

# SECURITIES AND EXCHANGE COMMISSION

## FORM 6-K

Current report of foreign issuer pursuant to Rules 13a-16 and 15d-16 Amendments

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### FILER

#### Americas Gold & Silver Corp

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**Form 6-K**

**REPORT OF FOREIGN PRIVATE ISSUER PURSUANT TO RULE 13a-16 or 15d-16 UNDER THE  
SECURITIES EXCHANGE ACT OF 1934**

For the month of **October 2024**

Commission File Number **001-37982**

**AMERICAS GOLD AND SILVER  
CORPORATION**

(Translation of registrant's name into English)

**145 King Street West, Suite 2870  
Toronto, Ontario, Canada  
MSH 1J8**

(Address of principal executive offices)

Indicate by check mark whether the registrant files or will file annual reports under cover Form 20-F or Form 40-F

Form 20-F ☒ Form 40-F ☐

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**AMERICAS GOLD AND  
SILVER CORPORATION**

Date: October 30, 2024

/s/ Peter McRae

Peter McRae  
Chief Legal Officer and Senior Vice  
President Corporate Affairs

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## AMERICAS GOLD AND SILVER CORPORATION COMPLETES PREVIOUSLY ANNOUNCED UPSIZED PRIVATE PLACEMENT OF SUBSCRIPTION RECEIPTS

**TORONTO, ONTARIO** — October 30, 2024 — Americas Gold and Silver Corporation (TSX: USA) (NYSE American: USAS) (“Americas” or the “Company”) announced today that it has completed its previously announced “bought deal” private placement (the “Private Placement”) of subscription receipts (“Subscription Receipts”). Pursuant to the Private Placement, the Company issued an aggregate of 125,000,000 Subscription Receipts at an issue price of C\$0.40 per Subscription Receipt, for gross proceeds of C\$50 million, which included 12,500,000 Subscription Receipts issued pursuant to the exercise, in full, of the Underwriters’ option granted to the Underwriters in connection with the Private Placement.

The Private Placement was co-led by Cormark Securities Inc. (“Cormark”) and TD Securities Inc., on behalf of a syndicate of underwriters including Desjardins Securities Inc., Haywood Securities Inc., Canaccord Genuity Corp., and Eight Capital (collectively, the “Underwriters”).

The Subscription Receipts were issued pursuant to a subscription receipt agreement dated October 30, 2024, among the Company, Cormark and Computershare Trust Company of Canada, as subscription receipt agent. Each Subscription Receipt represents the right of the holder thereof to receive, without payment of additional consideration or any further action on the part of the holder, one common share of the Company upon satisfaction of certain escrow release conditions, including the satisfaction or waiver of all conditions precedent to the completion of Company’s previously announced indirect acquisition of the remaining 40% interest in the Galena Complex in Idaho, USA (the “Acquisition”) pursuant to a purchase agreement (the “Purchase Agreement”) between the Company, an affiliate of Eric Sprott (“Sprott”) and Paul Andre Huet, as seller representative.

Closing of the Acquisition is expected to occur prior to the end of the year, subject to receipt of the relevant approvals from Company shareholders and the TSX and NYSE American and the satisfaction or waiver of other customary conditions to closing.

The proceeds from the Private Placement, less a portion of the Underwriters’ fees and expenses of the Underwriters, are being held in escrow pending the closing of the Acquisition. Following release of the proceeds from escrow, the Company intends to use the net proceeds of the Private Placement for growth initiatives at the Galena Complex, the payment of cash consideration to Sprott in accordance with the Purchase Agreement, the repayment of certain of the Company’s existing indebtedness, the payment of transaction expenses and for working capital and general corporate purposes.

The Subscription Receipts were offered by way of: (a) private placement in each of the provinces of Canada pursuant to applicable prospectus exemptions under applicable Canadian securities laws; (b) in the United States or to, or for the account or benefit of U.S. persons, by way of private placement pursuant to the exemptions from registration provided for under Rule 506(b) of Regulation D under the United States Securities Act of 1933, as amended (the “U.S. Securities Act”) and/or Section 4(a)(2) of the U.S. Securities Act and similar exemptions from applicable securities laws of any state of the United States; and (c) in jurisdictions outside of Canada and the United States as are agreed to by Americas and the Underwriters on a private placement or equivalent basis.

The Subscription Receipts are subject to a four-month hold period under applicable securities laws in Canada.

This news release does not constitute an offer to sell or a solicitation of an offer to buy any of the securities in the United States, Canada or in any other jurisdiction where such offer, solicitation or sale is unlawful. The securities have not been and will not be registered under the U.S. Securities Act, or under any securities laws of any state of the United States, and may not be offered or sold, directly or indirectly, or delivered within the United States or to, or for the account or benefit of, a U.S. person or person in the United States, except in certain transactions exempt from the registration requirements of the U.S. Securities Act and any applicable securities laws of any state of the United States. “United States” and “U.S. person” are as defined in Regulation S under the U.S. Securities Act.

### **About Americas Gold and Silver Corporation**

Americas Gold and Silver Corporation is a high-growth precious metals mining company with multiple assets in North America. The Company owns and operates the Cosalá Operations in Sinaloa, Mexico, manages the 60%-owned Galena Complex in Idaho, USA, and is re-evaluating the Relief Canyon mine in Nevada, USA. The Company also owns the San Felipe development project in Sonora, Mexico. For further information, please see SEDAR+ at [www.sedarplus.ca](http://www.sedarplus.ca), EDGAR at [www.sec.gov](http://www.sec.gov) or [www.americas-gold.com](http://www.americas-gold.com).

### **For more information:**

Stefan Axell  
VP, Corporate Development &  
Communications  
Americas Gold and Silver Corporation  
416-874-1708

Darren Blasutti  
President and CEO  
Americas Gold and Silver Corporation  
416-848-9503

### **Cautionary Statement on Forward-Looking Information:**

This news release contains “forward-looking information” and “forward-looking statements” (“forward-looking information”) within the meaning of applicable securities laws. Often, but not always, forward-looking information can be identified by forward-looking words such as “anticipate”, “believe”, “expect”, “goal”, “plan”, “intend”, “potential”, “estimate”, “may”, “assume” and “will” or similar words suggesting future outcomes, or other expectations, beliefs, plans, objectives, assumptions, intentions, or statements about future events or performance. Forward-looking information includes, but is not limited to, the intended use of proceeds from the Private Placement and the expected timing of the closing of the Acquisition. Forward-looking information is based on the opinions and estimates of Americas as of the date such information is provided and is subject to known and unknown risks, uncertainties, and other factors that may cause the actual results, level of activity, performance, or achievements of Americas to be materially different from those expressed or implied by such forward-looking information. With respect to the business of Americas, these risks and uncertainties include risks relating to widespread epidemics or pandemic outbreak, actions that have been and may be taken by governmental authorities to contain such epidemic or pandemic or to treat its impact and/or the availability, effectiveness and use of treatments and vaccines (including the effectiveness of boosters); interpretations or reinterpretations of geologic information; unfavorable exploration results; inability to obtain permits required for future exploration, development or production; general economic conditions and conditions affecting the industries in which the Company operates; the uncertainty of regulatory requirements and approvals; potential litigation; fluctuating mineral and commodity prices; the ability to obtain necessary future financing on acceptable terms or at all; the ability to operate the Company’s projects; risks associated with the closing and implementation of the Acquisition; and risks associated with the mining industry such as economic factors (including future commodity prices, currency fluctuations and energy prices), ground conditions, illegal blockades and other factors limiting mine access or regular operations without interruption, failure of plant, equipment, processes and transportation services to operate as anticipated, environmental risks, government regulation, actual results of current exploration and production activities, possible variations in ore grade or recovery rates, permitting timelines, capital and construction expenditures, reclamation activities, labor relations or disruptions, social and political developments, risks associated with generally elevated inflation and inflationary pressures, risks related to changing global economic conditions, and market volatility, risks relating to geopolitical instability, political unrest, war, and other global conflicts may result in adverse effects on macroeconomic conditions including volatility in financial markets, adverse changes in trade policies, inflation, supply chain disruptions and other risks of the mining industry. Although the Company has attempted to identify important factors that could cause actual results to differ materially from those contained in forward-looking information, there

may be other factors that cause results not to be as anticipated, estimated, or intended. Readers are cautioned not to place undue reliance on such information. Additional information regarding the factors that may cause actual results to differ materially from this forward-looking information is available in Americas' filings with the Canadian Securities Administrators on SEDAR+ and with the United States Securities and Exchange Commission on EDGAR. Americas does not undertake any obligation to update publicly or otherwise revise any forward-looking information whether as a result of new information, future events or other such factors which affect this information, except as required by law. Americas does not give any assurance (1) that Americas will achieve its expectations, including regarding the closing and implementation of the Acquisition, or (2) concerning the result or timing thereof. All subsequent written and oral forward-looking information concerning Americas are expressly qualified in their entirety by the cautionary statements above.

## UNDERWRITING AGREEMENT

October 30, 2024

Americas Gold and Silver Corporation  
145 King Street West, Suite 2870  
Toronto, Ontario M5H 1J8  
Canada

**Attention: Darren Blasutti, President and Chief Executive Officer**

Dear Sir:

Cormark Securities Inc. (“**Cormark**”) and TD Securities Inc. (“**TD**”, and together with Cormark, the “**Joint Bookrunners**”), and Desjardins Securities Inc., Haywood Securities Inc., Canaccord Genuity Corp., and Eight Capital (together with the Joint Bookrunners, the “**Underwriters**”), understand that Americas Gold and Silver Corporation (the “**Company**”) intends to create, issue and sell 112,500,000 subscription receipts of the Company (each, a “**Subscription Receipt**”, and together, the “**Subscription Receipts**”), without giving effect to the Underwriters’ Option (as defined below), having the terms described herein, at a price of \$0.40 (the “**Offering Price**”) per Subscription Receipt, for aggregate gross proceeds to the Company of \$45,000,000 (the “**Offering**”).

