

not negotiating any draft assessment or reassessment with any Governmental Entity. Other than as previously disclosed to the Fund in writing, neither Tahera nor Benachee is aware of any contingent liabilities for Taxes or any grounds for an assessment or reassessment including, without limitation, aggressive treatment of income, expenses, deductions, credits or other claims for deduction or credit under any Tax Returns. Neither Tahera nor Benachee has received any indication from any Governmental Entity that an assessment or reassessment is proposed in respect of any Taxes of Benachee, regardless of its merits. Neither Tahera nor Benachee has executed or filed with any Governmental Entity any agreement extending the period for the filing of any Tax Returns or for the assessment, reassessment or collection of any Taxes. Benachee has not requested, nor entered into any agreement or other arrangement, or executed any waiver providing for, any extension of time within which: (i) to file any Tax Return with respect to any Taxes for which it is or may be liable; (ii) to file any elections, designations or similar documents or instruments relating to Taxes for which it is or may be liable; (iii) it is required to pay or remit any Taxes or amounts on account thereof; or (iv) any Governmental Entity may assess, reassess or collect Taxes for which either it is or may be liable;

- (n) neither Tahera nor Benachee carries on business in a jurisdiction other than, and has no permanent establishment outside, the provinces of Ontario and British Columbia and the Territories of Nunavut and the Northwest Territories;
- (o) based on the generally accepted interpretation of the Tax Act as of the date hereof, during the period commencing December 31, 1998 and ending immediately prior to the date hereof, there has been no acquisition of control, as that term is used in the Tax Act, of Tahera or Benachee;
- (p) as at the date hereof, Benachee has the federal tax account balances set forth in the Disclosure Letter;
- (q) each of Tahera and Benachee have duly made a joint election pursuant to section 156 of the *Excise Tax Act* (Canada) in respect of the provision of all goods and services to each other such that such goods and services were deemed to have been made for nil consideration for the purposes of determining any goods and services tax otherwise payable in respect thereof;
- (r) each of Tahera and Benachee is and has been since its inception, resident in Canada for purposes of the Tax Act;
- (s) subject to obtaining the CCAA Approval Order, at the Effective Time there shall not be any Benachee Shares and other securities issued and outstanding, except as provided under or as a consequence of the Arrangement, no Person shall have any agreement or option or any right or privilege (whether by law, pre-emptive right, contract or otherwise) capable of becoming an agreement, option, warrant or right for the purchase, subscription, allotment or issuance of any unissued securities (including debt or equity) of Benachee, except as provided under or as a consequence of the Arrangement and all of the issued and outstanding securities of Benachee shall have been duly authorized and validly issued as fully paid and non assessable;
- (t) the Benachee Financial Statements, if any, shall be prepared in accordance with GAAP on a consistent basis with prior periods (except as stated therein) and present fairly its financial position as of the dates provided therein and the results of its operations and the changes in financial position for the periods then ended;
- (u) to the best of the knowledge of Tahera and Benachee, the amount of the Assumed Obligations does not exceed the fair market value of the Divested Assets as set out in Section 2.5;

- (v) Benachee has estimated Abandonment and Reclamation Obligations of between \$7.5 million and \$9.5 million, and has paid reclamation security deposits (the "Security Deposits") in the aggregate amount of \$11,060,759 to the Nunavut Water Board, Federal Department of Fisheries and Oceans, Kitikmeot Inuit Association and Indian and Northern Affairs Canada as security for the satisfaction of such Abandonment and Reclamation Obligations. Approximately \$9.5 million to \$10.5 million of the Security Deposits remain available to satisfy the Abandonment and Reclamation Obligations;
- (w) there are no unanimous shareholders agreements, voting trusts, escrow agreements or similar agreements among any shareholders relating to Benachee or any securities of Benachee that will survive the completion of the transactions contemplated by the CCAA Approval Order or the Arrangement;
- (x) no securities commission or similar regulatory authority or stock exchange in Canada has issued any order which is currently outstanding preventing or suspending trading in any securities of Benachee and, to their knowledge, no such proceeding is pending, contemplated or threatened;
- (y) the Tahera and Benachee Information will be true, complete and accurate in all material respects and shall not contain any misrepresentation;
- (z) neither Tahera nor Benachee has waived the applicability of any "standstill" or other provision of any confidentiality agreements entered into by it;
- (aa) neither Tahera nor Benachee has retained nor will either of them retain any financial advisor, broker, agent or finder, nor has either Tahera or Benachee paid or agreed to pay any financial advisor, broker, agent or finder, on account of this Agreement, any transaction contemplated hereby or any transaction presently ongoing or contemplated for which Benachee will have any responsibility following the Effective Time;
- (bb) neither Tahera nor Benachee has retained nor will either of them retain any financial advisor, broker, agent or finder, nor has either Tahera or Benachee paid or agreed to pay any financial advisor, broker, agent or finder, on account of this Agreement, any transaction contemplated hereby or any transaction presently ongoing or contemplated for which Benachee will have any responsibility following the Effective Time;
- (cc) other than as disclosed in writing to Fund, there have not occurred any material spills, emissions or pollution on any property of Benachee, Benachee has not been subject to any stop orders, control orders, clean-up orders or reclamation orders under applicable Environmental Laws and all operations of Benachee have been and are now being conducted in compliance with all applicable Environmental Laws (other than as disclosed in the Disclosure Letter). Benachee is not subject to or aware of and has not received:
 - (i) any orders or directives under Applicable Laws that relate to the Environment, health or safety matters and that require, or may require, any work, repairs, construction or capital expenditures; or
 - (ii) any demand or notice under Applicable Laws with respect to the breach of any Environmental Laws, including, without limitation, respecting the use, storage, treatment, transportation or disposition of any Hazardous Substances;

