1/2-10 & S 1/2-15 12.99 32.10
EXCEPTING THEREOUT:
HECTARES (ACRES) MORE OR LESS
A) PLAN 0024924 - SITE 0.765 1.89
(POWER SUBSTATION)
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

Thirdly:

PLAN 8622136
PLANT SITE ADDITION
CONTAINING 0.810 HECTARES, MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

SCHEDULE "B"

PLAN OF ROAD

REDACTED

SCHEDULE "C"

PURPOSE AND RATES

PURPOSE OF USE: To gain access to the Leased Lands

CONSIDERATION: \$1 per year

SCHEDULE "D"

FIELD REPRESENTATIVES

GRANTOR'S FIELD REPRESENTATIVE ADDRESS:

Address **REDACTED**

Phone: **REDACTED**

Fax: **REDACTED**

Attention: **REDACTED**

GRANTEE'S FIELD REPRESENTATIVE ADDRESS:

Address **REDACTED**

Phone: **REDACTED**

Attention: **REDACTED**

SCHEDULE "D"
INDEMNITY AGREEMENT

See attached.

INDEMNITY AGREEMENT
(this "Agreement")

This Agreement made effective [●], 2025 (the "Effective Date").

BY:

VALORY RESOURCES INC. (the "Indemnifier")

IN FAVOUR OF

MILNER POWER INC. (the "Landlord")

RECITALS:

- A. The Landlord and **REDACTED** (the "Tenant") are party to a ground lease dated [●], 2025 as such ground lease may be amended from time to time (the "Lease") in respect of certain premises located in the Municipal District of Greenview No. 16, Alberta, for the purpose of constructing and operating a coal processing facility, all as more particularly described in the Lease.
- B. As an inducement to the Landlord to enter into the Lease with the Tenant, the Indemnifier wishes to enter into this Agreement with the Landlord.

NOW THEREFORE in consideration of the Landlord entering into the Lease, the mutual covenants and agreements between the parties contained herein and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Defined Terms

Except as otherwise defined herein, all initially capitalized terms used in this Agreement shall have the meaning given in the Lease.

ARTICLE 2
INDEMNITY

2.1 Payment and Performance

The Indemnifier hereby unconditionally covenants and agrees with the Landlord to:

- (a) make due and punctual payment of all amounts payable to the Landlord under the Lease, whether as rent, additional rent or otherwise (the "Rent") as and when they fall due;

- (b) observe and perform all of the other covenants, provisions and obligations of whatsoever kind contained in or arising out of the Lease, which are to be observed and performed by the Tenant, or its successors or assigns, under the Lease (such covenants, provisions and obligations being herein collectively called, the "**Terms**"); and
- (c) indemnify and save the Landlord harmless from any loss or damage suffered or incurred by the Landlord as a result of any breach by the Tenant of the Tenant's obligations to pay Rent or observe and perform the Terms under the Lease.

2.2 Indemnity Not Limited

This Agreement is not limited. The liability of the Indemnifier to the Landlord hereunder shall for all purposes be construed as if the Indemnifier was the primary obligor and not merely surety for the obligations of the Tenant under the Lease.

2.3 Indemnity Absolute and Unconditional

The Indemnifier acknowledges and agrees that the Landlord shall be entitled, without prior notice to the Indemnifier, without the knowledge or consent of the Indemnifier and without affecting the obligations and liabilities of the Indemnifier hereunder, to:

- (a) alter the amount, time or manner of payment of Rent, or grant extensions, indulgences, releases or discharges pertaining thereto;
- (b) amend, modify, change or supplement the Terms as agreed by the Tenant;
- (c) accept or require security from the Tenant for arrears of Rent or non-compliance with the Terms;
- (d) assign the Lease or benefits of the Rent thereunder to any mortgagee of the Landlord;
- (e) consent to, or receive notice of, the Tenant's assignment of the Lease or subletting of all or a part of the Premises;
- (f) assign this Agreement in whole or in part; and
- (g) otherwise deal with the Lease as agreed to by the Tenant.

2.4 Expiry of Indemnity

Notwithstanding any other provision of this Agreement, it is agreed and acknowledged that the liabilities and obligations of the Indemnifier hereunder shall continue until the Rent has been fully paid and all of the Terms have been duly observed and performed or until the Landlord shall have delivered to the Indemnifier an instrument in writing discharging the Indemnifier from all of its obligations and liabilities hereunder.

ARTICLE 3 DEFAULT AND REMEDIES

3.1 Default

In the event of a default under the Lease or under this Agreement, the Indemnifier hereby acknowledges that the Landlord shall not be required to:

- (a) proceed against or exhaust any remedy against the Tenant;
- (b) proceed against or exhaust any security of the Tenant held by the Landlord;
- (c) pursue any other remedy available to the Landlord; or
- (d) notify the Indemnifier of any default under the Lease by the Tenant,

before making a claim hereunder against the Indemnifier. A default of the Indemnifier under this Agreement, including without limitation, the failure to promptly delivery anything reasonably requested by the Landlord pursuant to Section 4.3 hereof, shall constitute a default of the Tenant under the Lease.

3.2 Enforcement

The Landlord has the right to enforce this Agreement regardless of the acceptance of additional security from the Tenant and regardless of any release or discharge of the Tenant by the Landlord or by others or by operation of law. Without limiting the generality of the foregoing, the liability of the Indemnifier under this Agreement is not and is not deemed to have been waived, released, discharged, impaired or affected by reason of the release or discharge of the Tenant in any receivership, bankruptcy, winding-up or other creditors' proceedings or the rejection, disaffirmance or disclaimer of the Lease in any proceeding or otherwise. The liability of the Indemnifier shall not be affected by any repossession of the Premises by the Landlord.

3.3 Additional Security

This Agreement is in addition to, and not in substitution for, any other covenant or security the Landlord may obtain in respect of the Lease, and the liability of the Indemnifier hereunder is not affected by the existence or non-existence of any such other covenant or security.

3.4 Sale Not Affecting

The covenants of the Indemnifier shall be, remain and continue operative and binding notwithstanding the sale or disposition of the assets or business of the Tenant or the Indemnifier in whole or in part to one another or to others, or any change or reorganization of the Tenant.

3.5 Remedies Not Limiting

No action or proceeding brought or instituted under this Agreement and no recovery in pursuance thereof shall be a bar or defence to any further action or proceeding which may be brought under this Agreement by reason of any further default hereunder or in the performance and observance of the Terms.

ARTICLE 4 GENERAL

4.1 Notice

Any notice or other communication which may or is required to be given pursuant to this Agreement shall be in writing and shall be delivered and received in accordance with the notice provisions set out in the Lease and the Indemnifiers address for any such notices shall be the Premises.

4.2 Lease

The Indemnifier acknowledges having received and read a copy of the Lease and that the Indemnifier understands same.

4.3 Further Assurances

The parties hereto shall execute such further documents and do or cause to be done such further acts or things as may be necessary to better implement and carry into effect the provisions and intent of this Agreement.

4.4 Headings

Headings used throughout this Agreement are solely for the convenience of the parties hereto and are not to be used as an aid in the interpretation of this Agreement.

4.5 Interpretation

The necessary grammatical changes required to make the provisions of this Agreement apply in the plural where a party comprises more than one entity and to corporations, associations, partnerships or individuals will be assumed in all cases as though in each case they were fully expressed. Any words herein making reference to gender shall be deemed to include the other gender, corporations, associations and partnerships, as applicable.

4.6 Time of Essence

Time shall be of the essence of this Agreement.

4.7 Non-Juridical Day

If the date for making payment or doing any act hereunder shall be a Saturday, Sunday or a statutory holiday in the Province of Alberta, such date shall be extended to the first business day following such date.

4.8 Representations and Entire Agreement

This Agreement and the Lease contain the entire terms, conditions, and provisions relating to the matters contemplated herein and there are no other additional or collateral terms, conditions, agreements, representations or warranties, express or implied, relating to the matters contemplated herein except as expressly stated in this Agreement. This Agreement supersedes all prior oral and written

agreements and understandings of the parties hereto, or any one of them in relation to the matters contemplated herein.

4.9 Amendments

This Agreement shall not be modified, amended or waived except by an instrument in writing duly executed and delivered by the parties hereto or by their respective successors and permitted assigns.

4.10 Non-Waiver

A waiver by any party of the strict performance of any term, covenant or condition herein contained shall not of itself constitute a waiver of any such term, covenant or condition or of any subsequent breach thereof.

4.11 Severability

If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

4.12 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

4.13 Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and each party hereto irrevocably attorns to the jurisdiction of the courts of the Province of Alberta.

[Signature page follows]

4.14 Counterpart Execution

This Agreement may be executed in any number of counterparts with the same effect as if all signatories to the counterparts had signed one document, all such counterparts shall together constitute, and be construed as, one instrument and each of such counterparts shall, notwithstanding the date of its execution, be deemed to bear the date first above written. A signed counterpart provided by way of facsimile transmission or in .pdf format shall be as binding upon the parties hereto as an originally signed counterpart.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the Effective Date.

VALORY RESOURCES INC.

Per: _____
Authorized Signatory

MILNER POWER INC.

Per: _____
Authorized Signatory

TENANT ACKNOWLEDGEMENT

The Tenant hereby acknowledges and agrees that a default of the Indemnifier under this Agreement, including without limitation, the failure to promptly delivery anything reasonably requested by the Landlord pursuant to Section 4.3 hereof, shall constitute a default of the Tenant under the Lease.

REDACTED

Per: _____
Authorized Signatory

SCHEDULE "E"
DUST CONTROL HANDBOOK

REDACTED

EXHIBIT B
D & O RELEASES

See attached.