Upon and subject to the terms and conditions set forth herein, the Underwriters hereby agree to purchase all, but not less than all, of the Subscription Receipts from the Company at the Offering Price, on a “bought deal” private placement basis, pursuant to exemptions from the prospectus requirements of the Applicable Securities Laws (as defined below), and in the respective percentages as described in Section 15. The Company agrees that the Underwriters shall have the right to cause the Subscription Receipts to be purchased by substituted Purchasers (as defined below) in the Selling Jurisdictions (as defined below) in place of the Underwriters, and that the obligation of the Underwriters to purchase the Subscription Receipts shall, upon completion and settlement of such sales by substituted Purchasers, be reduced by an amount equal to the number of Subscription Receipts purchased by such substituted Purchasers from the Company.

In addition, in connection with the Offering, the Company hereby grants the Underwriters an option (the “**Underwriters’ Option**”) to increase the size of the Offering by up to an additional 12,500,000 Subscription Receipts on the same terms and for additional aggregate gross proceeds of up to \$5,000,000. The Underwriters’ Option shall be exercisable, in whole or in part, by the Underwriters in their sole discretion, until the Closing Date (as defined below). Unless the context requires otherwise, all references to the Subscription Receipts shall be deemed to include any Subscription Receipts issued and sold pursuant to the Underwriters’ Option.

The Subscription Receipts will be created and issued pursuant to a subscription receipt agreement (the “**Subscription Receipt Agreement**”) among the Company, Cormark and Computershare Trust Company of Canada, appointed as subscription receipt agent pursuant to the terms of the Subscription Receipt Agreement (the “**Subscription Receipt Agent**”), to be dated as of the Closing Date.

The Subscription Receipts are being issued in connection with the proposed Acquisition (as defined below), pursuant to the Purchase Agreement (as defined below).

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At the Closing Time, if the terms and conditions contained in this Agreement (as defined below) have been complied with to the satisfaction of the Underwriters or waived by the Underwriters, among other things, the Underwriters and the Company, as applicable, will deliver the gross proceeds from the sale of the Subscription Receipts, less 50% of

the Underwriters' Fee (as defined below) and the full amount of the Underwriters' Expenses (as defined below), to the Subscription Receipt Agent to be deposited and held in escrow by the Subscription Receipt Agent and shall be invested pursuant to the terms of the Subscription Receipt Agreement, until the earlier of: (i) the Escrow Release (as defined below), or (ii) the occurrence of a Termination Event (as defined below).

Pursuant to and in accordance with the Subscription Receipt Agreement, and provided the Escrow Release Conditions (as defined below) have been satisfied or waived prior to the Escrow Release Deadline (as defined below) and, upon receipt of proper notice thereof in accordance with the terms of the Subscription Receipt Agreement, the Subscription Receipt Agent shall immediately release and pay to the Company (or as the Company may otherwise direct) (the "**Escrow Release**") an amount equal to the Escrowed Funds (as defined below) and any interest earned thereon, less the remaining 50% of Underwriters' Fee, held by the Subscription Receipt Agent, and at such time each Subscription Receipt will be exchanged and will entitle the holder thereof to receive, without payment of any additional consideration or further action on the part of the holder, and subject to adjustment (in certain circumstances as set forth in the Subscription Receipt Agreement), one Common Share (as defined below).

If: (i) the Escrow Release Conditions are not satisfied prior to the Escrow Release Deadline, (ii) the Company delivers to Cormark and the Subscription Receipt Agent a notice, executed by the Company, declaring that the Purchase Agreement has been terminated; or (iii) the Company announces to the public by way of a news release that it does not intend to proceed with the Acquisition prior to the Escrow Release Deadline (each such event being a "**Termination Event**" and the date upon which such event occurs, the "**Termination Date**"), then as soon as practicable following the Termination Event, the Subscription Receipt Agent shall return to each holder of Subscription Receipts an amount equal to the aggregate Offering Price of the Subscription Receipts held by each such holder and the *pro rata* portion of interest and other income earned thereon, less applicable withholding taxes (if any) and the Subscription Receipts shall be cancelled. The Company covenants to make up any shortfall in the Escrowed Funds so that holders of Subscription Receipts receive a full refund of their aggregate Offering Price plus a *pro rata* share of interest actually earned thereon, less applicable withholding taxes, if any.

The Subscription Receipts will be offered to Purchasers resident in the Selling Jurisdictions within Canada by way of a private placement to "accredited investors" as such term is defined in NI 45-106 (as defined below) and other prospectus exemptions available under Applicable Securities Laws as agreed to between the Underwriters and the Company. The Subscription Receipts may also be offered and sold to U.S. Purchasers that are (i) U.S. Accredited Investors (as defined below), or (ii) Qualified Institutional Buyers (as defined below), in each case on a substituted purchaser basis pursuant to Rule 506(b) of Regulation D (as defined below) and/or Section 4(a)(2) of the U.S. Securities Act (as defined below) and similar exemptions under any securities laws of the United States (as defined below) in accordance with Schedule "A" attached hereto, which forms part of this Agreement. All offers and sales of the Subscription Receipts will be conducted in such a manner so as not to require registration thereof or the filing of a prospectus or an offering memorandum with respect thereto under the U.S. Securities Act and will be conducted through U.S. Affiliates (as defined below) of one or more of the Underwriters duly registered with the SEC (as defined below) and the Financial Industry Regulatory Authority, Inc. and in compliance with applicable securities laws of any state of the United States. The Subscription Receipts may be distributed in Selling Jurisdictions outside of Canada and the United States in such jurisdictions as the Company and the Underwriters may agree, where they may be lawfully sold on a basis exempt from the prospectus, registration and similar requirements of any such jurisdiction and do not give rise to any disclosure obligations or submission to the jurisdiction in such jurisdictions on the part of the Company.

In consideration of the Underwriters' services to be rendered in connection with the Offering, the Company agrees to pay the Underwriters' Fee to the Underwriters. 50% of the Underwriters' Fee shall be payable on the Closing Date and 50% of the Underwriters' Fee will be payable on the date of the Escrow Release. For greater certainty, upon the occurrence of a Termination Event, the aggregate Underwriters' Fee payable with respect to the Subscription Receipts will be limited to the amount payable on the Closing Date.

It is understood and agreed that the Company shall be entitled to designate certain Purchasers (which Purchasers may purchase an aggregate of up to US\$3,000,000 of Subscription Receipts under the Offering) on a president's list (the "**President's List**"), as agreed between the Company and the Joint Bookrunners.



The Company agrees that the Underwriters will be permitted to appoint, at the Underwriters' sole expense, other registered dealers or other dealers duly qualified in their respective jurisdictions, in each case acceptable to the Company, acting reasonably, as its agents to assist with the Offering in the Selling Jurisdictions and that the Underwriters may determine the remuneration payable by the Underwriters to such other dealers appointed by them, provided that such remuneration shall not in any way increase the aggregate Underwriters' Fee payable to the Underwriters or the Underwriters' Expenses under this Agreement.

The terms and conditions of the Subscription Receipts are subject in all respects to the terms and conditions of the Subscription Receipt Agreement. In the event of a conflict between the provisions of this Agreement and the provisions of the Subscription Receipt Agreement, the provisions of the Subscription Receipt Agreement shall prevail.

This offer is conditional upon and subject to the additional terms and conditions set forth below.

## 1. Interpretation

1.1 Unless expressly provided otherwise herein, where used in this Agreement or any schedule attached hereto, the following terms have the following meanings, respectively:

**"2024 Convertible Debentures"** means, collectively, the fifth amended and restated series of secured convertible debentures dated August 14, 2024 among the Company, Royal Capital Management Corp. (as Agent thereunder), Mark Shoom, Stephen Rider, Delbrook Resource Opportunities Fund and Delbrook Resource Opportunities Master Fund LP, inclusive of all schedules thereto, as the same may be amended, confirmed, supplemented, replaced or restated from time to time;

**"Acquisition"** means the indirect acquisition by the Company of the remaining 40% interest in the Galena Complex in the Silver Valley of Northwest Idaho not indirectly owned by the Company, in accordance with the Purchase Agreement;

**"Act"** means the *Canada Business Corporations Act*;

**"affiliate"** has the meaning ascribed to such concept in Section 1(2) of the *Securities Act* (Ontario);

**"Affiliates"** means affiliates of the Underwriters;

**"Agreement"** means this underwriting agreement resulting from the acceptance by the Company of the offer made by the Underwriters hereby;

**"AIF"** means the annual information form of the Company for the year ended December 31, 2023, dated March 29, 2024;

**"Applicable Securities Laws"** means, in respect of any person, collectively, the securities laws, regulations, rulings, rules, orders and prescribed forms in each of the Selling Jurisdictions, and published policy statements issued by a Securities Regulator, including the rules and policies of the TSX and of any other stock exchange, in each case, applicable to that person;

**"Canadian Securities Laws"** means, collectively, all Applicable Securities Laws of each of the Reporting Jurisdictions;

**"Closing"** means the completion of the sale of the Subscription Receipts as contemplated by this Agreement and the Subscription Agreements;

**"Closing Date"** means October 30, 2024, or such other date as the Company and the Underwriters may mutually agree;

**“Closing Time”** means 8:00 a.m. (Toronto time) on the Closing Date, or such other time on the Closing Date as the Company and the Underwriters may mutually agree;

