

22. The parties continued their efforts to satisfy the due diligence requirement and all other conditions, including the negotiation and settlement of the Transaction documents. The deal includes a requirement for Court approval in this proceeding, in so far as the Transaction relates to the Applicants, and a CBCA plan of arrangement, in so far as the Transaction relates to the Fund and its subsidiaries.

23. On April 19, 2009, the Applicants and the Fund announced that an agreement had been finalized. The press release of the Fund in this regard is annexed hereto as Exhibit "D". The press release of Tahera is annexed hereto as Exhibit "E".

24. A copy of the CBCA arrangement agreement (the "CBCA Arrangement Agreement"), including all schedules, is annexed hereto as Exhibit "F".

#### **Structure of the Transaction**

25. While the steps necessary to implement the Transaction are complicated and highly structured, the business terms of the Transaction are substantially as contemplated by the LOI (as amended by the Extension Letter).

26. The essence of the Transaction, in so far as it relates to Tahera and its wholly-owned subsidiary Benachee, is to transfer all of the assets and liabilities of Benachee into a new wholly-owned subsidiary of Tahera ("Newco") thereby creating a complete duplicate, or "mirror image", of Benachee. Newco will be a CBCA corporation, as is Benachee.

27. Newco will acquire, by way of the vesting order sought in this motion, all of the assets of Benachee and will be subject to all of the liabilities of Benachee to the same extent and with the

same priority as those claims now existing against Benachee, all as more particularly described in the draft order sought in this motion, a copy of which annexed as Exhibit "G".

28. By acquiring all of the assets and being subject to all of the debt and liabilities of any nature (with two exceptions, noted below), no stakeholder of Benachee will be prejudiced. Claims of creditors of Tahera will not be affected, save and except that the amount of the senior secured debt owing to CAZ will be reduced.

29. It should be noted that as a result of the claims process ordered in this proceeding in 2008 for both Tahera and Benachee, there are only 3 unsecured creditors (net of the secured claim of CAZ and the settled lien claims) against Benachee for a total amount of approximately \$625,908.60 plus two claims filed by government authorities (Indian and Northern Affairs Canada and Canada Revenue Agency) in undetermined amounts.

30. By way of background, debts and liabilities were incurred historically by the public parent corporation, Tahera, which acted as the contracting party for most purposes.

31. Importantly, in order to facilitate achieving Goal Two, the reopening of the Jericho Mine, it is proposed that Newco be allowed to step into the shoes of Benachee in respect of all permits, licences and other authorizations necessary for the mine to recommence operations.

#### **Summary of Transaction Steps**

32. The details of each step in the Transaction are described in section 3.1 of the CBCA plan of arrangement annexed as Exhibit "A" (the "CBCA Plan") to the CBCA Arrangement Agreement. Those steps may be summarized as follows:

- (1) Benachee transfers all of its assets to Newco and Newco assumes all of Benachee's liabilities with the exception of (a) the secured guarantee obligation owing to CAZ and (b) a specified amount of the intercompany debt currently owing by Benachee to Tahera, the "Remaining Intercompany Debt". Newco issues a guarantee and security to both the Fund and CAZ for the DIP loans and for the existing CAZ secured obligation, to mirror the existing obligations of Benachee.
- (2) Through a series of steps, the intercompany indebtedness owing by Benachee to Tahera, other than the Remaining Intercompany Debt, is converted to equity. These steps involve the issuance of a subordinated intercompany note and the creation of a new subsidiary of Benachee which is ultimately dissolved as part of the Transaction.
- (3) Benachee is declared to be free and clear of all assets and liabilities, save only the Remaining Intercompany Debt. All of those assets and liabilities have been vested in Newco and all liabilities have the same priority as previously existed at Benachee.
- (4) There are changes made to the constating documents of the Fund and Benachee.
- (5) Benachee issues new shares to the unit holders of the Fund in a share for unit exchange. Each fund unit is exchanged for one common share of Benachee.
- (6) A subsidiary of the Fund loans \$5 million to Benachee.

- (7) Benachee repays the Remaining Intercompany Debt (in the amount of approximately \$13 million) using the cash proceeds of the Fund loan plus the issuance of 182,588 common shares and 4 million preferred shares. This consideration is paid to CAZ in reduction of its senior secured claim.
- (8) CAZ acquires the AG DIP Loan by directing a portion of the cash proceeds to the AG DIP Lender.
- (9) Benachee is now owned and controlled by the former unit holders of the Fund. It changes its name to Ag Growth Industries Corporation and its bylaws and directors are changed in accordance with the plan.