RELEASE

TO: [•] (the "**Directors and Officers**")

For and in consideration of the direct and indirect consideration received by the undersigned pursuant to a purchase and sale agreement (the "**Purchase and Sale Agreement**"), dated effective February 18, 2025, entered into between Maxim Power Corp. ("**Maxim**") and Valory Resources Inc. (the "**Purchaser**") and pursuant to Section 9.2(p) of the Purchase and Sale Agreement, effective as of the date hereof, **Summit Coal Inc.** ("**SCI**"), its respective past and present officers, directors, shareholders, principals, employees, predecessors, successors, assigns, advisors, agents and representatives (collectively, the "**SCI Parties**") hereby release and forever discharge the Directors and Officers, their respective heirs, executors, administrators and assigns (collectively, the "**Director and Officer Parties**") of and from all liability including all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, claims, accounts, covenants, costs, damages and demands of every nature and kind whatsoever, whether arising at common law, in equity, by contract or by statute which the SCI Parties may have ever had, now have, or which any of them hereafter shall or may have against the Director and Officer Parties, for or by reason of any act, omission, matter, cause or thing whatsoever, existing up to the present time; except for any rights, claims, actions or entitlements the SCI Parties may have or will have in connection with the Purchase and Sale Agreement.

DATED effective as of [•], 2025.

SUMMIT COAL INC.

Per: _____
Name:
Title:

RELEASE

TO: [•] (the "**Directors and Officers**")

For and in consideration of the direct and indirect consideration received by the undersigned pursuant to a purchase and sale agreement (the "**Purchase and Sale Agreement**"), dated effective February 18, 2025, entered into between Maxim Power Corp. ("**Maxim**") and Valory Resources Inc. (the "**Purchaser**") and pursuant to Section 9.2(p) of the Purchase and Sale Agreement, effective as of the date hereof, **Summit Coal Limited Partnership** ("**SCLP**"), its respective past and present officers, directors, unitholders, principals, employees, predecessors, successors, assigns, advisors, agents and representatives (collectively, the "**SCLP Parties**") hereby release and forever discharge the Directors and Officers, their respective heirs, executors, administrators and assigns (collectively, the "**Director and Officer Parties**") of and from all liability including all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, claims, accounts, covenants, costs, damages and demands of every nature and kind whatsoever, whether arising at common law, in equity, by contract or by statute which the SCLP Parties may have ever had, now have, or which any of them hereafter shall or may have against the Director and Officer Parties, for or by reason of any act, omission, matter, cause or thing whatsoever, existing up to the present time; except for any rights, claims, actions or entitlements the SCLP Parties may have or will have in connection with the Purchase and Sale Agreement.

DATED effective as of [•], 2025.

**SUMMIT COAL LIMITED PARTNERSHIP,
by its General Partner, SUMMIT COAL INC.**

Per: _____

Name:

Title:

EXHIBIT C
ROYALTY AGREEMENT

See attached.

MAXIM POWER CORP.

as Royalty Owner

- and -

SUMMIT COAL LIMITED PARTNERSHIP

as Royalty Payor

ROYALTY AGREEMENT

[•], 2025

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ROYALTY AGREEMENT

THIS ROYALTY AGREEMENT dated as of [●], 2025 at [●] [a.m./p.m.] M.T. between MAXIM POWER CORP., an Alberta corporation (the "**Royalty Owner**") and SUMMIT COAL LIMITED PARTNERSHIP, an Alberta limited partnership (the "**Royalty Payor**").

WHEREAS Royalty Owner is the sole limited partner of the Royalty Payor;

AND WHEREAS Royalty Payor has agreed to grant, by way of making a distribution from the capital of the Royalty Payor, and pay the Royalty to the Royalty Owner in accordance with the terms and conditions set forth in this Agreement;

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

ARTICLE 1 INTERPRETATION

1.1 Defined Terms.

In this Agreement, including the recitals thereto, the following terms have the following meanings:

"**Affiliate**" has the same meaning as "affiliate" under the *Securities Act* (Alberta).

"**Agreement**" means this royalty agreement and all Schedules attached hereto and any instruments in amendment or confirmation of it; and the expressions "Article", "Section" and "Schedule" followed by a number or letter, as the case may be, mean and refer to the specified Article, Section or Schedule of this Agreement.

"**Benchmark Coal Price**" means the greater of (a) S&P Platts Premium Hard Coking Coal Low Vol CFR China benchmark (code: PLVHC00), and (b) S&P Platts Premium Low Vol HCC FOB Australia benchmark (code: PLVA00), published at <https://www.spglobal.com/platts/en/our-methodology/price-assessments/metals/premium-low-vol-coking-coal-metals-prices>, from time to time.

"**Business Day**" means any day of the year, other than a Saturday or Sunday, on which banks in Calgary, Alberta are open for commercial banking business during normal banking hours.

"**Closing**" has the meaning set out in the Option Agreement.

"**Coal**" means all coal within, upon or under the Lands.

"**Coal Leases**" means, subject to Section 2.2(d), the coal leases set out in Schedule A.

"**Commercial Production**" means the date upon which Coal from any portion of the Lands is first sold, transferred, assigned, conveyed, traded, exchanged, alienated, disposed, gifted or otherwise provided to any purchaser.

"**Dispute**" has the meaning set out in Section 7.1.

"**Dispute Notice**" has the meaning set out in Section 7.1.

"Event of Default" has the meaning set out in Section 5.1.

"Governmental Entity" means: (a) any multinational, federal, provincial, state, municipal, local or other governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (b) any subdivision or authority of any of the foregoing; or (c) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of or in lieu of any of the above.

"Lands" means the lands that are the subject matter of the Coal Leases, as set out in Schedule A.

"Laws" means any and all applicable laws including all statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, ruling or awards, and general principles of common and civil law and equity, binding on or affecting the Person referred to in the context in which the word is used.

"Lien" has the meaning set out in Section 2.5(a).

"month" means a calendar month.

"Option Agreement" means the option agreement entered into between Valory Resources Inc. and the Royalty Owner on February 15, 2022, as amended by an amending agreement to option agreement dated February 14, 2023, as further amended by a second amending agreement to option agreement dated March 6, 2023, and further amended by an amended and restated option agreement dated March 14, 2023, and as further amended by an amending agreement to the amended and restated option agreement dated October 16, 2023.

"Parties" means the Royalty Owner and the Royalty Payor, and **"Party"** means either of them.

"Partnership Agreement" means the Amended and Restated Limited Partnership Agreement, governing the formation of the Royalty Payer, dated December 4, 2019, between Summit Coal Inc., as general partner, and the Royalty Owner, as the sole limited partner.

"Person" means a natural person, sole proprietorship, partnership, limited liability partnership, corporation, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Entity, and pronouns have a similarly extended meaning.

"Prior Quarter" has the meaning set out in Section 2.4(b)(i).

"Project" means the development of the Coal Leases, commonly referred to as the "Mine 14 Project".

"quarter" means a calendar quarter.

"Review Period" has the meaning set out in Section 2.6(b).

"Royalty" has the meaning set out in Section 2.1.

"Secured Property" has the meaning set out in Section 2.5(a).

"Term" has the meaning set out in Section 4.1.

"Third Party" means a Person who is at arm's length from the Royalty Payor or the Royalty Owner, as the context requires.

"**tonnage**" means a weight expressed in Tonnes.

"**Tonne**" means 1,000 kilograms (1.102311 short tons).

1.2 Gender and Number.

Any reference in this Agreement to gender includes all genders and words importing the singular number only will include the plural and vice versa.

1.3 Headings, etc.

The provision of a Table of Contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect its interpretation.

1.4 Currency.

All references in this Agreement to dollar amounts, unless otherwise specifically indicated, are expressed in lawful currency of Canada.

1.5 Certain Phrases, etc.

In this Agreement: (a) the words "including" and "includes" mean "including (or includes) without limitation"; and (b) the phrase "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"; and (c) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.6 Accounting Terms.

All accounting terms not specifically defined in this Agreement will be interpreted in accordance with GAAP.

1.7 Incorporation of Exhibits and Schedules.

The Schedules attached to this Agreement are incorporated into this Agreement by reference and are deemed to be part hereof.

ARTICLE 2 ROYALTY

2.1 Grant of Royalty.

- (a) On the terms and subject to the conditions of this Agreement, the Royalty Payor hereby grants and agrees to pay, in United States dollars, a fixed production royalty to the Royalty Owner from Coal produced from the Lands (the "**Royalty**"), calculated in its unprocessed state at a flat rate of three percent (3%) of the Benchmark Coal Price per Tonne of Coal produced from the Lands.
- (b) The consideration for the grant of the Royalty, as set out in Section 2.1(a), shall be paid by the Royalty Payor making a Special Distribution (as defined in the Partnership Agreement) of the Royalty to the Royalty Owner pursuant to Section 6.2 of the Partnership Agreement, and the capital

account maintained in respect of the Royalty Owner shall be decreased by the amount of CAD\$REDACTED, which the Parties acknowledge and agree is the fair market value of the Royalty.

2.2 Interest in Land.

It is the express intention of the Parties that:

- (a) the Royalty is, and is to be construed as, an interest in land in the Lands;
- (b) the Royalty is, and is to be construed as, an interest in the Coal *in situ*;
- (c) all terms, covenants, provisions and conditions of this Agreement shall run with and be binding upon the Lands and the Coal Leases, and the estates affected thereby for the duration of this Agreement;
- (d) the Royalty shall apply to the Royalty Payor's and its Affiliates' interest in all renewals, extensions, amendments, relocations or conversions, and any coal leases issued in replacement or substitution of the foregoing or other similar arrangements with respect to any Coal Leases (whether obtained before or after the date of this Agreement);
- (e) the Royalty Payor shall co-operate with the Royalty Owner in taking any commercially reasonable actions that are necessary or appropriate to support and defend the Parties' intentions set out in this Section 2.2; and
- (f) the Royalty Owner may register or record against the title to any or all of the Lands such form of notice, caveat, caution or other document (including, without limitation, a copy of this Agreement) as it considers appropriate to protect its right to receive the Royalty hereunder. Each of the Parties hereby consents to such registering or recording and agrees to co-operate with such Party to accomplish the same.