**“Common Shares”** means common shares in the capital of the Company, and **“Common Share”** means any one of them;

**“Company”** has the meaning ascribed thereto on the face page of this Agreement;

**“Concurrent Offerings”** means the issuance by the Company of (i) up to \$4,000,000 of Common Shares at a price of \$0.40 per Common Share on a non-brokered private placement basis to an affiliate of one or more of the vendors in the Acquisition; and (ii) approximately \$2,925,000 of Common Shares at a price of \$0.44 per Common Share on a non-brokered private placement basis to certain investors, in each case in conjunction with the Offering and the Acquisition, for bridge financing purposes;

**“Continuing Underwriter”** has the meaning ascribed thereto in Section 15.2;

**“Debt Instrument”** means any note, loan, bond, debenture, indenture, promissory note, credit facility, or other instrument evidencing material indebtedness (demand or otherwise) for borrowed money or other liability, and any amendments thereto, to which the Company or its Material Subsidiaries are a party or to which their property or assets are otherwise bound, including, but not limited to, the 2024 Convertible Debentures and the Secured Credit Facility, and as amended from time to time;

**“Defaulted Securities”** has the meaning ascribed thereto in Section 15.2;

**“Employee Plans”** has the meaning ascribed thereto in Section 6.1(yy);

**“Engagement Letter”** means the engagement letter entered into between the Joint Bookrunners and the Company dated October 8, 2024, as amended on October 9, 2024;

**“Environmental Laws”** has the meaning ascribed thereto in Section 6.1(ss);

**“Environmental Permits”** has the meaning ascribed thereto in Section 6.1(ss);

**“Escrow Release”** has the meaning ascribed thereto on the face page of this Agreement;

**“Escrow Release Conditions”** means, collectively:

- (a) the satisfaction or waiver of each of the conditions to the completion of the Acquisition as set out in the Purchase Agreement, other than payment of the purchase price payable on closing of the Acquisition; and
- (b) the receipt of all required board, shareholder, regulatory and stock exchange approvals in connection with the Offering and the Acquisition, including, without limitation, the approval of the Exchanges for the listing of the Common Shares having been obtained (other than such approvals that, by their nature, are to be satisfied following the closing of the Acquisition);

**“Escrow Release Deadline”** means 5:00 p.m. (Toronto time) on February 27, 2025;

**“Escrowed Funds”** means the gross proceeds from the sale of the Subscription Receipts, together with any interest and other income earned thereon, less 50% of the Underwriters’ Fee and the full amount of the Underwriters’ Expenses, which funds shall be held in escrow by the Subscription Receipt Agent;

**“Exchanges”** means, collectively, the TSX and the NYSE American;

**“Financial Statements”** means, collectively: (i) the Company’s audited consolidated financial statements for the years ended December 31, 2023 and December 31, 2022; and (ii) the unaudited condensed interim consolidated financial statements of the Company for the three and six months ended June 30, 2024 and 2023;

**“Governmental Authority”** means and includes, without limitation, any national or federal government, province, state, municipality or other political subdivision of any of the foregoing, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, and any governmental department, commission, board, bureau, agency or instrumentality, including the Securities Regulators and the Exchanges;

**“IFRS”** means International Financial Reporting Standards as issued by the International Accounting Standards Board, namely, the standards, interpretations and the framework for the preparation and presentation of financial statements (in the absence of a standard or interpretation), as adopted in Canada by the Accounting Standards Board of the Chartered Professional Accountants of Canada, that are applicable to the circumstances as of the date of determination, consistently applied;

**“including”** means including without limitation (and “include” or “includes” have similar extended meanings);

**“Indemnified Parties”** has the meaning ascribed thereto in Section 10.1;

**“Indemnitor”** has the meaning ascribed thereto in Section 10.1;

**“Material Adverse Effect”** means any event, change, fact, or state of being that would reasonably be expected to have a significant and adverse effect on: (i) the business, affairs, capital, operation, properties, permits, assets, liabilities (absolute, accrued, contingent or otherwise) or condition (financial or otherwise) of the Company and the Material Subsidiaries considered on a consolidated basis; or (ii) the ability of such entity to consummate the transactions contemplated by this Agreement and the Purchase Agreement;

**“Material Agreement”** means any Debt Instrument, contract, commitment, agreement (written or oral), instrument, lease, license, or other document (written or oral), to which the Company or the Material Subsidiaries are a party and which is material to the Company and the Material Subsidiaries on a consolidated basis, including, but not limited to the Precious Metals Delivery and Purchase Agreement (as defined in the AIF), each as amended from time to time;

**“Material Permits”** means all material permits, certificates, licenses, approvals, consents, registrations and other authorizations of the Company and the Material Subsidiaries;

**“Material Properties”** means collectively: (i) the Cosalá Operations, located in Sinaloa, Mexico; and (ii) the Galena Complex, located in Idaho, United States, each as described in the Public Disclosure Documents;

**“Material Subsidiaries”** means, collectively, Platte River Gold Inc., Minera Platte River Gold S.A. de R.L. de C.V., Scorpio Holding Two Limited, Scorpio Holding One Limited, Minera Cosalá S.A. de C.V., U.S. Silver & Gold Inc., U.S. Silver Corporation, United States Silver, Inc., RX Gold & Silver Inc. and U.S. Silver – Idaho, Inc.;

**“misrepresentation”, “material fact”, “material change”, “associate”, and “distribution”** have the respective meanings ascribed thereto in the *Securities Act* (Ontario);

**“NI 43-101”** means National Instrument 43-101 – *Standards of Disclosure for Mineral Projects*;

**“NI 45-102”** means National Instrument 45-102 – *Resale of Securities*;

**“NI 45-106”** means National Instrument 45-106 – *Prospectus Exemptions*;

**“NYSE American”** means the NYSE American LLC;

“**OFAC**” has the meaning ascribed thereto in Section 6.1(ggg);

“**Offering**” has the meaning ascribed thereto on the face page of this Agreement;

“**Offering Documents**” means, collectively, this Agreement, the Subscription Agreements, and the Subscription Receipt Agreement;

“**Offering Price**” has the meaning ascribed thereto on the face page of this Agreement;

“**person**” includes any individual, corporation, limited partnership, general partnership, joint stock company or association, joint venture association, company, trust, bank, trust company, land trust, investment trust, society or other entity, organization, syndicate, whether incorporated or not, trustee, executor or other legal personal representative, and governments and agencies and political subdivisions thereof;

“**Personnel**” has the meaning ascribed thereto in Section 10.1;

“**President’s List**” has the meaning ascribed thereto on the face page of this Agreement;

“**Public Disclosure Documents**” means, collectively, all of the following documents:

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- (a) the AIF;
- (b) the Financial Statements;
- (c) the Company’s management’s discussion and analysis for the three and six months ended June 30, 2024, dated August 15, 2024;
- (d) the Company’s management’s discussion and analysis for the year ended December 31, 2023, dated March 28, 2024; and
- (e) the Company’s management information circular for the annual and special meeting of shareholders held on June 25, 2024, dated May 21, 2024;

“**Purchase Agreement**” means the purchase agreement dated October 9, 2024 by and between the Company, Sprott Mining Inc., Sprott Mining Idaho Holdings Inc., Sprott Mining Idaho Management Inc., Sprott Mining Idaho Limited Partnership and Paul Huet, as seller representative, including the exhibits and schedules thereto, pursuant to which, among other things, the Company will complete the Acquisition;

“**Purchasers**” means the purchasers who purchase Subscription Receipts pursuant to the Subscription Agreements, and each such purchaser, a “**Purchaser**”;

“**Qualified Institutional Buyer**” means a “Qualified Institutional Buyer” as such term is defined in Rule 144A(a)(1) under the U.S. Securities Act that is also a U.S. Accredited Investor;

“**Refusing Underwriter**” has the meaning ascribed thereto in Section 15.2;

“**Regulation D**” means Regulation D adopted by the SEC under the U.S. Securities Act;

“**Regulation S**” means Regulation S adopted by the SEC under the U.S. Securities Act;

“**Reporting Jurisdictions**” means all of the provinces of Canada;

**“Required Shareholder Approvals”** means the shareholder approvals required to be obtained by the Company under Applicable Securities Laws in connection with and prior to the completion of the Acquisition and the issuance of the Common Shares upon exchange of the Subscription Receipts;

**“SEC”** means the United States Securities and Exchange Commission;

**“Secured Credit Facility”** means the secured credit facility of up to \$15 million established pursuant to the credit and off-take agreement entered into between the Company and Trafigura PTE Ltd. as announced on August 14, 2024;

**“Securities Regulator”** means, in respect of any jurisdiction, the securities regulator or other securities regulatory authority of that jurisdiction;

**“SEDAR+”** means the System for Electronic Data Analysis and Retrieval +;

**“Selling Jurisdictions”** means, collectively, (i) all of the provinces of Canada, (ii) the United States, and (iii) such other jurisdictions outside of Canada and the United States as mutually agreed between the Company and the Underwriters, provided that such sales are completed in such a manner so as not to require the filing of a prospectus, registration statement or offering memorandum or similar document and do not give rise to any disclosure obligations or submission to the jurisdiction in such jurisdictions on the part of the Company;

**“Subscription Agreements”** means the subscription agreements for Subscription Receipts, in the forms agreed upon by the Company and the Underwriters, in respect of the purchase by and sale to the Purchasers of the Subscription Receipts pursuant to the Offering as contemplated herein and shall include, for greater certainty, all schedules and exhibits thereto;