33. The above represents my attempt to summarize and explain the Transaction. However, because the Transaction is complicated and very technical, regard should be had to the terms of the CBCA Arrangement Agreement itself, including the details contained in the CBCA Plan.

34. The CBCA Arrangement Agreement has a number of conditions precedent, in addition to Court approval in this proceeding, including the Fund's requirements to obtain an interim order establishing a vote of its security holders, to obtain the necessary approvals from such security holders at a meeting and to obtain a final order approving the CBCA Plan. Obtaining the Order sought herein is the first step in satisfying these conditions

35. The Applicants' legal and financial advisors are satisfied that the Transaction is effective to provide the benefits anticipated by all parties. The Fund is hopeful that the necessary approvals will be obtained on its side of the Transaction.

36. If the Transaction closes, Goal One of the Applicants will have been achieved and the Applicants will have sufficient financing to attempt to achieve Goal Two.

37. If the Transaction does not close, for any reason, the Applicants will have few, if any, options open to them.

**The Applicants' progress towards reopening the Jericho Mine**

38. The Applicants and their advisors have held discussions with a number of parties who have expressed interest in the Jericho Mine. In respect of at least two of those parties, such interest is, in my opinion, real and serious.

39. The Applicants hope to finalize an engagement letter, possibly before the hearing of this motion, with a party who has agreed to assist in the search for financing or a purchaser to restart the Jericho Mine. Such party has agreed to work primarily on success fee basis and is confident that such success can be achieved. I am of the view that channelling all expressions of interest through such a process will maximize the possibility of a successful conclusion.

40. It should be noted that the Applicants were successful in negotiating a carve out from the customary "standstill" provisions of the CBCA Arrangement Agreement. It is usual that counterparties to such a transaction are prohibited from any dealings that are not in the ordinary course of business. Because a restart of the Jericho Mine might not be said to be in the ordinary course of business in these circumstances, the Applicants have negotiated a carve out from the standstill provisions that allows the Applicants to engage in these potential non-ordinary course discussions, provided such do not have an adverse effect upon the Transaction or the benefits anticipated to be received by the Fund and its security holders.


**Conclusion**

41. The Transaction is a critical step towards maximizing the value of the assets and operations of the Applicants. Importantly, it provides critical interim financing to allow the Applicants to achieve their strategic goals.

42. The Transaction has been structured so that no creditors of either of the Applicants are prejudiced and to facilitate, as efficiently as possible, the potential reopening of the Jericho Mine.

43. The Applicants have kept the Monitor apprised of all developments in respect of the Transaction. It is my understanding from the Monitor that it will be issuing a report to the Court wherein it recommends that the Transaction and the CBCA Arrangement Agreement be approved and that the Order sought be granted.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 20<sup>th</sup>  
day of April, 2009.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits, etc.

  
\_\_\_\_\_  
ANDREW GOTTWALD

# AG GROWTH INCOME FUND

PRIVATE & CONFIDENTIAL

March 3, 2009

Tahera Diamond Corporation and  
Benachee Resources Inc.  
PO Box 1020  
TDC Postal Station  
77 King Street West  
Toronto, ON M5K 1P2

Attention: Andrew Gottwald,  
Chief Restructuring Officer

CAZ Petroleum Inc.  
c/o Thornton Grout Finnegan  
Suite 3200, 100 Wellington Street West  
Canadian Pacific Tower  
Toronto Dominion Centre  
Toronto, ON M5K 1K7

Attention: Paul C. Champagne,  
President

This is Exhibit A referred to in the  
affidavit of ANDREW GOTTWALD  
sworn before me, this 20<sup>th</sup>  
day of APRIL 2009

Commissioner for Taking Affidavits

Dear Sirs:

Further to our recent discussions, we are pleased to provide the following proposal for a transaction (the "Transaction") involving Ag Growth Income Fund (the "Fund"), Tahera Diamond Corporation ("Tahera"), Benachee Resources Inc. ("Benachee") and CAZ Petroleum Inc. ("CAZ").

1. **Transaction and Consideration.** It is anticipated that Benachee would, through a court-approved plan of arrangement (the "Plan"), acquire all of the issued and outstanding trust units ("Fund Units") of the Fund in consideration for common shares of Benachee (thereafter, "New Ag Growth"), such common shares representing substantially all of the outstanding common shares of New Ag Growth. The final structure would be mutually agreed upon by the parties based upon securities, corporate and tax law advice in order to ensure the most efficient structure.