2.3 Quantification of Royalty.

- (a) The tonnage of Coal shall be weighed by the Royalty Payor, at its sole cost and expense, in accordance with good industry practice and standards or as otherwise agreed between the Parties, calculated in its unprocessed state, prior to washing or other forms of processing. The Royalty Owner or its designate may be present at such measuring.
- (b) The Royalty Payor shall ensure that all scales used for weighing unprocessed Coal produced from the Lands, are correctly certified, inspected, operated and maintained in accordance with good coal mining industry standards and applicable Law. The accuracy and performance of scale equipment shall be verified at an interval frequency consistent with industry standards, not greater than three (3) months, and the results of such verification tests shall be retained by the Royalty Payor and shared with the Royalty Owner upon request.
- (c) All scales and measuring equipment used in connection with weighing the Coal shall be open to inspection and verification at reasonable times by the Royalty Owner. If a question arises as to the accuracy of any measurement, any scale and measuring equipment shall be tested upon request of a Party, and if found to be correct, or to be in error of not more than one percent (1%), the expense of such testing shall be borne by the requesting Party, but the expense of such testing shall be for the other Party's account if the meter is found to be incorrect by more than one percent (1%).

- (d) If, upon any test, a scale or measuring equipment is found to be in error of not more than one percent (1%), previous readings of such equipment shall be considered correct in computing the volumes being metered, but such equipment shall be adjusted properly at once to record accurately. If upon any test, measuring equipment shall be found to be inaccurate by a known amount exceeding one percent (1%), then any previous readings of such equipment shall be corrected to zero error for any period which is known definitely or agreed upon, but in case the period is not known definitely or agreed upon, such correction shall be for a period covering the last half of the time elapsed since the date of the last test of such measuring equipment.
- (e) The Royalty shall be paid by Royalty Payor to Royalty Owner free and clear of any and all deductions whatsoever, including without limitation taxes, royalties, governmental expenses, costs and other expenses incurred by Royalty Payor.

2.4 Payment.

- (a) The Royalty shall be calculated on a quarterly basis, in accordance with the royalty statement provided in Section 2.4(b)(ii), and paid by Royalty Payor to Royalty Owner in accordance with Section 2.4(c).
- (b) No later than ten (10) days following the end of each quarter, the Royalty Payor shall provide the Royalty Owner with:
 - (i) a production report setting out the actual tonnage of unprocessed Coal produced from the Lands in the immediately preceding quarter (or portion thereof in respect of the first quarter of the Term) (the "**Prior Quarter**"), including where the actual tonnage of produced Coal is nil;
 - (ii) a statement, in a form satisfactory to the Royalty Owner, acting reasonably, showing the calculation of the Royalty payable in respect of such Prior Quarter in detail sufficient to enable the Royalty Owner to verify the accuracy of the Royalty calculation, together with a certificate of a duly authorized officer of the Royalty Payor certifying on behalf of the Royalty Payor (and not in a personal capacity) as to the validity and accuracy of both the production report and the royalty calculation shown in the statement; and
 - (iii) in the event of any commingling, a detailed summary of the determination by the Royalty Payor of the quantity of coal comingled in accordance with Section 3.6 and subject to the Royalty.
- (c) Royalty payments will be due and payable quarterly on the last day of the month immediately following the end of the Prior Quarter in which the same accrued by either certified cheque or wire transfer of immediately available funds in United States dollars. For clarity, Royalty payments accrued for the quarterly period ending March 31 will be due and payable on April 30, being the last day of the month immediately following the end of the preceding quarter.

2.5 Royalty Lien.

- (a) As of the date hereof, the Royalty Payor hereby mortgages and charges and grants a continuing first priority security interest and lien (such mortgage, charge, security interest and lien being collectively referred to as a "**Lien**") in all of the Royalty Payor's right, title and interest in its interest in the Coal, the Coal Leases, the Lands and the Project, and the proceeds thereof (collectively, the "**Secured Property**"), as security for the due payment and performance of the Royalty and all other

indebtedness, liabilities and obligations of the Royalty Payor under this Agreement, to have and to hold the same for the uses and purposes, with the rights, powers and authorities and on the terms and conditions provided for herein.

- (b) The Royalty Payor covenants and agrees to co-operate with the Royalty Owner to create and register a security interest in favour of the Royalty Owner registrable under the *Mines and Minerals Act* (Alberta), *The Personal Property Security Act* (Alberta) and any other applicable registry, and provide its written consent or signature to any documents or things reasonably necessary to accomplish such registrations, in order to ensure that any successor or assignee or other acquiror or encumbrancer of the Royalty Payor's title to the Lands or the Project, or any of the other Secured Property shall have public notice of the Royalty Owner's interest in the Lands, the Project and any of the other Secured Property as security for the payment of the Royalty. The Royalty Owner may register such security interest at its own cost and expense and the Royalty Payor has no obligation to maintain or renew the security interest under any applicable registry.
- (c) If a prospective financier of the Project requires security over the Secured Property that ranks ahead of the Lien as a condition precedent to the provision of finance, and the Royalty Payor requests the Royalty Owner to subordinate its Lien to the prospective financier, the Royalty Owner agrees to act in good faith and reasonably in considering and responding to that request.

2.6 Accounting Matters.

- (a) Royalty Payor shall, from and after the date hereof, keep and maintain true and correct books, records and accounts showing the tonnage of unprocessed Coal produced from the Lands, and other records, as appropriate, related to the determination of the Royalty, for the minimum period required by applicable Laws or for two (2) years plus the current year for audit purposes, whichever is longer.
- (b) Any Royalty payment made hereunder shall be considered final and in full satisfaction of all obligations of the Royalty Payor hereunder in respect of the Royalty payable for the applicable calendar year to which such payment relates unless within twenty-four (24) months (the "**Review Period**") after the receipt by the Royalty Owner of the last quarterly payment of a calendar year, the Royalty Owner provides a written notice of its objection (describing in detail the specific objection and its basis therefor) to the Royalty Payor.
- (c) Upon not less than thirty (30) Business Days' prior written request within the Review Period, from the Royalty Owner, duly authorized representatives of the Royalty Owner or the Royalty Owner's chartered accountants shall be entitled, at the Royalty Owner's cost and expense, to inspect and audit such books of account, records and supporting materials related to the determination of the Royalty or otherwise confirming the rights and obligations of the Royalty Payor and the Royalty Owner hereunder.
- (d) Any discrepancies disclosed by such audit shall be identified in writing to the Royalty Payor within sixty (60) days following the completion of such audit, and the Royalty Payor shall respond in writing to any claims or discrepancies within sixty (60) days of the receipt of such notice of claim or discrepancies. If the Royalty Payor does not respond in such sixty (60) day period, a credit for the disputed amount shall be deemed to be made in favour of the Royalty Owner.
- (e) To the extent that the Royalty Payor and the Royalty Owners are unable to resolve any outstanding claims or discrepancies disclosed by such audit within thirty (30) days of the response of Royalty Payor, such audit exceptions shall be resolved by a nationally or internationally recognized firm of

chartered accountants as may be selected by Royalty Payor and Royalty Owners, which shall be requested to render its decision without qualifications, other than the usual qualifications relating to engagements of this nature, within fourteen (14) days after the dispute is referred to it.

- (f) The decision of the accounting firm shall be final and binding upon the Parties and shall not be subject to appeal by any Party. The costs and expenses of the accounting firm shall be borne by the unsuccessful party to any dispute referred to dispute resolution pursuant to this Section 2.6. Notwithstanding the foregoing audit period limitation, the Royalty Owner's audit rights under this Section 2.6, shall be extended for the time period, and in respect of those books, records and accounts, as may be reasonably necessary to permit Royalty Owner to verify refunds or payments to be received or made by it pursuant to this Agreement.

2.7 Right to Inspect.

Upon not less than five (5) days' notice to the Royalty Payor, the Royalty Owner or its authorized representatives may enter upon all surface and subsurface portions of the Lands and the Project (subject to complying with all of the Royalty Payor's policies and procedures relating to access to the Lands and Project), and may, subject to the obligations of confidentiality described in Section 8.2, inspect and copy all records and data pertaining to the determination of the Royalty, including such records and data which are maintained electronically. The Royalty Owner or its authorized representatives shall enter the Lands and the Project at its own risk and may not unreasonably hinder operations on or pertaining to the Lands. The Royalty Owner shall indemnify and save harmless the Royalty Payor and its Affiliates, from and against any expenses, costs, claims, penalties, fines, losses, liabilities which may be suffered or incurred by any of them by reason of damage to property or injury to the Royalty Payor or any of its agents or representatives caused by the Royalty Owner's exercise of its rights in this Section 2.7.

ARTICLE 3 OPERATIONS

3.1 Commercial Production.

The Royalty Payor shall use commercially reasonable efforts to bring the Project into Commercial Production as soon as reasonably practicable and shall deliver to the Royalty Owner notice indicating said date as soon promptly after the occurrence thereof.

3.2 Proper Practices in Operations.

- (a) The Royalty Payor shall conduct all operations in respect of the Coal, the Coal Leases and the Lands in a good and workmanlike manner in accordance with good coal mining industry practice and applicable Laws.
- (b) The Royalty Payor shall pay all rentals, royalties, taxes and charges payable under the provisions of the Coal Leases and with respect to the Lands and the production therefrom, and covenants and agrees to keep the Coal Leases in good standing until surrender thereof as herein provided for and shall not allow the Coal Leases to terminate or become subject to forfeiture. The Royalty Payor will renew the Coal Leases prior to the expiry of the current term and any subsequent terms of such Coal Leases.