**“Subscription Receipt Agent”** has the meaning ascribed thereto on the face page of this Agreement;

**“Subscription Receipt Agreement”** has the meaning ascribed thereto on the face page of this Agreement;

**“Subscription Receipts”** has the meaning ascribed thereto on the face page of this Agreement;

**“subsidiary”** has the meaning ascribed thereto in the *Securities Act* (Ontario);

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

**“Taxes”** has the meaning ascribed thereto in Section 6.1(cc);

**“Term Sheet”** means the term sheet included in the Subscription Agreements in respect of the Offering;

**“Termination Date”** has the meaning ascribed thereto on the face page of this Agreement;

**“Termination Event”** has the meaning ascribed thereto on the face page of this Agreement;

**“to the knowledge of the Company”** means to the actual knowledge, information and awareness of the President and Chief Executive Officer, Chief Financial Officer, Senior Vice President, Corporate Affairs & Chief Legal Officer, or Chief Operating Officer of the Company after having made reasonable and applicable inquiries and investigations in connection with such facts and circumstances that would ordinarily be made by senior officers of resource exploration and development companies of similar size to the Company in the discharge of their respective duties;

**“Transaction Documents”** means, collectively, the Offering Documents and the Purchase Agreement;

**“TSX”** means the Toronto Stock Exchange;

“**TSX Listing**” means listing on the TSX of the Common Shares issuable in connection with the Offering upon Escrow Release;

“**Underwriters**” has the meaning ascribed thereto on the face page of this Agreement;

“**Underwriters’ Expenses**” has the meaning ascribed thereto in Section 11.1;

“**Underwriters’ Fee**” has the meaning ascribed thereto in Section 13;

“**Underwriters’ Option**” has the meaning ascribed thereto on the face page of this Agreement;

“**United States**” means the United States of America, its territories and possessions, any state of the United States, and the District of Columbia;

“**U.S. Accredited Investor**” means an “accredited investor” as that term is defined in Rule 501(a) of Regulation D;

“**U.S. Affiliates**” has the meaning ascribed thereto in Section 2.2;

“**U.S. Person**” means a “U.S. person” as that term is defined in Rule 902 of Regulation S;

“**U.S. Purchaser**” means (a) any Purchaser in the United States, (b) any Purchaser who is a U.S. Person, (c) any person purchasing securities for the account or benefit of any person in the United States or any U.S. Person, (d) any person that receives or received an offer of the Subscription Receipts while in the United States (except persons excluded from the definition of “U.S. person” pursuant to Rule 902(k)(2)(vi) of Regulation S or persons holding accounts excluded from the definition of “U.S. person” pursuant to Rule 902(k)(2)(i) of Regulation S, solely in their capacities as holders of such accounts), and (e) any person that is in the United States at the time the Purchaser’s buy order was made or such Subscription Agreement was executed or delivered (except persons excluded from the definition of “U.S. person” pursuant to Rule 902(k)(2)(vi) of Regulation S or persons holding accounts excluded from the definition of “U.S. person” pursuant to Rule 902(k)(2)(i) of Regulation S, solely in their capacities as holders of such accounts); and

“**U.S. Securities Act**” means the United States Securities Act of 1933, as amended.

**1.2 Division and Headings:** The division of this Agreement into sections, subsections, paragraphs and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to sections, subsections, paragraphs and other subdivisions are to sections, subsections, paragraphs and other subdivisions of this Agreement.

**1.3 Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and the parties hereto irrevocably accept and attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

**1.4 Currency:** Except as otherwise indicated, all amounts expressed herein in terms of money refer to lawful currency of Canada and all payments to be made hereunder shall be made in such currency.

**1.5 Schedules:** Schedule “A” – Compliance with United States Securities Laws, as attached to this Agreement, is deemed to be a part of this Agreement and is hereby incorporated by reference herein.

## **2. Nature of Transaction**

**2.1 Sale on Exempt Basis.** Upon and subject to the terms and conditions set forth herein, the Underwriters hereby agree to purchase, and upon acceptance hereof, the Company hereby agrees to sell to the Underwriters and/or the Purchasers, on a “bought deal” private placement basis, all of the Subscription Receipts to be issued and sold pursuant

to the Offering and the Underwriters agree that they will only solicit and arrange for Purchasers of Subscription Receipts in the Selling Jurisdictions, in accordance with Applicable Securities Laws, and only to such Purchasers and in such a manner which will not trigger any obligation for the Company to file a prospectus, a registration statement or other offering document with any Securities Regulator under Applicable Securities Laws or otherwise comply with any continuous disclosure or reporting obligation in any jurisdiction outside of Canada. The Underwriters acknowledge that, subject to the conditions contained in Section 7 hereof being satisfied, the Underwriters shall become obligated to purchase or cause to be purchased all of the Subscription Receipts. To the extent that Purchasers purchase Subscription Receipts at the Closing, the Underwriters shall not be obligated to purchase the Subscription Receipts so purchased by such Purchasers.

**2.2 United States Sales.** The parties to this Agreement acknowledge that the Subscription Receipts (and the Common Shares issuable upon exchange for the Subscription Receipts), offered and sold to U.S. Purchasers shall be issued as “restricted securities” (as defined in Rule 144(a)(3) under the U.S. Securities Act), have not been and will not be registered under the U.S. Securities Act or applicable state securities laws, and may not be offered, sold, pledged or otherwise transferred, directly or indirectly, in the United States except pursuant to exemptions from the registration requirements of the U.S. Securities Act and the applicable laws of any state of the United States. Accordingly, the Company, the Underwriters and the U.S. Affiliates agree that any offers or sales to U.S. Purchasers shall be conducted only in the manner specified in Schedule “A” of this Agreement. All actions to be undertaken by the Underwriters in the United States in connection with the matters contemplated herein shall be undertaken through a duly registered U.S. broker-dealer Affiliate (the “**U.S. Affiliates**”) or a U.S. registered broker-dealer that is a member of the selling group engaged in connection with such offer or sale.

**2.3 Filings.** The Company hereby agrees to comply with all Applicable Securities Laws on a timely basis in connection with the Offering and undertakes to file, or cause to be filed, within the periods stipulated under Applicable Securities Laws, all forms, documents or undertakings required to be filed by the Company in connection with the issue and sale of the Subscription Receipts so that the distribution of the Subscription Receipts may lawfully occur without the necessity of filing a prospectus, a registration statement or other offering document with any Securities Regulator in the Selling Jurisdictions, and the Underwriters agree to assist the Company in all reasonable respects to secure compliance with all regulatory requirements in connection with the Offering, including, for the avoidance of doubt, the filing of a Form D with the SEC within 15 days of the first sale of the Subscription Receipts to a U.S. Purchaser and any such related filings as may be required by applicable state securities laws to secure exemption from registration under such securities laws for the sale of the Subscription Receipts in such states. All fees payable in connection with such filings shall be paid by the Company.

**2.4 Solicitation of Orders.** Neither the Company nor the Underwriters shall: (i) provide to prospective purchasers of the Subscription Receipts any document or other material that would constitute an offering memorandum or “future-oriented financial information” within the meaning of Applicable Securities Laws, other than the Term Sheet; (ii) engage in any form of “general solicitation” or “general advertising” (as those terms are used in Regulation D) in connection with the offer and sale of the Subscription Receipts, including but not limited to, causing the sale of the Subscription Receipts to be advertised in any newspaper, magazine, printed public media, printed media or similar medium of general and regular paid circulation, broadcast over radio, television or telecommunications, including electronic display, or conduct any seminar or meeting relating to the offer and sale of the Subscription Receipts whose attendees have been invited by general solicitation or advertising; or (iii) conduct the Offering in any manner involving a public offering within the meaning of Section 4(a)(2) of the U.S. Securities Act.

### **3. Representations and Warranties of the Underwriters**

3.1 Each Underwriter hereby severally, and neither jointly, nor jointly and severally, represents and warrants to the Company that:

- (a) it will conduct activities in connection with arranging for the sale and distribution of the Subscription Receipts in compliance with all Applicable Securities Laws and the provisions of this Agreement;



- (b) it has not and will not, directly or indirectly, sell or solicit offers to purchase the Subscription Receipts or distribute or publish any offering memorandum, prospectus, form of application, advertisement or other offering materials (other than the Term Sheet) in any country or jurisdiction so as to require registration of the Subscription Receipts or filing of a prospectus or similar document with respect thereto or compliance by the Company with regulatory requirements (including any continuous disclosure obligations or similar reporting obligations) under the Applicable Securities Laws;

- (c) it will obtain from each Purchaser an executed Subscription Agreement (including all certifications, forms, and other documentation contemplated thereby) and all other applicable forms, reports, undertakings and documentation required under Applicable Securities Laws or required by the Company, acting reasonably; and
- (d) it is duly registered pursuant to the provisions of the Applicable Securities Laws and is duly registered or licensed as an investment dealer in those jurisdictions in which it is required to be so registered in order to perform the services contemplated by this Agreement, or if or where not so registered or licensed, it will act only through members of a selling group who are so registered or licensed or, with respect to actions undertaken in the United States and/or with respect to U.S. Purchasers, through a U.S. Affiliate as described in Section 2.2.