- (dd) Benachee shall, after the Effective Time, not have any have any debts, Losses and Liabilities, commitments or obligations of any nature or kind whatsoever (whether matured or unmatured, known or unknown, accrued, fixed, contingent or otherwise and including, without limitation, any Environmental Obligations) resulting from any matters, actions, events, facts or circumstances related to the activities, affairs or business of Tahera or Benachee which occurred prior to the Effective Time.

4.2 Representations and Warranties of Fund

Fund represents and warrants to and in favour of Tahera and Benachee as follows and acknowledges that Tahera and Benachee are relying upon such representations and warranties in connection with the matters contemplated by this Agreement:

- (a) Fund is a trust duly created and validly existing under the Laws of the Province of Ontario and has the requisite trust power and authority to own its assets and to conduct its affairs as now conducted. Fund is duly registered to conduct its affairs in each jurisdiction in which the character of its assets, owned or leased, or the nature of its activities makes such registration necessary, except where the failure to be so registered would not have a Material Adverse Effect on Fund.
- (b) AGII is a corporation duly incorporated and validly existing under the Laws of Canada and has the requisite corporate power and authority to own its assets as now owned and to carry on its business as now conducted. AGII has the requisite corporate power and authority to execute this Agreement on its own behalf and on behalf of Fund in its capacity as general partner of Ag Growth Industries Limited Partnership, the administrator of Fund, and each of Fund and AGII has the requisite power and authority to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation by each of Fund and AGII of the Arrangement have been duly authorized by the trustees of Fund and the board of directors of AGII, respectively, and no other proceedings on the part of Fund or AGII are necessary to authorize this Agreement or the Arrangement. This Agreement has been duly executed and delivered by each of Fund and AGII and constitutes a legal, valid and binding obligation of Fund and AGII enforceable against them in accordance with its terms, subject to the qualification that such enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other Laws of general application relating to or affecting rights of creditors and that equitable remedies, including specific performance, are discretionary and may not be ordered.
- (c) Except as contemplated by this Agreement:
 - (i) neither the execution and delivery of this Agreement by Fund or AGII nor the consummation of the Arrangement nor compliance by Fund or AGII with any of the provisions hereof will: (A) violate, conflict with, or result in a breach of any provision of, require any consent, approval or notice under, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) or result in a right of termination or acceleration under, or result in the creation of any encumbrance upon any of the properties or assets of Fund or AGII or cause any indebtedness to come due before its stated maturity or cause any credit to cease to be available, under any of the terms, conditions or provisions of (1) the Fund Declaration of Trust, (2) the constating documents of AGII or (3) any material note, bond, mortgage, indenture, loan agreement, deed of trust, agreement, lien, contract or other instrument or obligation to which Fund or AGII is a party or to which any of them, or any of their respective properties or assets, may be subject or by which they are bound; or (B) subject to compliance with applicable

statutes and regulations, violate any judgment, ruling, order, writ, injunction, determination, award, decree, statute, ordinance, rule or regulation applicable to Fund or AGII or any of their respective properties or assets (except, in the case of each of clauses (A) and (B) above, for such violations, conflicts, breaches, defaults, terminations, accelerations or creations of encumbrances which, or any consents, approvals or notices which if not given or received, would not have any Material Adverse Effect on Fund, or significantly impede the ability of Fund or AGII to consummate the Arrangement); or (C) cause the suspension or revocation of any authorization, consent, approval or license currently in effect which would have a Material Adverse Effect on Fund; and