3.3 Royalty Payor to determine Operations.

Subject to Sections 3.1 and 3.2, the Royalty Payor shall have complete discretion concerning the nature, timing and extent of all exploration, development, mining and other operations conducted with respect to the Project and the Lands and may suspend operations and production at any time it considers prudent or appropriate to do so.

3.4 Notice Obligations On Surrender.

The Royalty Payor shall not surrender any portion of the Coal Leases or the Lands without giving notice of such proposed surrender in writing (hereinafter called the "**Surrender Notice**") to the Royalty Owner at least sixty (60) days before the next ensuing anniversary date of the lease covering the lands or interest therein which it proposes to surrender. Within thirty (30) days after receipt of the Surrender Notice, the Royalty Owner may elect in writing to acquire all or part of such interest for nominal (CAD\$10) consideration and if it does so the Royalty Payor shall, without warranty, forthwith transfer or assign such interest to the Royalty Owner. The Royalty shall thereafter cease to be payable with respect to the interest so assigned to the Royalty Owner. If the Royalty Owner fails to make the election as provided for herein, the Royalty Payor may surrender the lands specified in the Surrender Notice. The Royalty Payor shall provide the Royalty Party with access to all data, records, agreements and information reasonably required by the Royalty Party to assess whether it will exercise its rights under this Section 3.4.

3.5 Royalty Party to Assume Rights and Obligations.

Upon the Royalty Owner electing to acquire the interest to be surrendered as set forth herein, the Royalty Owner shall assume all rights and obligations of the Royalty Payor with respect to the interest assigned. The effective date of such assignment shall be the date upon which the Royalty Owner elected to acquire the subject interest as provided herein.

3.6 Commingling.

Coal from the Lands may be commingled with coal products from other lands provided that the Royalty Payor establishes a system for determining the Royalty payable hereunder with reasonable accuracy to the reasonable satisfaction of the Royalty Owner (having regard to systems commonly used by other miners for commingled coal). The Royalty Owner's access, inspection and audit rights set out in Sections 2.5 and 2.7 shall extend to verifying the accuracy of any such system for determining the Royalty payable hereunder for commingled coal.

3.7 Stockpiling.

The Royalty Payor shall be entitled to temporarily stockpile, store or place Coal produced from the Lands in any locations owned, leased or otherwise controlled by the Royalty Payor or its Affiliates, provided the same are appropriately secured from loss, theft, tampering and contamination in accordance with best coal mining industry practices and Laws.

ARTICLE 4 TERM

4.1 Term.

The Royalty shall be effective as of the date hereof and shall terminate upon the termination of all Coal Leases and the abandonment of the Lands (the "**Term**"), so long as the Royalty Payor does not

re-license or leases the Lands at any time within an **REDACTED** period following the effective date of abandonment of all the Lands. Thereafter, this Agreement shall nevertheless remain in full force and effect in respect of any accrued and unfulfilled obligations of either Party.

ARTICLE 5 DEFAULT

5.1 Events of Default.

The following shall constitute an event of default by the Royalty Payor (each an "**Event of Default**"):

- (a) the failure by the Royalty Payor to pay the Royalty or any other amount required to be paid by Royalty Payor pursuant to this Agreement within five (5) Business Days of the due date therefor;
- (b) the breach or default under any of the material terms of, or the early termination of, any of the Coal Leases;
- (c) if the Royalty Payor is unable to pay its debts as such debts become due, or is, or is adjudged or declared to be, or admits to being, bankrupt or insolvent;
- (d) if the Royalty Payor makes a general assignment for the benefit of creditors; or any proceeding or filing is instituted or made by the Royalty Payor seeking relief on its behalf as debtor, or to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition of it or its debts under any similar law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its properties or assets, or the Royalty Payor takes any action to authorize any of the actions set forth in this paragraph;
- (e) if any *bona fide* notice of intention is filed or any proceeding or filing is instituted or made against the Royalty Payor in any jurisdiction seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its properties or assets or seeking possession, foreclosure or retention, or sale or other disposition of, or other proceedings to enforce security over, all or a substantial part of the assets of the Royalty Payor;
- (f) if a receiver, liquidator, trustee, sequestrator or other officer with like powers is appointed with respect to, or an encumbrancer pursuant to any mortgage, lien, pledge, charge (whether fixed or floating), security interest, trust claim or other encumbrance of any kind (collectively, an "**Encumbrance**") takes possession of, forecloses, retains, sells or otherwise disposes of, or otherwise proceeds to enforce such Encumbrance over any of the properties or assets of the Royalty Payor or gives notice of its intention to do so, unless such action is contested in good faith by the Royalty Payor within ten (10) days of the commencement thereof;
- (g) if any writ, attachment, execution, sequestration, extent, distress or any other similar process becomes enforceable against the Royalty Payor or if a distress or any analogous process is levied against any of the properties or assets of a Royalty Payor except where the same is being contested actively and diligently in good faith by appropriate and timely proceedings and the enforcement or levy has been stayed;

- (h) if there exists a voluntary or involuntary suspension of business of the Royalty Payor; or
- (i) if after the Royalty Owner provides written notice to the Royalty Payor of a breach of any of the terms of this Agreement (except as set forth in Section 5.1(a) to (h) above) and, if capable of remedy, the Royalty Payor fails to cure such breach within thirty (30) days following receipt of such notice.

5.2 Remedies.

If an Event of Default has occurred and is continuing, the Royalty Owner shall have the right to:

- (a) charge interest on any unpaid amounts at 12% per annum, calculated monthly from the date such payment is due until the day it is paid;
- (b) institute an action or actions for such unpaid amounts on a continuing basis as such amounts are payable, but not paid, as if the obligation to pay such amounts and the interest were liquidated demands due and payable on the relevant date such amounts were due to be paid, without any right or resort to set-off or counter-claim by the Royalty Payor;
- (c) review the records of the Royalty Payor regarding Coal produced from the Lands and the Royalty Payor shall be required to forthwith provide to the Royalty Owner or its agent, such records;
- (d) treat the Event of Default as an immediate and automatic assignment to the Royalty Owner of the proceeds of sale attributed to the Royalty, and give notice to purchasers of Coal from the Royalty Payor requiring them to pay the proceeds of sale of the Royalty directly to the duly appointed agent of the Royalty Owner, which may be the Royalty Owner, and such purchasers of Coal shall be entitled to rely upon notice from the Royalty Owner to such effect and to thereafter pay the proceeds of sale accordingly; and
- (e) subject to applicable Law, enter into and take possession of all or any part of the Secured Property, with full power to exclude the Royalty Payor and their servants and agents therefrom, and, additionally, with full power and authority, but without obligation:
 - (i) to take any such actions as it may in its discretion consider necessary or desirable for purposes of maintaining, preserving or protecting the Secured Property or any part thereof;
 - (ii) to effect such replacements of and additions to the Secured Property as it may in its discretion consider necessary or desirable;
 - (iii) to satisfy or settle any charges on or claims against the Secured Property ranking in priority to the Lien;
 - (iv) to operate, use, produce and enjoy the Secured Property or any part thereof, to exercise the rights and perform the obligations of the Royalty Payor under contracts, agreements and arrangements forming part of or relating to the Secured Property or any part thereof, and to sell, lease or otherwise dispose of, upon such terms and for such price as it may in its discretion consider appropriate in the circumstances, including by way of deferred payment arrangement, all or any part of any Coal or other marketable products produced from or allocated to the Secured Property or any part thereof;

- (v) to receive, to take actions for the collection of, and to give notifications of and receipts for, the rents, revenues, incomes, issues and profits generated by or attributable to the Secured Property, to pay therefrom, at its discretion, any costs or expenses incurred in connection with the exercise of any of the rights, powers or remedies available to it hereunder or under any other right of realization it may have in respect of the Secured Property, and to apply the balance thereof, if and when received, on account of any amounts outstanding to the Royalty Owner hereunder; and
- (vi) to enter into contracts and to otherwise undertake obligations on behalf of the Royalty Payor for purposes of facilitating the exercise of any of the rights, powers or remedies available to it hereunder or under any right of realization it may have in respect of the Secured Property;
- (vii) either with or without entry and possession, sell or lease the Secured Property or any part thereof, either as a whole or in separate parcels, either for cash or upon credit, including deferred payment arrangement, and either by private contract or at public auction or by public tender, all as the Royalty Owner may in its discretion consider appropriate in the circumstances, it being agreed that: (1) any such sale or lease may be made upon such terms and conditions, including, without limitation, terms and conditions as to price and payment, as the Royalty Owner may in its discretion consider appropriate in the circumstances; (2) the Royalty Owner may, in its discretion, adjourn any such sale or lease from time to time, or rescind or vary any contract for sale or lease entered into pursuant hereto, and thereafter sell or re sell or lease or re-lease on such new or amended terms and conditions as it may in its discretion consider appropriate in the circumstances; and (3) any such sale or lease shall be a perpetual bar at law and in equity against the Royalty Payor, its successors and assigns and all other persons claiming any right or interest in the sold or leased property by, through or under the Royalty Payor, its successors or assigns.

ARTICLE 6 REPRESENTATIONS, WARRANTIES AND INDEMNITY

6.1 Representation and Warranty of Royalty Payor.

The Royalty Payor hereby represents and warrants that it has the corporate power, capacity and authority to grant the Royalty to the Royalty Owner and such grant, and the execution and delivery of this Agreement by the Royalty Payor has been duly authorized by all required corporate action of the Royalty Payor and this Agreement represents a valid and binding obligation of the Royalty Payor duly enforceable against it by the Royalty Owner.