#### **4. Covenants of the Company**

4.1 The Company hereby covenants to the Underwriters, the U.S. Affiliates, and the Purchasers as applicable, and acknowledges that each of them is relying on such covenants in connection with the purchase of the Subscription Receipts and the completion of the Offering, as follows:

- (a) the Company will, in connection with the Offering and the Acquisition, allow the Underwriters and their representatives the opportunity to conduct all due diligence which the Underwriters and their representatives may reasonably require to be conducted prior to the Closing Date and will make available its directors, senior management, technical advisors, audit committee, and legal counsel to conduct such procedures as are reasonably required, to answer the questions of the Underwriters in due diligence meetings to be conducted prior to the Closing Date;
- (b) the Company has made available and provided to the Underwriters and their representatives, and, on a timely basis, will make available and provide to the Underwriters and their representatives at any time prior to the Closing Date: (i) all requested corporate and operating records, material contracts, reserve reports, technical reports, financial information, budgets and other relevant information necessary in order to complete the due diligence investigation of the business, properties and affairs of the Company and the Material Subsidiaries; and (ii) all material agreements, arrangements and documents in connection with the Acquisition;
- (c) the Company shall duly execute and deliver, at or prior to the Closing Time, the applicable Subscription Agreements and the Subscription Receipt Agreement and the certificates evidencing the Subscription Receipts (if any), and comply with and satisfy all terms, conditions and covenants therein contained that are required to be complied with or satisfied by the Company at or prior to the Closing Time, as applicable;
- (d) the Company shall use its commercially reasonable efforts to fulfill, at or prior to the Closing Time, each of the conditions required to be fulfilled by it set out in Section 7;

- (e) the Company shall, prior to and following the completion of the distribution of the Subscription Receipts and prior to the Escrow Release, deliver to the Underwriters copies of all material written correspondence



between the Company and the Exchanges, and between the Company and the Securities Regulators, relating to the Offering and the Acquisition;

- (f) the Company shall use commercially reasonable efforts to pursue the satisfaction of the Escrow Release Conditions prior to the Escrow Release Deadline and will keep the Underwriters reasonably informed, from time to time, of the satisfaction of the conditions thereof;
- (g) the Company shall ensure that the Subscription Receipts and the Common Shares issuable upon exchange thereof, shall be duly and validly created, authorized and issued on payment of the Offering Price therefor, and shall have the attributes corresponding in all material respects to the description thereof set forth in the Term Sheet, this Agreement, the Subscription Agreements, and the Subscription Receipt Agreement;
- (h) the Company will comply with its obligations under the Subscription Receipt Agreement;
- (i) the Company shall obtain the prior written approval of Cormark, on behalf of the Underwriters, such approval not to be unreasonably, withheld, conditioned or delayed, in respect of any proposed amendment or supplement to the Purchase Agreement which would constitute a material change to the Company and which would require public disclosure thereof;
- (j) the Company shall use the net proceeds of the Offering to finance, in part, the Acquisition, as well as the Company's expenses of the Acquisition, the Offering and the Concurrent Offerings, to repay certain of the Company's existing indebtedness, for the advancement of the Company's initiatives at the Galena Complex, and for general corporate purposes;
- (k) the Company shall retain the Subscription Receipt Agent or a substituted licensed trust company acceptable to the Underwriters, acting reasonably, as subscription receipt agent in respect of the Subscription Receipts;
- (l) the Company shall not issue any Common Shares or financial instruments convertible or exchangeable into Common Shares, other than: (i) for purposes of director or employee stock options or other security based compensation arrangements, (ii) to satisfy existing instruments of the Company already issued as of the date of the Engagement Letter, (iii) in connection with the exchange of the Subscription Receipts, (iv) in connection with the Concurrent Offerings, or (v) in connection with the Acquisition, for a period of 120 days from the date of the Escrow Release, without the prior consent of the Joint Bookrunners, such consent not to be unreasonably withheld, conditioned or delayed;

- (m) the Company shall cause each of the directors and executive officers of the Company to execute and deliver lock-up agreements, pursuant to which each such person shall agree that for a period of 120 days from the closing date of the Acquisition, each such person will not, without the prior consent of the Joint Bookrunners, on behalf of the Underwriters, such consent not to be unreasonably withheld, conditioned or delayed, directly or indirectly, offer, sell, contract to sell, grant any option to purchase, make any short sale, or otherwise dispose of, or transfer, or announce any intention to do so, any Common Shares, whether now owned or subsequently acquired, directly or indirectly, or under their control or direction, or with respect to which each has beneficial ownership, or enter into any transaction or arrangement that has the effect of transferring, in whole or in part, any of the economic consequences of ownership of the Common Shares, whether such transaction is settled by the delivery of Common Shares, other securities, cash or otherwise, other than pursuant to a take-over bid or any other similar transaction made generally to all of the shareholders of the Company;
- (n) the Company shall use its commercially reasonable efforts to ensure the conditional approval of the TSX Listing is obtained prior to the Closing Date;
- (o) the Company shall use its commercially reasonable efforts to obtain all consents, including approvals, permits, authorizations or filings as may be required under applicable corporate laws and Applicable

Securities Laws or otherwise necessary for the execution and delivery of and the performance by the Company of their obligations under the Transaction Documents, as applicable;

- (p) for a period of two years following the Closing Date, the Company shall use commercially reasonable efforts to remain a reporting issuer under Canadian Securities Laws in the Reporting Jurisdictions, not in default of any material requirement of such Canadian Securities Laws, provided that this covenant shall not prevent the Company from completing any transaction which would result in the Company ceasing to be a “reporting issuer”, so long as the holders of Common Shares receive securities of an entity which is listed on a stock exchange in Canada or cash or the holders of the Common Shares have approved the transaction in accordance with the requirements of applicable corporate and securities laws and the policies of the TSX (or any securities exchange, market or trading or quotation facility on which the Common Shares are then listed or quoted);
- (q) the Company shall use commercially reasonable efforts to maintain the listing of the Common Shares on the TSX, and to not take any action for a period of two years after the Closing Date which would reasonably be expected to result in the delisting or suspension of the Common Shares on or from the TSX or on or from any securities exchange, market or trading or quotation facility on which the Common Shares are then listed or quoted (by action of the Company), provided that this covenant shall not prevent the Company from completing any transaction which would result in the Company ceasing to be listed on the TSX (or any securities exchange, market or trading or quotation facility on which the Common Shares are then listed or quoted (by action of the Company)) so long as the holders of the Common Shares receive securities of an entity which is listed on a stock exchange in Canada, a national securities exchange in the United States or cash, or the holders of the Common Shares have approved the transaction in accordance with the requirements of applicable corporate and securities laws and the policies of the TSX (or any securities exchange, market or trading or quotation facility on which the Common Shares are then listed or quoted (by action of the Company));

- (r) during the period commencing on the date hereof and until completion of the distribution of the Subscription Receipts, the Company will promptly provide to the Underwriters drafts of any press releases of the Company for review by the Underwriters and their counsel prior to issuance, and will not publish those press releases (unless otherwise required by Applicable Securities Laws) except with the prior approval of the Underwriters, which approval will not be unreasonably withheld or delayed. In addition, if required by Applicable Securities Laws, any press release announcing or otherwise referring to the Offering shall comply with the requirements of the U.S. Securities Act and applicable rules thereunder and shall (i) include the following legend: “*Not for distribution to U.S. news wire services or dissemination in the United States*” and the following disclaimer: “*This news release does not constitute an offer to sell or a solicitation of an offer to buy any of the securities in the United States. The securities have not been and will not be registered under the United States Securities Act of 1933, as amended (the “U.S. Securities Act”) or any state securities laws and may not be offered or sold within the United States or to U.S. Persons unless registered under the U.S. Securities Act and applicable state securities laws or an exemption from such registration is available*”; or (ii) comply with the requirements of Rule 135c under the U.S. Securities Act; and
- (s) the Company will take all actions reasonably necessary or required by it and within its control to obtain the Required Shareholder Approvals and complete the Acquisition and satisfy the Escrow Release Conditions as soon as reasonably practicable following the date hereof and, in any event, on or before the Escrow Release Deadline.

## **5. Material Changes and Orders, Rulings, etc.**

5.1 During the period from the date hereof to the later of the Closing Date and the date of completion of the distribution of the Subscription Receipts, the Underwriters will be kept fully informed of all material changes affecting the Company and the Company shall, upon becoming aware of same, promptly notify the Underwriters (and, if requested by the Underwriters, confirm such notification in writing) of:

- (a) any material change (actual, anticipated, contemplated or threatened, financial or otherwise) in the business, affairs, operations, assets, liabilities (contingent or otherwise) or capital of the Company or the Material Subsidiaries;
- (b) other than in the ordinary course in connection with the Acquisition, any written notice by any judicial or regulatory authority requesting any information, meeting or hearing relating to the Company and their respective affairs, or the Offering or Acquisition; or
- (c) any order, ruling, or determination having the effect of suspending the sale or ceasing the trading in any securities of the Company (including the Common Shares) that has been issued by any Securities Regulator or of any proceedings that have been instituted, threatened or contemplated, for any such purposes (and will use its commercially reasonable efforts to prevent the issuance of any such order, ruling, or determination or, if any such order, ruling or determination is issued, to obtain the withdrawal thereof as promptly as possible).

During the period from the date hereof to the later of the Closing Date and the date of completion of the distribution of the Subscription Receipts, the Company shall promptly, and in any event, within any applicable time limitation, comply with all applicable filing and other requirements under Canadian Securities Laws as a result of any material change. The Company shall in good faith discuss with the Underwriters any fact or change in circumstances (actual, anticipated, contemplated or threatened, and financial or otherwise) which is of such a nature that there is reasonable doubt as to whether notice need be given to the Underwriters pursuant to this Section 5. Unless advised otherwise, the Underwriters will be entitled to assume that there has been no material change in any information provided by the Company and will be entitled to rely thereon.