- (ii) other than in connection with or in compliance with the provisions of Applicable Laws or which are required to be filed post-Arrangement, (A) there is no legal impediment to Fund's or AGII's consummation of the Arrangement, and (B) no filing or registration with, or authorization, consent or approval of, any domestic or foreign public body or authority is required of Fund or AGII in connection with the consummation of the Arrangement, except for such filings or registrations which, if not made, or for such authorizations, consents or approvals which, if not received, would not have a Material Adverse Effect on Fund, or significantly impede the ability of Fund or AGII to consummate the Arrangement.
- (d) There are no Claims in existence or pending or, to the knowledge of Fund, threatened or for which there is a reasonable basis, affecting or that would reasonably be expected to affect Fund or AGII or affecting or that would reasonably be expected to affect any of its property or assets at law or equity or before or by any court or Governmental Entity which Claim involves a possibility of a judgment against, or Losses or Liabilities of, Fund which, if successful, could reasonably be expected to have a Material Adverse Effect on Fund, or would significantly impede the ability of Fund or AGII to consummate the Arrangement.
- (e) Since January 1, 2009, other than as disclosed in the public record, there has not been any Material Adverse Change in respect of Fund.
- (f) Fund is a reporting issuer (where such concept exists) in all provinces of Canada and is in material compliance with all applicable Canadian Securities Laws therein. The Fund Units are listed and posted for trading on the TSX and Fund is in material compliance with the rules of the TSX.
- (g) the information and statements set forth in the Public Record pertaining to Fund and its business were true, correct, and complete and did not contain any misrepresentation, as of the respective dates of such information or statements, and no material change has occurred in relation to Fund and its business which is not disclosed in the Public Record, and Fund has not filed any confidential material change reports which continue to be confidential;
- (h) there has not been any material change in the assets, liabilities or obligations (absolute, contingent or otherwise) of Fund or its business from the position set forth in the Public Record including the financial statements therein and there has not been any adverse material change in the business, operations, capital or condition (financial or otherwise) or results of the operations of Fund since December 31, 2008; and since that date there have been no material facts, transactions, events or occurrences which could materially adversely affect the capital, assets, liabilities (absolute, accrued, contingent or otherwise), business, operations or condition (financial or otherwise) or results of the operations of Fund, which have not been disclosed in the Public Record; and

- (i) except as disclosed in the Public Record, Fund has not entered into any transaction which is or may reasonably be expected to be material to Fund and its affiliates (taken as a whole) and which is not in the ordinary course of business.

4.3 Privacy Issues

- (a) For the purposes of this Section 4.3, the following definitions shall apply:
 - (i) **"applicable law"** means, in relation to any Person, transaction or event, all applicable provisions of Laws by which such Person is bound or having application to the transaction or event in question, including applicable privacy laws;
 - (ii) **"applicable privacy laws"** means any and all Applicable Laws relating to privacy and the collection, use and disclosure of Personal Information in all applicable jurisdictions, including but not limited to the *Personal Information Protection and Electronic Documents Act* (Canada) and/or any comparable provincial law including the *Personal Information Protection Act* (Alberta);
 - (iii) **"authorized authority"** means, in relation to any Person, transaction or event, any: (A) federal, provincial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), both domestic and foreign, (B) agency, authority, commission, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, (C) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions, and (D) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, transaction or event; and
 - (iv) **"Personal Information"** means information about an individual.
- (b) The Parties hereto acknowledge that they are responsible for compliance at all times with applicable privacy laws which govern the collection, use and disclosure of Personal Information acquired by or disclosed to the Parties pursuant to or in connection with this Agreement (the **"Disclosed Personal Information"**).
- (c) None of the Parties shall use the Disclosed Personal Information for any purposes other than those related to the performance of this Agreement, the transactions contemplated by the CCAA Approval Order and the completion of the Arrangement.
- (d) Each Party acknowledges and confirms that the disclosure of the Disclosed Personal Information is necessary for the purposes of determining if the Parties shall proceed with the Arrangement and the transactions contemplated by the CCAA Approval Order, and that the disclosure of the Disclosed Personal Information relates solely to the carrying on of the business and the completion of the Arrangement and the transactions contemplated by the CCAA Approval Order.
- (e) Each Party acknowledges and confirms that it has and shall continue to employ appropriate technology and procedures in accordance with applicable law to prevent accidental loss or corruption of the Disclosed Personal Information, unauthorized input or access to the Disclosed Personal Information, or unauthorized or unlawful collection, storage, disclosure, recording,

copying, alteration, removal, deletion, use or other processing of such Disclosed Personal Information.