6.2 Royalty Payor Indemnity.

The Royalty Payor shall:

- (a) be liable to the Royalty Owner for all losses, costs, damages and expenses whatsoever (whether contractual or otherwise, including legal costs on a solicitor client basis) that the Royalty Owner may suffer, sustain, pay or incur; and
- (b) indemnify and hold harmless the Royalty Owner and its directors, officers, agents and employees (each, an "**Indemnified Party**") against all actions, causes of action, proceedings, claims, demands, losses, costs, damages and expenses whatsoever that may be brought against or suffered by the Royalty Owner, its directors, officers, agents and employees or that they may sustain, pay or incur,

insofar as they are a direct result of: (i) any act or omission (whether negligent or otherwise) of the Royalty Payor with respect to operations or activities conducted by it or on behalf of it with respect to the Coal Leases, the Lands or the Project; or (ii) a breach or default by the Royalty Payor with respect to this Agreement. This assumption of liability and indemnity shall survive any termination of this Agreement.

The indemnity provided in this Section 6.2 is limited to claims, demands, liabilities, actions and proceedings that may be made or taken against an Indemnified Party in its capacity as or related to the Royalty Payor as a holder of the Royalty and will not include any indemnity in respect of any claims, demands, liabilities, actions and proceedings against an Indemnified Party in any other capacity.

ARTICLE 7 DISPUTES

7.1 Reasonable Commercial Efforts to Settle Disputes.

If any controversy, dispute, claim, question or difference arises with respect to this Agreement (a "**Dispute**"), either Party hereto shall be entitled to deliver to the other Party a written notice (a "**Dispute Notice**"), which notice shall include detailed particulars describing the nature of the Dispute. Upon receipt of a Dispute Notice, the Parties shall use all reasonable commercial efforts to settle the Dispute and to this end, they shall consult and negotiate with each other in good faith and understanding of their mutual interests to reach a just and equitable solution satisfactory to both Parties. If the Parties do not reach a mutually acceptable solution to the Dispute pursuant to this Section 7.1 within a period of ten (10) Business Days following receipt of a Dispute Notice, then either Party shall be entitled to commence litigation in accordance with Section 8.13.

ARTICLE 8 MISCELLANEOUS

8.1 Notices.

Any notice, direction or other communication given under this Agreement or any Ancillary Agreement (a "**Notice**") will be in writing and made by personal delivery, pre-paid ordinary and registered mail or email and given by delivering it:

- (a) to Royalty Owner at:
Maxim Power Corp.

REDACTED

Attention: **REDACTED**

Email: **REDACTED**

- (b) to Royalty Payor at:
Summit Coal Limited Partnership

Attention: **REDACTED**

Email: **REDACTED**

or to such other address or facsimile number as either party may from time to time designate, by notice to the other. Any notice personally delivered to the Party to whom it is addressed as provided for in this Section shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day then the notice shall be deemed to have been given and received on the Business Day next following such day. Any notice mailed to the address and in the manner provided for in this Section shall be deemed to have been given and received on the fifth Business Day next following the date of its mailing. Any notice transmitted by facsimile shall be deemed to have been given and received on the first Business Day after its transmission.

8.2 Confidentiality.

- (a) Each Party entitled to information hereunder or pursuant to this Agreement may use such information for its sole benefit. However, the Parties shall take such measures with respect to operations and internal security as are appropriate in the circumstances to keep all such information confidential, except information which the Parties have expressly agreed among themselves to release and information disclosed by a Party:
- (i) when and to the extent required by Laws applicable to such Party, provided that such Party shall invoke any confidentiality protection permitted by such Laws;
 - (ii) to an Affiliate, provided that the disclosing Party shall cause such Affiliate to maintain the confidential status of the disclosed information in accordance with this Section 8.2, and such Party shall be liable for any loss suffered by the Parties, or any of them, because of the failure of such Affiliate to maintain such information confidential;
 - (iii) to a Third Party that is a *bona fide* prospective assignee of any of that Party's interest or to a Third Party with which it is conducting *bona fide* negotiations directed towards a merger, amalgamation or sale of shares representing a majority ownership interest of that Party or any of its Affiliates, provided that a binding covenant is obtained from such Third Parties prior to disclosure which provides, *inter alia*, that none of such information shall be disclosed by it to any other Third Parties; and
 - (iv) to the personnel and advisors (including, any auditors, accountants, legal, engineering and other technical and professional advisors or consultants engaged by such Party) which require such information to provide their services to such Party or other financial institution from which such Party is attempting to obtain financing, provided that a binding covenant is obtained from such consultant or financier, as the case may be, prior to such disclosure, which provides, *inter alia*, that none of such information shall be disclosed by it to any other Person or used for any purposes other than advising such Party or providing financing to such Party, as applicable.
- (b) Notwithstanding the foregoing, the confidentiality obligation hereunder shall not extend to information to the extent that it is in the public domain, provided that specific items of information shall not be considered to be in the public domain merely because more general information is in the public domain.

8.3 Time of the Essence.

Time will be of the essence in this Agreement.

8.4 Amendments.

This Agreement may only be amended, supplemented or otherwise modified by written agreement executed by the Parties.

8.5 Set-Off.

The Royalty Owner may set-off against any amount unpaid by the Royalty Payor, any sums due or accruing to the Royalty Payor or any Affiliate of the Royalty Payor from the Royalty Owner under this Agreement or any other agreement between the Royalty Owner and the Royalty Payor or any Affiliate of the Royalty Payor, whether entered into before or after the date of this Agreement.

8.6 Waiver.

- (a) No waiver of any of the provisions of this Agreement will be deemed to constitute a waiver of any other provision (whether or not similar), nor will such waiver be binding unless executed in writing by the Party to be bound by the waiver.
- (b) No failure on the part of any Party to exercise, and no delay in exercising any right under this Agreement will operate as a waiver of such right, nor will any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

8.7 Non-Merger.

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties will not merge on and will survive the Closing and, notwithstanding such Closing and any investigation made by or on behalf of any Party, will continue in full force and effect. Closing will not prejudice any right of one Party against any other Party in respect of anything done or omitted under this Agreement or in respect of any right to damages or other remedies.

8.8 No Implied Covenants.

The Parties agree that no implied covenants or duties relating to exploration, development, mining or the payment of production royalties or any other matters provided for herein shall affect any of their respective rights or obligations hereunder, and that the only covenants or duties which affect such rights and obligations shall be those expressly set forth and provided for in this Agreement.

8.9 Authorship.

The Parties hereto agree that the terms and language of this Agreement are the result of negotiations between the Parties and, as a result, there will be no presumption that any ambiguity in this Agreement will be resolved against any Party.

8.10 Entire Agreement.

This Agreement constitute the entire agreement between the Parties with respect to the Royalty and supersede 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 herein and therein and no Party has relied or is

relying on any other information, discussion or understanding in entering into and completing this Agreement.

8.11 Successors and Assigns.

- (a) This Agreement will become effective when executed by each of the Parties and after that time will be binding upon and enure to the benefit of each Party and its respective heirs, executors, successors and permitted assigns.
- (b) The Royalty Owner may assign, transfer or otherwise convey this Agreement or all or any of its rights in the Royalty without the prior written consent of the Royalty Payor and shall deliver to the Royalty Payor notice as soon promptly after the occurrence thereof, subject to the following:
 - (i) before any assignment, transfer or conveyance by the Royalty Owner of all or any portion of the Royalty or its interest under this Agreement shall relieve the Royalty Owner of its obligations under this Agreement, any transferee shall have first entered into an agreement, in form and substance satisfactory to the Royalty Payor, acting reasonably, to be bound by this Agreement, and from and after the execution of such agreement, the Royalty Owner will be released from any obligations and liabilities under this Agreement (to the extent of the interest so transferred), other than obligations and liabilities existing or accrued as at the time of any assignment, transfer or conveyance; and
 - (ii) notwithstanding any assignment, transfer or conveyance by the Royalty Owner, the Royalty Payor will not be or become liable to make payments in respect of the Royalty, or provide any information or updates, to more than one Person. If the interests of the Recipient hereunder are at any time owned by more than one Person, such owners will, as a condition of receiving payment hereunder, nominate one Person to act as agent and common trustee for receipt of monies payable hereunder and to otherwise deal with the Royalty Payor in respect of such interests and no royalty owner will be entitled to administer or enforce any provisions of this Agreement except through such agent and trustee. In such event, the Royalty Payor will, after receipt of notice respecting the nomination of such agent and trustee, thereafter make and be entitled to make payments due hereunder in respect of the Royalty to such agent and trustee and to otherwise deal with such agent and trustee as if it were the sole holder of the Royalty hereunder.
- (c) The Royalty Payor may not assign, transfer or otherwise convey this Agreement or all or any of its rights or obligations hereunder in connection with any assignment or conveyance of Lands and the Project or any interest in it in any manner whatsoever without the prior written consent of the Royalty Owner, such consent not to be unreasonably withheld. It shall be a condition of any such assignment, transfer or conveyance that the transferee first execute and deliver to the other parties an instrument pursuant to which the transferee agrees to be bound by the terms hereof and by all of the liabilities and obligations of the transferor hereunder in the same manner and to the same extent as though the transferee was an original party hereto in the first instance.

8.12 Severability.

If any provision of this Agreement is determined by an arbitrator or any court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect. The Parties shall use reasonable efforts to replace the invalid or unenforceable provisions by a valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

8.13 Governing Law; Attornment.

This Agreement will be governed by and interpreted and enforced in accordance with the Laws of the Province of Alberta and the federal laws of Canada applicable therein, without reference to conflict of laws rules. The Parties do hereby submit and attorn to the non-exclusive jurisdiction of the Courts of the Province of Alberta for all matters arising out of or relating to this Agreement or any of the transactions contemplated hereby.

8.14 Counterparts.

This Agreement may be executed in any number of counterparts (including counterparts by facsimile or pdf e-mail) and all such counterparts taken together will be deemed to constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the Parties have executed and delivered this Royalty Agreement.

MAXIM POWER CORP.