## 6. Representations and Warranties of the Company

6.1 The Company hereby represents and warrants to the Underwriters, the U.S. Affiliates, and the Purchasers and acknowledges that each of them is relying on such representations and warranties in connection with the purchase of the Subscription Receipts and the completion of the Offering, as at the Closing Time, as follows:

- (a) **Good Standing of the Company.** The Company (i) is duly incorporated under the Act and is up-to-date in respect of all material corporate filings and is in good standing under the Act, (ii) has all requisite corporate power, authority and capacity to carry on its business as now conducted and to own, lease and operate its properties and assets as described in the AIF, and (iii) has all requisite corporate power and authority to enter into the Transaction Documents and to perform its obligations hereunder and thereunder;
- (b) **Good Standing of the Material Subsidiaries.** The Material Subsidiaries are the only subsidiaries of the Company which are material to the Company. Each of the Material Subsidiaries (i) has been duly incorporated or otherwise organized in its respective jurisdiction of incorporation or organization (as applicable) and is up-to-date in respect of all material corporate or other filings and is in good standing under the laws of such jurisdiction, and (ii) has all requisite corporate or other power and capacity to carry on its business as now conducted and to own, lease and operate its properties and assets as described in the AIF;
- (c) **Ownership of the Material Subsidiaries.** The Company is the direct or indirect legal, registered and beneficial owner of the issued and outstanding shares or other equity interests of each of the Material Subsidiaries, free and clear of all mortgages, liens, charges, pledges, security interests, encumbrances, claims and demands whatsoever, except as disclosed in the Public Disclosure Documents. All of such shares or equity interests in the capital of the Material Subsidiaries have been duly authorized and validly issued and are outstanding as fully paid and non-assessable shares or equity interests and, except as disclosed in the Public Disclosure Documents, no person has any right, agreement or option, present or future, contingent or absolute, or any right capable of becoming a right, agreement or option, for the purchase from the Company or any subsidiary of the Company of any interest in any of such shares or equity interests for the issue or allotment of any unissued shares or other equity interests in the capital of the Material Subsidiaries or any other security convertible into or exchangeable for any such shares or equity interests;

- (d) **No Proceedings for Dissolution.** No proceedings have been taken or instituted or, to the knowledge of the Company, are pending for the dissolution or liquidation of the Company or any of the Material Subsidiaries;
- (e) **Compliance with Laws.** The Company and each of the Material Subsidiaries is conducting its business in compliance with all applicable laws, rules and regulations of each jurisdiction in which its respective business is carried on, and the Company has not received a notice of non-compliance, or knows of, or has reasonable grounds to know of, any facts that could give rise to a notice of non-compliance with any such laws, regulations or permits, except where any failure to so comply or any non-compliance would not reasonably be expected to have a Material Adverse Effect, and the Company and each of the Material Subsidiaries is licensed, registered or qualified in all jurisdictions in which it owns, leases or operates its property or carries on business to enable it to carry on its business as now conducted and its property and assets to be owned, leased and operated and all such licenses, registrations and qualifications are valid, subsisting and in good standing, except where the failure of such licenses, registrations or qualifications to be valid, subsisting or in good standing would not reasonably be expected to have a Material Adverse Effect;
- (f) **Valid and Binding Documents.** The execution and delivery of the Transaction Documents and the performance of the transactions contemplated hereunder and thereunder, including without limitation the creation and issuance of the Subscription Receipts and the Common Shares issuable upon exchange thereof, have been duly authorized by all necessary corporate action of the Company and the Transaction Documents have been duly executed and delivered by the Company and constitute valid and binding obligations of the Company, enforceable against the Company in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting the rights of creditors generally and except as limited by the application of equitable principles when equitable remedies are sought, and by the fact that rights to indemnity, contribution and waiver, and the ability to sever unenforceable terms, may be limited by applicable law;
- (g) **Validly Issued Securities.**
  - (i) The Subscription Receipts will, as of the Closing Time, be duly and validly created and issued pursuant to the Subscription Receipt Agreement;
  - (ii) The Common Shares issuable upon exchange of the Subscription Receipts have been validly authorized and allotted for issuance and, upon the exchange of the Subscription Receipts in accordance with the terms of the Subscription Receipt Agreement, the Common Shares will be validly issued as fully paid and non-assessable Common Shares;
- (h) **Forward-Looking Information.** With respect to forward-looking information contained in the Public Disclosure Documents:

- (i) the Company had a reasonable basis for the forward-looking information at the time the disclosure was made;
- (ii) all forward-looking information is identified as such, and all such documents caution users of forward-looking information that actual results may vary from the forward-looking information, identify material risk factors that could cause actual results to differ materially from the forward-looking information, and state the material factors or assumptions used to develop the forward-looking information; and
- (iii) the future-oriented financial information or financial outlook contained therein is limited to a period for which the information can be reasonably estimated;

- (i) **All Necessary Consents and Approvals.** All consents, approvals, permits, authorizations or filings as may be required under Applicable Securities Laws necessary for: (i) the execution and delivery of the Transaction Documents; (ii) the creation, issuance, sale and delivery, as applicable, of Subscription Receipts and the issuance of the Common Shares upon exchange thereof; and (iii) the consummation of the transactions contemplated hereby and thereby, have been made or obtained, as applicable, other than in respect of the Required Shareholder Approvals, those in respect of the Acquisition expected to be obtained in the ordinary course, and customary post-closing notices or filings required to be submitted within the applicable time frame pursuant to Applicable Securities Laws;
- (j) **Stock Exchange Listing, Filings and Fees.** The currently issued and outstanding Common Shares are listed and posted for trading on the Exchanges and the Company is currently in material compliance with the rules and regulations of the Exchanges and all material filings and fees required to be made and paid by the Company pursuant to Applicable Securities Laws and general corporate law have been made and paid;
- (k) **No Cease Trade Orders or Action to Delist.** No order ceasing or suspending trading in any securities of the Company or prohibiting the sale or issuance of the Subscription Receipts or the Common Shares issuable upon exchange thereof or the trading of any of the Company's issued securities has been issued and no proceedings for such purpose are threatened or, to the best of the Company's knowledge, pending, and the Company has not taken any action which would be reasonably expected to result in the delisting or suspension of the Common Shares on or from the Exchanges;
- (l) **Dividends.** The Company has not, directly or indirectly, declared or paid any dividend or declared or made any other distribution on any of its shares or securities of any class, or, directly or indirectly, redeemed, purchased or otherwise acquired any of the Common Shares or securities or agreed to do any of the foregoing, and there are no restrictions upon or impediment to, the declaration or payment of dividends by the Company in the constating documents of the Company or in any Material Agreements;
- (m) **No Default or Breach.** The execution and delivery of the Transaction Documents and the performance by the Company of its obligations hereunder and thereunder, and the issuance of the Subscription Receipts and the Common Shares issuable upon exchange thereof does not, and will not, conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, whether after notice or lapse of time or both, (i) any statute, rule or regulation applicable to the Company or any of the Material Subsidiaries, including Applicable Securities Laws; (ii) the constating documents, by-laws or resolutions of the Company or any of the Material Subsidiaries, that are in effect at the date hereof; (iii) the terms of any Material Agreement to which the Company or any of the Material Subsidiaries are a party or by which they are bound; or (iv) any judgment, decree or order binding the Company, any of the Material Subsidiaries or the respective property or assets of the Company or the Material Subsidiaries;

- (n) **Absence of Rights to Acquire Securities.** Except: (i) as disclosed in the Public Disclosure Documents; (ii) pursuant to the Offering, the Concurrent Offerings, or the Purchase Agreement; or (iii) pursuant to an equity incentive plan of the Company, no person now has any agreement or option or right or privilege (whether at law, pre-emptive or contractual) capable of becoming an agreement for the purchase, subscription or issuance of, or conversion into, any unissued shares, securities, warrants or convertible obligations of any nature of the Company or any of the Material Subsidiaries;
- (o) **Share Capital.** The authorized capital of the Company consists of an unlimited number of Common Shares, without par value, and 8,000,000 preferred shares, of which, as of October 29, 2024, an aggregate of 276,963,382 Common Shares and nil preferred shares were outstanding as fully paid and non-assessable shares of the Company.
- (p) **No Adverse Legislation.** Other than as disclosed in the Public Disclosure Documents, the Company is not aware of any legislation, or proposed legislation published by a legislative body, which it anticipates will have a Material Adverse Effect;

- (q) **No Material Changes.** Since December 31, 2023, other than as disclosed in the Public Disclosure Documents or as contemplated by the Transaction Documents: (i) there has been no material change in the assets, liabilities, obligations (absolute, accrued, contingent or otherwise), business, condition (financial or otherwise) or results of operations of the Company and its subsidiaries on a consolidated basis, (ii) there has been no material change in the capital stock or long-term debt of the Company and its subsidiaries on a consolidated basis, and (iii) the Company and the Material Subsidiaries have carried on their respective businesses in the ordinary course;
- (r) **Reporting Issuer.** The Company is currently a “reporting issuer” (within the meaning of Canadian Securities Laws) in each of the Reporting Jurisdictions and the Company will, as of the Closing Date, be a “reporting issuer” in each of the Reporting Jurisdictions and not included in a list of defaulting reporting issuers maintained by any Securities Regulator in such jurisdictions, and in particular, without limiting the foregoing, the Company has at all relevant times complied with its obligations to make timely disclosure of all material changes relating to it, no such disclosure has been made on a confidential basis (including, but not limited to, the filing of any confidential material change report) that is still maintained on a confidential basis, and there is no material change relating to the Company which has occurred and with respect to which the requisite material change report has not been filed with any Securities Regulator;
- (s) **Continuous Disclosure Compliance.** The Company is in compliance in all material respects with its timely and continuous disclosure obligations under Applicable Securities Laws and the rules and regulations of the Exchanges, and, without limiting the generality of the foregoing, there has been no material change that has occurred since December 31, 2023, which has not been publicly disclosed. The information and statements in the Public Disclosure Documents and in any news releases filed by the Company since December 31, 2023 were true and correct in all material respects as of the respective dates of such information and statements and at the time any such documents were filed on SEDAR+ and, except as may have been corrected or superseded by subsequent disclosure, do not contain any misrepresentations and no material facts have been omitted therefrom which would make such information materially misleading;