Our proposal assumes that on completion of the Plan and delivery of the cash and New Ag Growth common and preferred shares described below to CAZ, Benachee would have no assets and no liabilities (including any to CAZ or Tahera or to any governmental authority in respect of environmental claims) and a financial and tax position that is otherwise satisfactory to the Fund.

Pursuant to the Transaction, the obligations of Benachee to CAZ in respect of secured guarantees of Tahera's indebtedness to CAZ would be satisfied on closing by the payment to CAZ of an aggregate of \$13.0 million, comprised of \$5.0 million in cash and the issue to CAZ of \$4.0 million of common shares of New Ag Growth and \$4.0 million face amount of preferred shares of New Ag Growth as follows:

- (a) the \$4.0 million of New Ag Growth common shares would be issued at a price equal to the volume weighted average price of the Fund Units for the 20 trading day period ending the day immediately prior to the date of signing of the Definitive Agreement (as defined below), adjusted by the exchange ratio (the "Exchange Ratio") at which the New Ag Growth common shares are issued in exchange for Fund Units pursuant to the Plan. The parties would endeavour (not including the filing of a prospectus) to have these shares issued with no "hold period" but CAZ acknowledges that a four month hold period from the date of closing may apply. It is anticipated that the New Ag Growth common shares will trade on the Toronto Stock Exchange ("TSX") in substitution for the Fund Units.

- (b) the \$4.0 million face value of 5% convertible redeemable retractable preferred shares would be redeemable at the option of the holder for face value plus accrued dividends on or after June 30, 2010 and would be retractable by New Ag Growth for face value plus accrued dividends until June 30, 2010. The preferred shares would be convertible at the option of the holder into common shares of New Ag Growth for a period of three years from closing at a conversion price per share equal to 130% of the weighted average price of the Fund Units for the 20 trading day period ending the day immediately prior to the date of signing of the Definitive Agreement, adjusted by the Exchange Ratio. The preferred shares will have preference in redemption, dividends and liquidation to the common shares of New Ag Growth, which will be received by the Fund's unitholders.

2. **Conditions.** Our proposal is subject to completing satisfactory due diligence, negotiation of satisfactory definitive transaction documentation, and final approval of our board. The transaction documentation would include a definitive agreement ("**Definitive Agreement**"), which would contain customary terms, conditions and deal protection measures for a transaction of this nature including, without limitation, there being no change or proposed change in law or the interpretation thereof that adversely affects the ability of Benachee to utilize its tax account balances.

3. **Due Diligence.** The Fund and its advisors will be entitled to undertake a detailed review of Tahera and Benachee information. The Fund will be permitted to conduct such due diligence investigations until 5:00 p.m. (Winnipeg time) on the later of March 31, 2009 and the 21<sup>st</sup> day after the day that the Interim Court Approval (as defined below) has been obtained (the "**Due Diligence Deadline**"). Without limitation of paragraph 2, the Fund's decision to proceed with a Transaction and any obligation to negotiate a Definitive Agreement shall be subject to the Fund being satisfied by the Due Diligence Deadline, in its sole and exclusive discretion, with the results of its due diligence investigations including, without limitation, the satisfaction of any issues arising from the due diligence process. If, at any time prior to the Due Diligence Deadline, the Fund determines not to proceed with a Transaction for any reason, it will so notify Tahera and Benachee and, for greater certainty, thereafter each of the parties hereto shall have no obligation to proceed with a Transaction.

Without limiting the foregoing, such due diligence inquiries shall include (but are not limited to) the following:

- (a) Tahera and Benachee shall provide as soon as reasonably practical or cause to be so provided all information reasonably requested by the Fund and its representatives including in any due diligence document request list provided by the Fund;
- (b) the Fund and its representatives shall be given access to Tahera and Benachee's legal counsel, auditors, agents, representatives and creditors for such purposes as the Fund shall reasonably determine; and
- (c) Tahera, Benachee and CAZ shall cooperate and provide all information reasonably requested by the Fund and its legal counsel, accountants and other representatives for the purposes of assisting the Fund complete its due diligence inquiries.

4. **Exclusivity; Non-Solicitation.** For a period commencing on the date of this letter and ending on (the "**Expiration Date**") the earliest of:

- (a) the date the Fund notifies Tahera that it elects not to proceed with a Transaction;
- (b) the execution of a Definitive Agreement, and
- (c) the Due Diligence Deadline,