Per: _____
Name:
Title

**SUMMIT COAL LIMITED PARTNERSHIP,
by its general partner SUMMIT COAL INC.**

Per: _____
Name:
Title:

[Signature page for Royalty Agreement]

SCHEDULE "A"
LANDS AND COAL LEASES

1. Coal Lease No. 1319090196

Lessee: SCI

Term Commencement Date: September 26, 2019

Term: 15 years

Description of Location:

The subsurface area or areas underlying the surface area of the following tract or tracts of land:

6-08-057: 10N,SE;11;12N;13S,NW;14;23S,NW

2. Coal Lease No. 1319090197

Lessee: SCI

Term Commencement Date: September 26, 2019

Term: 15 years

Description of Location:

The subsurface area or areas underlying the surface area of the following tract or tracts of land:

6-08-057: 15;16N,SE,20S;21;22

3. Coal Lease No. 1319090198

Lessee: SCI

Term Commencement Date: September 26, 2019

Term: 15 years

Description of Location:

The subsurface area or areas underlying the surface area of the following tract or tracts of land:

6-08-057: 27;28;33

4. Coal Lease No. 1312050624

Lessee: SCI. Coal Lease No. 1312050624 held in the name of Milner was transferred to SCI on May 23, 2012 pursuant to Registration No. 1201757.

Term Commencement Date: May 3, 2012

Term: 15 years

Description of Location:

The subsurface area or areas underlying the surface area of the following tract or tracts of land:

6-07-057: 17W;18;19SW

6-08-057: 13NE;23NE;24;25SW;26;34SW,L1,L2,L7,L11,L12;35L3,L4

5. Coal Lease No. 1312050625

Lessee: SCI

Term Commencement Date: May 3, 2012

Term: 15 years

Description of Location:

The subsurface area or areas underlying the surface area of the following tract or tracts of land:

6-08-057: 8E;9;10SW;16SW;17

6. Coal Lease No. 1312050632

Lessee: SCI

Term Commencement Date: May 3, 2012

Term: 15 years

Description of Location:

The subsurface area or areas underlying the surface area of the following tract or tracts of land:

6-10-059: 17-20;29;30;32

EXHIBIT D
PURCHASER GUARANTEE

See attached.

DATE: [•], 2025

GUARANTEE

TO: Maxim Power Corp. (the "**Royalty Owner**")

WHEREAS pursuant to the terms of a Purchase and Sale Agreement dated February 18, 2025 between the undersigned (the "**Guarantor**") and the Royalty Owner (the "**Purchase Agreement**"), the Guarantor acquired from the Royalty Owner, *inter alia*, all issued and outstanding partnership units in Summit Coal Limited Partnership (the "**Royalty Payor**");

AND WHEREAS as a condition of closing of the transaction contemplated by the Purchase Agreement, the Royalty Payor has entered into a Royalty Agreement dated [•], 2025 with the Royalty Owner (the "**Royalty Agreement**"), whereby the Royalty Payor has agreed to grant and pay the Royalty to the Royalty Owner in accordance with the terms and conditions set out in the Royalty Agreement;

AND WHEREAS, on completion of the transaction contemplated by the Purchase Agreement, the Guarantor (together with its successors and permitted assigns) is an affiliate of the Royalty Payor and, as such, derives direct and indirect economic benefits from the business of the Royalty Payor;

AND WHEREAS the Guarantor has agreed to guarantee payment and performance of the obligations of the Royalty Payor under the Royalty Agreement, in favour of the Royalty Owner.

NOW THEREFORE in consideration of the sum of ONE (\$1.00) DOLLAR and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Guarantor agrees as follows:

ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 Definitions

Wherever used in this Guarantee, all capitalized terms used and not defined have the meanings ascribed to them in the Royalty Agreement and the following words and terms have the following meanings:

- (a) "**Additional Amounts**" has the meaning specified in Section 7.10.
- (b) "**Additional Guarantor**" has the meaning specified in Section 2.5(b)(ii).
- (c) "**Claims**" has the meaning specified in Section 4.1(a).
- (d) "**Guarantee**" means this guarantee and any instruments in amendment or confirmation of it; and the expressions "Article" and "Section" followed by a number or letter, as the case may be, mean and refer to the specified Article or Section of this Guarantee.
- (e) "**Guaranteed Obligations**" has the meaning specified in Section 2.1.
- (f) "**Guarantor**" has the meaning specified on the Recitals hereto.
- (g) "**Notice**" has the meaning specified in Section 7.4.

- (h) **"Original Currency"** has the meaning specified in Section 7.11(a).
- (i) **"Other Currency"** has the meaning specified in Section 7.11(a).
- (j) **"Purchase Agreement"** has the meaning specified on the Recitals hereto.
- (k) **"Royalty Agreement"** has the meaning specified on the Recitals hereto.
- (l) **"Royalty Owner"** has the meaning specified on the first page of this Guarantee.
- (m) **"Royalty Payor"** has the meaning specified on the Recitals hereto.
- (n) **"Taxes"** has the meaning specified in Section 7.10.

1.2 Rules of Interpretation

In this Guarantee, unless a clear contrary intention appears:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person includes such Person's successor and assignee but, if applicable, only if the succession by such successor or assignment to such assignee is permitted hereby;
- (c) use of the masculine, feminine or neuter gender includes all genders;
- (d) a grammatical variation of a defined term will have a corresponding meaning;
- (e) reference to any agreement (including this Guarantee), document or instrument means such agreement, document or instrument as amended, restated or modified and in effect from time to time in accordance with the terms thereof;
- (f) reference to any applicable Law, rule or regulation means such applicable Law, rule or regulation as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any section or other provision of any applicable Law, rule or regulation means that provision of such applicable Law, rule or regulation from time to time in effect and constituting the substantive amendment, modification, codification, replacement or re-enactment of such section or other provision;
- (g) **"hereunder"**, **"hereof"**, **"hereto"**, **"herein"** and words of similar import are references to the whole of this Guarantee and not, unless a particular Section or other part thereof is referred to, to any particular Section or other part;
- (h) **"including"** (and, with correlative meanings, **"include"** and **"includes"**) means including without limiting the generality of any description preceding or succeeding such term and for purposes hereof the rule of *ejusdem generis* will not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned;
- (i) unless otherwise indicated, all references to currency are deemed to mean lawful money of Canada;
- (j) references to time of day or date means the local time or date in Calgary, Alberta, Canada;

- (k) where any payment or calculation is to be made, or any other action is to be taken, on or as of a day that is not a Business Day, that payment or calculation is to be made, or that other action is to be taken, as applicable, on or as of the next following Business Day, unless such next following Business Day falls in the next calendar month in which event the payment or calculation is to be made, or that other action is to be taken, as applicable, on or as of the immediately preceding Business Day;
- (l) any obligation of the Guarantor, however expressed, including a statement that it must or will do or refrain from doing anything, will be construed as a covenant by the Guarantor;
- (m) a reference to a misrepresentation or breach of warranty includes an inaccuracy of a representation or warranty; and
- (n) an undertaking by the Guarantor not to do or to omit to do any act or thing includes an undertaking not to allow, cause or assist in the doing or omission of such act or thing, in so far as such act is within the control of the Guarantor.

ARTICLE 2 GUARANTEE

2.1 Guarantee

The Guarantor unconditionally and irrevocably guarantees to the Royalty Owner the due and punctual payment and performance to the Royalty Owner of all amounts payable, debts, liabilities and obligations of or owing by the Royalty Payor to the Royalty Owner at any time and from time to time, present and future, direct and indirect, absolute and contingent arising in respect of or contained in the Royalty Agreement and all documents, undertakings and agreements entered into by the Royalty Payor pursuant to or in connection with the Royalty Agreement, and all amendments, restatements, supplements, extensions, renewals, or replacements of, and continuations to, each such agreement, undertaking or contract and whether the Royalty Payor is bound alone or with another or others, and whether as principal or surety, and including without limitation, all liabilities of the Royalty Payor arising as a consequence of its failure to pay or fulfil any of such amounts owing, debts, liabilities and obligations (the "**Guaranteed Obligations**").

2.2 Indemnity

In addition to the guarantee specified in Section 2.1 hereof, the Guarantor agrees to indemnify and save the Royalty Owner, its Affiliates, and the Royalty Owner's and its Affiliates' officers, directors, employees, agents, successors and assigns harmless from and against all costs, losses, expenses and damages such Person may suffer as a result or consequence of, any inability by the Royalty Owner to recover the ultimate amount due or remaining unpaid to the Royalty Owner in respect of the Guaranteed Obligations, including without limitation legal fees incurred by or on behalf of the Royalty Owner resulting from any action instituted on the basis of this Guarantee or the Royalty Agreement.

2.3 Payment and Performance

- (a) If the Royalty Payor fails or refuses to punctually make any payment or perform the Guaranteed Obligations, after the occurrence of an Event of Default which is continuing, the Guarantor shall unconditionally render any such payment or performance upon demand made on it in accordance with the terms of this Guarantee.
- (b) Nothing but payment and satisfaction in full of the Guaranteed Obligations shall release the Guarantor from the Guarantor's obligations under this Guarantee.

2.4 Interest

All amounts demanded under this Guarantee shall bear interest at a rate per annum equal to the interest rate applicable to the Guaranteed Obligations in accordance with Section 5.2(a) of the Royalty Agreement from time of demand until paid, both before and after default and judgment.