- (t) **Financial Statements.** The Financial Statements: (i) have been prepared in accordance with IFRS consistently applied throughout the periods involved, and comply as to form in all material respects with applicable accounting requirements of Canadian Securities Laws, and (ii) present fairly, in all material respects, the consolidated financial position, results of operations and cash flows of the Company as at the date thereof and the results of its operations and the changes in its financial position for the periods then ended.
- (u) **Independent Auditors.** The Company’s auditors who audited the consolidated financial statements of the Company as at and for the financial years ended December 31, 2023 and 2022 and delivered their auditors’ report thereon are independent public accountants as required by the Canadian Securities Laws;
- (v) **No Reportable Events.** Since December 31, 2023, there has not been any “reportable event” (within the meaning of National Instrument 51-102 – *Continuous Disclosure Obligations*) with the Company’s auditors;
- (w) **Accounting Controls.** The Company and each of the Material Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management’s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles in Canada and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management’s general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Since December 31, 2023, the Company has not become aware of any material weakness in the Company’s internal control over financial reporting (whether or not remediated) or change in the Company’s internal control over financial reporting that has materially affected or is reasonably expected to materially affect the Company’s internal control over financial reporting;



- (x) **Accounting Policies.** There has been no change in accounting policies or practices of the Company since December 31, 2023, other than as required by IFRS.
- (y) **Off-Balance Sheet Arrangements and Liabilities.** There are no off-balance sheet transactions, arrangements or obligations of the Company or its subsidiaries, whether direct, indirect, absolute, contingent or otherwise which are required to be disclosed and are not disclosed or reflected in the Public Disclosure Documents.
- (z) **No Actions or Proceedings.** To the knowledge of the Company, there is no action, suit, proceeding, inquiry or investigation before or brought by any court or governmental agency, governmental instrumentality or body, domestic or foreign, now pending or threatened against or affecting the Company or any Material Subsidiary, which is required to be disclosed in the Public Disclosure Documents and which is not so disclosed, or which if determined adversely, would reasonably be expected to result in a Material Adverse Effect or to materially and adversely affect the consummation of the transactions contemplated in the Transaction Documents or the performance by the Company of its obligations hereunder and thereunder;

- (aa) **No Voting Agreements.** Other than as disclosed in the Public Disclosure Documents or voting and support agreements in respect of the Acquisition, to the knowledge of the Company, no agreement is in force or effect which in any manner affects the voting or control of any of the securities of the Company or the Material Subsidiaries;
- (bb) **Purchases and Sales.** Other than in connection with the Acquisition and pursuant to the Purchase Agreement, the Company has not approved or entered into any binding agreement in respect of: (i) the purchase of any material property or assets or any interest therein or the sale, transfer or other disposition of any material property or assets or any interest therein currently owned, directly or indirectly, by the Company or any Material Subsidiary whether by asset sale, transfer of shares or otherwise, or (ii) the change of control (by sale or transfer of shares or sale of all or substantially all of the property and assets of the Company or otherwise) of the Company;
- (cc) **Taxes.** All taxes (including income tax, capital tax, payroll taxes, employer health tax, workers' compensation payments, property taxes, custom and land transfer taxes), duties, royalties, levies, imposts, assessments, deductions, charges or withholdings and all liabilities with respect thereto including any penalty and interest payable with respect thereto (collectively, "**Taxes**") due and payable by the Company or the Material Subsidiaries have been paid, except where the failure to pay such taxes would not reasonably be expected to constitute a Material Adverse Effect. All tax returns, declarations, remittances and filings required to be filed by the Company and the Material Subsidiaries have been filed with all appropriate Governmental Authorities and all such returns, declarations, remittances and filings are complete and materially accurate and no material fact or facts have been omitted therefrom which would make any of them misleading, except where the failure to file or any incompleteness of or inaccuracy in such documents would not reasonably be expected to constitute a Material Adverse Effect. To the knowledge of the Company, no examination of any tax return of the Company or the Material Subsidiaries is currently in progress and there are no issues or disputes outstanding with any Governmental Authority respecting any taxes that have been paid, or may be payable, by the Company, in any case, except where such examinations, issues or disputes would not reasonably be expected to constitute a Material Adverse Effect;
- (dd) **Material Agreements.** With respect to the Material Agreements (other than the Debt Instruments):
  - (i) all of the Material Agreements are valid, subsisting, in good standing and in full force and effect, enforceable in accordance with the terms thereof;
  - (ii) the Company and the Material Subsidiaries, as applicable, have performed all material obligations (including payment obligations) in a timely manner under, and are in compliance with all material terms, conditions and covenants contained in each Material Agreement; and

- (iii) to the knowledge of the Company, no other party is in breach, violation or default of any term under any Material Agreement;

(ee) **Debt Instruments.** With respect to the Debt Instruments:

- (i) the Company and the Material Subsidiaries, as applicable, have performed all material obligations (including payment obligations) in a timely manner under, and are in compliance with all material terms, conditions and covenants contained in any Debt Instruments;
  - (ii) each of the Company and the Material Subsidiaries does not reasonably expect to fail to perform any material obligations (including payment obligations) under any Debt Instruments, and expects to remain in compliance with all material terms, conditions and covenants contained in each of the Debt Instruments; and
  - (iii) the entering into of the Transaction Documents will not trigger any event of default or similar provisions in respect of any Debt Instruments;
- (ff) **No Non-Arm's Length Indebtedness.** Neither the Company nor any of the Material Subsidiaries is party to any material Debt Instrument with, or has any material loans or other indebtedness outstanding which has been made to, any of its shareholders, officers, directors, employees or independent contractors, past or present, or any person not dealing at arm's length with them;
- (gg) **Related Parties.** Except as disclosed in the Public Disclosure Documents or as will be disclosed in the management information circular to be filed by the Company in connection with the Acquisition, none of the directors or officers of the Company, any known holder of more than 10% of any class of shares of the Company, or any known associate or affiliate of any of the foregoing persons, has had any material interest, direct or indirect, in any material transaction within the previous two years or any proposed material transaction which, as the case may be, materially affected, is material to or will materially affect the Company and the Material Subsidiaries on a consolidated basis;
- (hh) **Compliance with Mining Laws.** The Company and each Material Subsidiary has conducted and is conducting its business in compliance in all material respects with all applicable laws, rules and regulations of each jurisdiction in which it carries on business and with all laws, regulations, tariffs, rules, orders and directives material to its operation, including all applicable laws, regulations and statutes relating to mining or mining claims, concessions, licenses or leases, and neither the Company nor any Material Subsidiary has received any notice of the revocation or cancellation of, or any intention to revoke or cancel, any of the mining claims, concessions, licenses, leases or other instruments conferring mineral rights, including in respect of the Material Properties, where such revocation or cancellation would have a Material Adverse Effect;
- (ii) **Material Properties.** The Material Properties are the only mineral properties or mineral assets which the Company considers material to the business of the Company and the Material Subsidiaries, taken as a whole;

- (jj) **Title to Material Properties.** Except as disclosed in the Public Disclosure Documents: (i) each of the Company or the Material Subsidiaries, as applicable, is the absolute legal and beneficial owner of, and has good and marketable title to or a valid leasehold interest in the Material Properties and all of its other material properties or assets, free of all liens or encumbrances; (ii) no other material property rights are necessary for the conduct of the Company's or any Material Subsidiary's business in respect of the Material Properties or



any Material Subsidiary, as currently conducted; neither the Company nor any Material Subsidiary knows of any material claim or the basis for any material claim that could reasonably be expected to adversely affect the right thereof to use, transfer or otherwise exploit such property rights; and (iii) neither the Company nor any Material Subsidiary has any current responsibility or obligation to pay any outstanding material commission, royalty, license fee or similar payment to any person with respect to the property rights thereof except pursuant to applicable legislation;

- (kk) **Mineral Rights.** The Company and any applicable Material Subsidiaries hold freehold title, leases, licenses, mining claims or other conventional property, proprietary or contractual interests or rights, recognized in the jurisdiction in which the Material Properties are located, under valid, subsisting and enforceable title documents or other recognized and enforceable agreements or instruments, sufficient to permit the Company or any Material Subsidiary to explore or exploit (as the case may be) the minerals relating thereto. All property, leases or claims relating to the Material Properties in which the Company or any Material Subsidiary has any interest or right have been validly applied for and, if issued, to the knowledge of the Company, issued in accordance with all applicable laws and are valid and subsisting. The Company and any applicable Material Subsidiaries have all necessary surface rights, access rights and other necessary rights and interests relating to the Material Properties, granting the Company and any applicable Material Subsidiaries the right and ability to explore, exploit and mine the mineral resources as are appropriate in view of the rights and interest therein of the Company or any Material Subsidiary and the current state of exploration, with only such exceptions as do not materially interfere with the use made by the Company or any Material Subsidiary of the rights or interests so held and each of the proprietary interests or rights and each of the documents, agreements, leases, instruments and obligations relating thereto referred to above is currently in good standing in the name of the Company or any Material Subsidiary;
- (ll) **Property Agreements.** Any and all of the agreements and other documents and instruments pursuant to which the Company or any Material Subsidiary holds the Material Properties (including any interest in, or right to earn an interest therein), are valid and subsisting agreements, documents or instruments in full force and effect, enforceable in accordance with the terms thereof (subject to customary qualifications and exceptions), neither the Company nor any Material Subsidiary is in default of any of the material provisions of any such agreements, documents or instruments nor, to the knowledge of the Company, is any such default currently being alleged, and such properties and assets are in good standing in all material respects under the applicable statutes and regulations of the jurisdictions in which they are situated, all leases, licenses and claims pursuant to which the Company or any Material Subsidiary derives the interests thereof in such property and assets are in good standing and, to the knowledge of the Company, there has been no material default under any such lease, license or claim and all taxes required to be paid with respect to such properties and assets to the date hereof have been paid. The Material Properties (or any interest therein, or right to earn an interest therein) are not subject to any right of first refusal or purchase or acquisition right which is not disclosed in the Public Disclosure Documents;
- (mm) **Possession of Permits and Authorizations.** In respect of the Material Properties, the Company and the Material Subsidiaries:

- have all Material Permits issued by the appropriate federal, provincial, regional, state, local or foreign regulatory agencies or bodies necessary to carry on the business of the Company and the Material Subsidiaries as it is currently conducted and all of the Material Permits issued to date are valid and in full force and effect;
- (i)
- expect that any additional Material Permits that are required to carry out the Company's and the Material Subsidiaries' planned business activities will be obtained in the ordinary course, subject to the risks and uncertainties concerning potential delays as set out in the Public Disclosure Documents;
- (ii)
- (iii) are, and will be, in compliance with the terms and conditions of all Material Permits; and

- have not received any notice of proceedings relating to the revocation or modification of any such
- (iv) **Material Permits** or any notice advising of the refusal to grant any Material Permit that has been applied for or is in process of being granted,

except in each case as would not reasonably be expected to have a Material Adverse Effect.