- (f) Each Party shall at all times keep strictly confidential all Disclosed Personal Information provided to it, and shall instruct those employees or advisors responsible for processing such Disclosed Personal Information to protect the confidentiality of such information in a manner consistent with the Parties' obligations hereunder. Each Party shall ensure that access to the Disclosed Personal Information shall be restricted to those employees or advisors of the respective Party who have a bona fide need to access such information in order to complete the Arrangement.
- (g) Each Party shall promptly notify the Other Party of all inquiries, complaints, requests for access, and claims of which the Party is made aware in connection with the Disclosed Personal Information. The Parties shall fully co-operate with one another, with the Persons to whom the Personal Information relates, and any authorized authority charged with enforcement of applicable privacy laws, in responding to such inquiries, complaints, requests for access, and claims.
- (h) Upon the expiry or termination of this Agreement, or otherwise upon the reasonable request of a Party, the Other Party shall forthwith cease all use of the Disclosed Personal Information acquired by such Party in connection with this Agreement and will return to the Other Party or, at such Party's request, destroy in a secure manner, the Disclosed Personal Information (and any copies).

ARTICLE 5 CONDITIONS PRECEDENT

5.1 Mutual Conditions Precedent

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

- (a) on or before April 30, 2009, the CCAA Approval Order shall have been granted in form and substance the same as the draft of such order attached hereto as Exhibit B, and shall not have been set aside or modified in any manner unacceptable to such Parties, acting reasonably, on appeal or otherwise;
- (b) on or before May 29, 2009, the Interim Order shall have been granted in form and substance satisfactory to each of the Parties, acting reasonably, and shall not have been set aside or modified in any manner unacceptable to such Parties, acting reasonably, on appeal or otherwise;
- (c) on or before June 30, 2009, the Arrangement Resolution shall have been passed by the Fund Securityholders in accordance with the Interim Order;
- (d) on or before June 30, 2009, the Final Order shall have been granted in form and substance satisfactory to each of the Parties acting reasonably and shall not have been set aside or modified in any manner unacceptable to such Parties, acting reasonably, on appeal or otherwise;

- (e) the Articles of Arrangement, together with the Final Order, to be sent to the Director in accordance with the Arrangement shall be in form and substance satisfactory to each of the Parties acting reasonably;
- (f) all requisite consents, orders, approvals and authorizations, including, without limitation, regulatory and judicial approvals and orders, required or necessary for the completion of the Arrangement and the transactions contemplated by the CCAA Approval Order shall have been completed or obtained on terms and conditions satisfactory to each of the Parties, acting reasonably, and all applicable statutory or regulatory waiting periods in respect of the transactions contemplated under the Arrangement shall have expired or been terminated, and no objection or opposition shall have been filed, initiated or made by any regulatory authority during any applicable statutory or regulatory waiting period;
- (g) All appeal periods in respect of the CCAA Approval Order shall have expired and no appeals shall have been filed, initiated or made with respect to the CCAA Approval Order and the CCAA Approval Order shall be in full force and effect, unamended;
- (h) the Arrangement shall have become effective on or before June 30, 2009; and
- (i) there shall be no action taken under any Applicable Law or by any Person that:
 - (i) makes illegal or otherwise directly or indirectly restrains, enjoins or prohibits the Arrangement or the CCAA Approval Order or any other transactions contemplated herein; or
 - (ii) results in a judgment or assessment of material damages directly or indirectly relating to the Arrangement or the CCAA Approval Order or any other transactions contemplated herein; or
 - (iii) has had or, if the Arrangement Agreement was consummated, would reasonably be expected to result in, a Material Adverse Effect on Fund, Tahera or Benachee.

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

5.2 Conditions to Obligations of Fund and AGII

The obligations of Fund and AGII to consummate the transactions contemplated hereby, and in particular the Arrangement, are subject to the satisfaction, on or before the Effective Date or such other time as is specified below, of the following conditions:

- (a) the acts and undertakings of each of Tahera and Benachee to be performed on or before the Effective Date pursuant to the terms of this Agreement shall have been duly performed by them;
- (b) the acts and undertakings of CAZ to be performed on or before the Effective Date pursuant to the terms of the CAZ Support Agreement shall have been duly performed by it;
- (c) other than the Remaining Intercompany Debt, all security registrations, encumbrances, Claims, debts, Losses and Liabilities, commitments or obligations of any nature or kind whatsoever