2.5 Continuing Obligation

- (a) The only condition (and no other document, proof or action other than as specifically provided in this Guarantee is necessary as a condition of the Guarantor honouring its obligations under this Guarantee) shall be demand by the Royalty Owner to the Guarantor following the occurrence of an Event of Default which is continuing. This Guarantee shall be a continuing guarantee, shall cover all the Guaranteed Obligations, and shall apply to and secure any ultimate balance due or remaining unpaid to the Royalty Owner.
- (b) The liability of the Guarantor shall continue and be binding on the Guarantor, and as well after as before default and after and as before maturity of the Guaranteed Obligations, until all the Guaranteed Obligations are fully paid and satisfied, and regardless of:
 - (i) any amendment, supplement, restatement, extension, novation, renewal, replacement, continuation or waiver of this Guarantee, the Royalty Agreement, or any provision or term of any such agreement or document;
 - (ii) whether any other Person or Persons (each an "**Additional Guarantor**") shall become in any other way responsible to the Royalty Owner for, or in respect of all or any part of the Guaranteed Obligations;
 - (iii) whether any such Additional Guarantor shall cease to be so liable;
 - (iv) the enforceability, validity, perfection or effect of perfection or non-perfection of any security interest securing the Guaranteed Obligations;
 - (v) any of the Guaranteed Obligations, the Royalty Agreement, or any security relating to the Guaranteed Obligations, or the Royalty Agreement being or becoming illegal, invalid, void, voidable, unenforceable, ineffective or extinguished in any respect;
 - (vi) any failure by the Royalty Owner or any other Person to perform or comply with any of the provisions of the Royalty Agreement, or to provide the Guarantor with notice of any such failure;
 - (vii) any other act, event, omission or thing, or any delay to do any other act or thing, which may or might operate to discharge, impair or otherwise effect the liability of the Guarantor under this Guarantee or any of the rights, powers or remedies conferred upon the Royalty Owner by the Royalty Agreement, this Guarantee or by law; or
 - (viii) whether any payment of any of the Guaranteed Obligations has been made and where such payment is rescinded or must otherwise be returned upon the occurrence of any action or event, including the insolvency or bankruptcy of the Royalty Payor or otherwise, all as though such payment had not been made.

2.6 Guarantee Unaffected

- (a) This Guarantee shall not be determined or affected, or the Royalty Owner's rights under this Guarantee prejudiced by, the termination, compromise, reduction, extinguishment or disallowance of any of the Guaranteed Obligations by operation of law or otherwise, including without limitation, the bankruptcy, insolvency, winding-up, liquidation or dissolution of the Royalty Payor or any change in the name, business, powers, capital structure, constitution, objects, organization, directors, partners, membership, limited partners or management of the Royalty Payor, with respect to transactions occurring either before or after such change.
- (b) This Guarantee shall:
- (i) bind the Person or Persons for the time being and from time to time carrying on the business now carried on by the Guarantor, notwithstanding any reorganization of the Guarantor or the amalgamation or merger of the Guarantor with one or more other corporations (in this case, this Guarantee shall bind the resulting corporation and the term "Guarantor" shall include such resulting corporation); and
 - (ii) extend to the liabilities of the Person or Persons for the time being and from time to time carrying on the business now carried on by the Royalty Payor notwithstanding any reorganization or merger of the Royalty Payor or the amalgamation or merger of the Royalty Payor with one or more other corporations or partnerships (in this case, this Guarantee shall extend to the liabilities of the resulting corporation and the term "Royalty Payor" shall include such resulting entity) and all of such liabilities shall be included in the Guaranteed Obligations.
- (c) The Guarantor agrees that the manner in which the Royalty Owner may now or subsequently deal with the Royalty Payor, the Guarantor or any Additional Guarantor or any security (or any collateral subject to the security) or other guarantee in respect of the Guaranteed Obligations shall have no effect on the Guarantor's continuing liability under this Guarantee and the Guarantor irrevocably waives any rights it may have in respect of any of the above.

ARTICLE 3 REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Representation - Authority and Enforceability

The Royalty Owner shall not be concerned to inquire into the Royalty Payor's power or the powers of any of its directors, agents or officers, acting or purporting to act on its behalf, and all moneys due or payable at any time by the Royalty Payor to the Royalty Owner, from time to time, shall be deemed to form part of the Guaranteed Obligations notwithstanding any lack or limitation of status or power, incapacity of the Royalty Payor or of any of its directors, officers or agents, or that the Royalty Payor may not be a legal entity capable of being sued, whether known to the Royalty Owner or not.

ARTICLE 4 POSTPONEMENT OF CLAIMS AND SUBROGATION

4.1 Postponement of Claims and Subrogation

- (a) The Guarantor agrees that all debts and claims against the Royalty Payor now or subsequently held by the Guarantor and all of the Guarantor's rights of subrogation (all such debts, claims and rights, the "Claims") shall be for the Royalty Owner's security and, as between the Guarantor and the Royalty Owner, after the occurrence of an Event of Default which is continuing the Claims are

postponed to the repayment and performance of the Guaranteed Obligations. After the occurrence of an Event of Default which is continuing, until all of the Guaranteed Obligations shall have been satisfied in full, any money that such Guarantor receives in respect of any such Claims shall be received by the Guarantor in trust for the Royalty Owner and shall be paid immediately to the Royalty Owner to be applied against, or held as security for, payment of the Guaranteed Obligations, all without prejudice to and without in any way affecting, relieving, limiting or lessening the Guarantor's liability under this Guarantee.

- (b) In the event of the insolvency, bankruptcy, winding up or distribution of assets of the Royalty Payor, the Guarantor or any Additional Guarantor, the rights of the Royalty Owner shall not be affected or impaired by its omission to prove its claim in full or otherwise and it may prove such claim as it sees fit and may refrain from proving any claim in its sole discretion; and it may but shall not be obliged to prove in respect of the Claims assigned as a debt owing to it by the Royalty Payor, and the Royalty Owner shall be entitled to receive all amounts payable in respect of the Claims, such amounts to be applied on such part or parts of the monies payable from time to time on account of the Guaranteed Obligations until all of the Guaranteed Obligations shall have been paid in full and thereafter the Guarantor shall be entitled to the balance, if any, of such amounts; all of which the Royalty Owner may do without in any way affecting, relieving, limiting or lessening the Guarantor's liability to the Royalty Owner under this Guarantee.
- (c) The Guarantor acknowledges and agrees that it shall not have any rights of subrogation or indemnification unless it pays the Guaranteed Obligations in full. The Guarantor shall not prove a claim in the bankruptcy of the Royalty Payor unless and until the Guaranteed Obligations are repaid in full.

ARTICLE 5 AMENDMENTS

5.1 Amendments

The Guarantor authorizes the Royalty Owner, at any time and from time to time, without notice to the Guarantor and without affecting, relieving, limiting or lessening the Guarantor's liability under this Guarantee, to alter the terms of all or any part of the Guaranteed Obligations and any security and guarantees including, without limitation, modification of principal amount, times for payment or interest rates.

ARTICLE 6 WAIVERS AND REMEDIES

6.1 Waivers

The Guarantor waives each of the following, to the fullest extent permitted by law:

- (a) any defence based upon:
 - (i) the incapacity or lack of authority of the Royalty Payor;
 - (ii) the unenforceability, invalidity, illegality or extinguishment of all or any part of the Guaranteed Obligations, or any security or other guarantee for the Guaranteed Obligations or any failure of the Royalty Owner to take proper care or act in a commercially reasonable manner in respect of any security for the Guaranteed Obligations or any collateral subject to the security;

- (iii) any act or omission of the Royalty Payor or any other person, including the Royalty Owner, that directly or indirectly results in the discharge or release of the Royalty Payor or any other Person or any of the Guaranteed Obligations or any security for the Guaranteed Obligations; or
 - (iv) the Royalty Owner's present or future method of dealing with the Royalty Payor, any Additional Guarantor, any other obligor or any security (or any collateral subject to the security) or other guarantee for the Guaranteed Obligations;
- (b) any right (whether now or hereafter existing) to require the Royalty Owner, as a condition to the enforcement of this Guarantee:
- (i) to realize on any security that it holds;
 - (ii) to marshal the assets of the Royalty Payor, the Guarantor or any Additional Guarantor; or
 - (iii) to pursue any other remedy that the Guarantor may not be able to pursue itself and that might limit or reduce the Guarantor's burden;
- (c) presentment, demand, protest and notice of any kind including, without limitation, notices of default and notice of acceptance of this Guarantee;
- (d) any claims, set-off or other rights that the Guarantor may have against the Royalty Owner, whether or not related to the transactions contemplated by this Guarantee or the Royalty Agreement;
- (e) all suretyship defences and rights of every nature otherwise available under Laws and the laws of any other jurisdiction, including the benefit of discussion and of division; and
- (f) all other rights and defences (legal or equitable) the assertion or exercise of which would in any way diminish the liability of the Guarantor under this Guarantee.

6.2 Limitation Periods

No limitation period under the *Limitations Act* (Alberta) shall expire earlier than the second anniversary of the date on which demand for payment of the Guaranteed Obligations under this Guarantee is made in accordance with the provisions of this Guarantee.

6.3 Royalty Owner's Right to Act

The Royalty Owner, upon such terms as it deems appropriate and, in each case, without notice to the Guarantor and without in any way affecting, reducing, limiting, impairing, releasing, discharging or terminating the Guarantor's liability under this Guarantee, from time to time may deal with the Royalty Payor, the Guarantor, any Additional Guarantor, the documents creating or evidencing the Guaranteed Obligations and the security (or any collateral subject to the security) now or subsequently held by the Royalty Owner (including without limitation, all amendments, supplements, restatements, extensions, renewals and replacements to such documents or security) as the Royalty Owner may see fit, including by:

- (a) granting time, renewals, extensions, indulgences, concessions, compromises, releases and discharges to any Person in respect of the Guaranteed Obligations;
- (b) taking new or additional security for the Guaranteed Obligations;

- (c) discharging or partially discharging any or all existing security;
- (d) failing to or abstain from realizing upon, or fully realizing upon, any security;
- (e) electing not to take security from any Person, not to perfect security or not to continue to perfect security;
- (f) accepting partial payment or performance from the Royalty Payor or Additional Guarantor or otherwise waive compliance by the Royalty Payor or Additional Guarantor with the terms of any of the Royalty Agreement, or security;
- (g) assigning the Royalty Agreement, or security to any Person or Persons;
- (h) dealing or disposing in any manner (whether commercially reasonably or not) with any security (or any collateral subject to the security) or other guarantee for the Guaranteed Obligations;
- (i) applying all compositions and moneys at any time received from the Royalty Payor or others or from the security upon such part of the Guaranteed Obligations; or
- (j) obtain one or more additional guarantees of the Guaranteed Obligations.

6.4 Royalty Owner's Waiver

No term, condition or provision of this Guarantee or any right under this Guarantee or in respect of this Guarantee, shall be, or shall be deemed to have been, waived by the Royalty Owner, except by express written waiver signed by the Royalty Owner, all such waivers to extend only to the particular circumstances specified in such waiver.

6.5 Royalty Owner's Action or Inaction

Except as provided at law, no action or omission on the part of the Royalty Owner in exercising or failing to exercise its rights under this Guarantee or in connection with or arising from all or part of the Guaranteed Obligations shall make the Royalty Owner liable to the Guarantor for any loss occasioned to the Guarantor. No loss of or in respect of any securities received by the Royalty Owner from the Royalty Payor or others, whether occasioned by the Royalty Owner's fault or otherwise, shall in any way affect, relieve, limit or lessen the Guarantor's liability under this Guarantee. The Guarantor agrees that the Royalty Owner does not have any obligation to provide or disclose information to the Guarantor with respect to any dealings it has with or in respect of the Royalty Payor at any time or from time to time.

6.6 Royalty Owner's Rights

The rights and remedies provided in this Guarantee are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights or remedies provided by Laws.

ARTICLE 7 GENERAL

7.1 Acknowledgements

The Guarantor acknowledges that it is providing this Guarantee at the request of the Royalty Payor and that it has satisfied itself and is not relying upon the Royalty Owner in respect of all or any information with respect to the transaction under or related to the Royalty Agreement, or this Guarantee.

The Guarantor acknowledges that it has been provided with and has reviewed a copy of the Royalty Agreement.

7.2 Demand

The Royalty Owner may make demand in writing to the Guarantor at any time and from time to time after the occurrence of an Event of Default which is continuing, each such written demand to be accepted by the Guarantor as complete and satisfactory evidence of non-payment or non-performance of the Guaranteed Obligations by the Royalty Payor. The Guarantor shall pay to the Royalty Owner such amount or amounts payable under this Guarantee immediately upon such written demand in accordance with the payment provisions of the Royalty Agreement under which the demand is being made.

7.3 Set-Off

The Guarantor agrees that any and all deposits, general or special, term or demand, provisional or final, matured or unmatured, and any other indebtedness at any time owing by the Royalty Owner to the Guarantor or for the credit or account of the Guarantor, may be set-off and applied by the Royalty Owner at any time and from time to time, without notice (such notice being expressly waived by the Guarantor), against and on account of the Guaranteed Obligations even if any of them are contingent or unmatured.

7.4 Notices

Any notice, direction or other communication given under this Guarantee (a "**Notice**") will be in writing and made by personal delivery, pre-paid ordinary and registered mail, email or facsimile transmission and given by delivering it:

- (a) to the Royalty Owner at:

Maxim Power Corp.
REDACTED

Attention: **REDACTED**
Email: **REDACTED**

- (b) to the Guarantor at:

Valory Resources Inc.
REDACTED

Attention: **REDACTED**
Email: **REDACTED**

or to such other address or email the Guarantor or Royalty Owner may from time to time designate, by notice to the other. Any notice personally delivered to the Guarantor or Royalty Owner to whom it is addressed as provided for in this Section shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day then the notice shall be deemed to have been given and received on the Business Day next following such day. Any notice mailed to the address and in the manner provided for in this Section shall be deemed to have been given and received on the fifth Business Day next following the date of its mailing. Any notice transmitted by email shall be deemed to have been given and received on the first Business Day after its transmission.

7.5 No Representations

The Guarantor acknowledges that this Guarantee has been delivered free of any conditions and that there are no representations which have been made to the Guarantor affecting the Guarantor's liability under this Guarantee except as may be specifically embodied in this Guarantee and agrees that this Guarantee is in addition to and not in substitution for any other guarantee(s) held or which may subsequently be held by or for the benefit of the Royalty Owner.

7.6 Further Assurances

The Guarantor shall at all times do all such things and provide all such reasonable assurances as may be required to give the Royalty Owner the full benefit and effect of, or intended by this Guarantee, and shall provide such further documents or instruments required by the Royalty Owner as may be reasonably necessary or desirable to effect the purpose of this Guarantee and carry out its provisions.

7.7 Successors and Assignment

- (a) This Agreement will become effective when executed by the Guarantor and after that time will be binding upon and enure to the benefit of the Guarantor and its respective heirs, executors, successors and permitted assigns.
- (b) The Royalty Owner may assign, transfer or otherwise convey this Agreement or all or any of its rights in the Royalty without the prior written consent of the Royalty Payor. Notwithstanding the foregoing, the Royalty Owner shall not assign its interest hereunder to an entity that would require the Royalty Payor to make such entity whole for its tax withholding requirements under the *Income Tax Act* (Canada) and any entity to which the Royalty Owner shall intend to assign its interest hereunder to shall be required to represent to the Royalty Payor in writing that it is, or is deemed to be, resident in Canada for purposes of Part XIII of the *Income Tax Act* (Canada) prior to such assignment being effective.
- (c) The Guarantor may not assign or otherwise transfer any of its rights under this Guarantee without the prior written consent of the Royalty Owner.

7.8 Governing Law

This Guarantee, and all matters arising out of or relating to this Guarantee will be governed by and interpreted and enforced in accordance with the Laws of the Province of Alberta and the federal Laws of Canada applicable therein.

7.9 Submission to Jurisdiction

The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts of the Province of Alberta and irrevocably agrees that, at the Royalty Owner's discretion, any claims, actions or proceedings in respect of this Guarantee will be heard and determined in such courts. The Guarantor hereby waives, to the fullest extent it may effectively do so, the defence of an inconvenient forum to the maintenance of any such action or proceeding. The foregoing is without prejudice to the rights of the Royalty Owner to, in its discretion, bring claims, actions or proceedings in respect of this Guarantee before any other court of competent jurisdiction. The Guarantor hereby irrevocably consents to the service of any and all process in such action or proceeding by the delivery of such process to the Guarantor at its address provided in accordance with the notice requirements set out in this Guarantee.

7.10 Gross-Up

The Guarantor shall pay each of the Guaranteed Obligations in the applicable currencies of the Guaranteed Obligations free and clear and without deduction for any present or future taxes, charges or withholdings of any kind, unless such taxes, charges or withholdings are required by law to be deducted or withheld (the "**Taxes**"). If the Guarantor is so required to deduct or withhold any Taxes, the Guarantor will pay such additional amounts ("**Additional Amounts**") as may be necessary so that the net amount received by the Royalty Owner after such deduction or withholding (including in respect of Additional Amounts) will not be less than the amount the Royalty Owner would have received if such Taxes had not been deducted. In addition, the Guarantor shall indemnify and save harmless the Royalty Owner for the full amount of Taxes paid by the Royalty Owner, as appropriate, and pay liability (including penalties, interest and expenses) arising from or with respect to the Taxes.

7.11 Judgment Currency

- (a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due to the Royalty Owner under this Guarantee in any currency (the "**Original Currency**") into another currency (the "**Other Currency**"), the parties to this Guarantee agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Royalty Owner could purchase the Original Currency with the Other Currency on the Business Day preceding that on which final judgment is paid or satisfied.
- (b) The obligations of the Guarantor in respect of any sum due in the Original Currency from it to the Royalty Owner under this Guarantee shall, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Royalty Owner of any sum adjudged to be so due in such Other Currency, the Royalty Owner may in accordance with normal banking procedures purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Royalty Owner in the Original Currency, the Guarantor shall, as a separate obligation and notwithstanding any such judgment, indemnify the Royalty Owner against such loss.

7.12 Consent

Whenever a provision of this Guarantee requires an approval or consent and the approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

7.13 Authorship

The Guarantor hereto agree that the terms and language of this Agreement are the result of negotiations between the Guarantor and the Royalty Owner and, as a result, there will be no presumption that any ambiguity in this Agreement will be resolved against the Guarantor or the Royalty Owner.

7.14 Paramountcy

If there is a conflict, inconsistency, ambiguity or difference between any provision of this Guarantee, on the one hand, and the Royalty Agreement, on the other hand, the provisions of the Royalty Agreement shall prevail, and such provision of this Guarantee shall be amended to the extent only to eliminate any such conflict, inconsistency, ambiguity or difference. Any right or remedy in this Guarantee which may be in addition to the rights and remedies contained in the Royalty Agreement shall not constitute a conflict, inconsistency, ambiguity or difference.

7.15 Entire Agreement

This Guarantee and the Royalty Agreement constitute the entire agreement between the parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the parties in connection with the subject matter of this Guarantee and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral, whether statutory or otherwise, between the parties in connection with the subject matter of this Guarantee except as specifically set forth in this Guarantee and the Royalty Agreement.

7.16 Severability

If any provision of this Guarantee is determined by an arbitrator or any court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be severed from this Guarantee and the remaining provisions will remain in full force and effect. The Guarantor and the Royalty Owner shall use reasonable efforts to replace the invalid or unenforceable provisions by a valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

7.17 Time

Time shall be of the essence in this Guarantee.

7.18 Counterparts

This Guarantee may be executed in facsimile, pdf, or other electronic means, which shall be deemed to be an original and, when so delivered, shall constitute a binding agreement of the Guarantor hereto.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF the Guarantor has executed and delivered this Guarantee as of the date first written above.

VALORY RESOURCES INC.

Per: _____
Name:
Title:

[Signature page for Guarantee]