- (nn) **No Restrictions on Mining Activities.** Other than as disclosed in the Public Disclosure Documents or the current technical reports for the Material Properties, there are no restrictions imposed by any applicable law or by agreement which materially conflict with the proposed operation, exploration, or development of the Material Properties;
- (oo) **No Undisclosed Obligations.** Except as disclosed in the Public Disclosure Documents, neither the Company nor any Material Subsidiary has any responsibility or obligation to pay any commission, royalty or similar payment to any person with respect to its property rights relating to the Material Properties, including mining claims, concessions, licenses and leases or other instruments conferring the mineral rights comprising the Material Properties;
- (pp) **Compliance with Mining Disclosure Requirements.** The Company is in material compliance with the provisions of NI 43-101, has filed all technical reports required thereby and there is a current technical report (within the meaning of NI 43-101) in respect of each of the Material Properties, if required thereby. The information set forth in the Public Disclosure Documents relating to the estimates by the Company of the mineral reserves and mineral resources (including in respect of the Material Properties) has been reviewed and verified by the Company or independent consultants to the Company and the mineral reserve and mineral resource information has been prepared in accordance with NI 43-101, and the method of estimating the mineral reserves and mineral resources has been verified by mining experience and the information upon which the estimates of mineral reserves and mineral resources were based, was, at the time of delivery thereof, complete and accurate in all material respects and there have been no material changes to such information since the date of delivery or preparation thereof, except as disclosed in the Public Disclosure Documents;

- (qq) **Scientific and Technical Projections.** To the knowledge of the Company, the projected capital and operating costs and projected production and operating results relating to the Material Properties, as summarized in the Public Disclosure Documents, are reasonable in all material respects, subject to the assumptions, qualifications, limitations, risks and uncertainties stated therein;
- (rr) **No Asset Impairment.** The Company has undertaken an asset analysis in respect of the Material Properties, including all estimates of the mineral resources and mineral reserves reported thereon and has not found any material asset impairment and does not currently anticipate making any write downs in respect of the Material Properties;
- (ss) **Environmental Laws.** In respect of the Material Properties:
- (i) there has not been a material breach of any applicable federal, provincial, state, municipal and local laws, statutes, ordinances, by-laws and regulations and orders, directives and decisions rendered by any ministry, department or administrative or regulatory agency, domestic or foreign, including laws, ordinances, regulations or orders relating to the protection of the environment, occupational health and safety or the processing, use, treatment, storage, disposal, discharge, transport or handling of any pollutants, contaminants, chemicals or industrial, toxic or hazardous wastes or substances (the “**Environmental Laws**”);
  - (ii) all material licenses, permits, approvals, consents, certificates, registrations and other authorizations under all applicable Environmental Laws (the “**Environmental Permits**”) necessary as at the date hereof for the operation of the business currently carried on by the Company and the Material Subsidiaries have been obtained or have been applied for and the Company expects any additional

Environmental Permits that are required to carry out the planned business activities on the Material Properties to be obtained in the ordinary course and in accordance with the timing as disclosed in the Public Disclosure Documents and subject to the risks and uncertainties stated therein, and each Environmental Permit is valid, subsisting and in good standing and there are no material defaults or breaches of any Environmental Permits and no proceeding has been threatened, or to the knowledge of the Company, is pending to revoke or limit any Environmental Permit;

- (iii) there has not been any material breach of Environmental Laws and Environmental Permits, on any property or facility owned or leased or previously owned or leased, to generate, manufacture, process, distribute, use, treat, store, dispose of, transport or handle any hazardous substance, and no conditions exist at, on or under any property now or previously owned, operated or leased which, with the passage of time, or the giving of notice or both, would give rise to liability under any Environmental Laws, individually or in the aggregate, that would reasonably be expected to have a Material Adverse Effect;

- (iv) there have been no material claims, complaints, notices of, or prosecutions for an offence alleging, non-compliance with any Environmental Laws, and there have been no settlements of any allegation of non-compliance short of prosecution and there are no orders or directions relating to environmental matters including reclamation requiring any material work, repairs, construction or capital expenditures to be made or any notice of same;
- (v) except as ordinarily or customarily required by applicable permit, no notice has been received by the Company or its Material Subsidiaries, and to the knowledge of the Company, no notice has been issued alleging or stating that any party is potentially responsible for a federal, provincial, state, municipal or local clean-up site or corrective action under any law including any Environmental Laws;
- (vi) all mining related activities, exploration, reclamation, development and other actions and operations have been conducted by the Company and the Material Subsidiaries in all material respects in accordance with good mining, exploration and engineering practices and all applicable laws including material workers' compensation and health and safety and workplace laws, mining laws, regulations and policies;
- (vii) there are no ongoing environmental liabilities, claims, or disputes related to any mining activities on the Material Properties;
- (viii) except as disclosed in the Public Disclosure Documents, there are no reclamation bonds related to the Material Properties; and
- (ix) except as disclosed in the Public Disclosure Documents, there are no material ongoing environmental audits, evaluations, assessments, studies or tests being conducted except for ongoing audits, evaluations, assessments, studies or tests being conducted in the ordinary course.
- (tt) **No Indigenous or Local Claims.** There are no material claims or actions with respect to native or local rights currently threatened or, to the knowledge of the Company, pending with respect to the Material Properties. The Company is not aware of any material land entitlement claims or native or local land claims having been asserted or any legal actions relating to indigenous or community issues having been instituted with respect to the Material Properties, and no material dispute in respect of the Material Properties with any local or indigenous or local group exists or, to the knowledge of the Company, is threatened or imminent with respect to the Material Properties or any activities thereon;
- (uu) **Community Relationships.** Except as disclosed in the Public Disclosure Documents, there are no material complaints, issues, proceedings, or discussions with the communities and persons affected by or located on the Material Properties, which are ongoing or anticipated which could have the effect of interfering, delaying or impairing the ability to explore, develop and operate the Material Properties, and the Company and the

Material Subsidiaries do not anticipate any material issues or liabilities to arise that would adversely affect the ability to explore, develop and operate the Material Properties;

- (vv) **Government Relationships.** To the knowledge of the Company, with respect to any relationship with a Governmental Authority, there exists no condition or state of fact or circumstances in respect thereof, that would prevent the Company or the Material Subsidiaries from conducting its business and all activities in connection with the Material Properties as currently conducted or proposed to be conducted in all material respects and there exists no actual or, threatened termination, limitation, modification or material change in the working relationship with any Governmental Authorities;
- (ww) **No Expropriation.** No part of the Material Properties or Material Permits have been taken, revoked, condemned or expropriated by any Governmental Authority nor has any written notice or proceedings in respect thereof been given, or to the knowledge of the Company, been commenced, threatened or is pending, nor does the Company have any knowledge of the intent or proposal to give such notice or commence any such proceedings.
- (xx) **No Work Stoppage or Interruptions.** Except as disclosed in the Public Disclosure Documents, there has not been in the last year and there is not currently any actions, proceedings, inquiries, disruptions, protests, blockades or initiatives by non-governmental organizations, activist groups or similar entities or persons, that are ongoing or anticipated which could materially adversely affect the ability to explore, develop and operate the Material Properties.
- (yy) **Employee Plans.** Each material plan for retirement, bonus, stock purchase, profit sharing, stock option, deferred compensation, severance or termination pay, insurance, medical, hospital, dental, vision care, drug, sick leave, disability, salary continuation, legal benefits, unemployment benefits, vacation, incentive or otherwise contributed to or required to be contributed to, by the Company for the benefit of any current or former director, officer, employee or consultant of the Company (the “**Employee Plans**”) has been maintained in compliance with its terms and with the requirements prescribed by any and all statutes, orders, rules and regulations that are applicable to such Employee Plans, in each case in all material respects and has been publicly disclosed to the extent required by Canadian Securities Laws.
- (zz) **Material Accruals.** All material accruals for unpaid vacation pay, premiums for employment insurance, health premiums, federal or state pension plan premiums, accrued wages, salaries and commissions and employee benefit plan payments have been reflected in the books and records of the Company or the Material Subsidiaries;
- (aaa) **Labour & Employment Matters.** Except as disclosed in the Public Disclosure Documents, no material labour dispute, complaint, grievance or other conflict with the employees of the Company or the Material Subsidiaries currently exists or is pending or, to the knowledge of the Company, is threatened or pending; and no union representation question exists respecting the employees of the Company or the Material Subsidiaries and no collective bargaining agreement is in place or currently being negotiated by the Company or the Material Subsidiaries. The Company and Material Subsidiaries are currently in material compliance with all laws and regulations respecting employment and employment practices, workers’ compensation, occupational health and safety and similar legislation, including payment in full of all amounts owing thereunder, and there are no pending claims or outstanding orders of a material nature against either of them under applicable workers’ compensation legislation, occupational health and safety or similar legislation nor has any event occurred which may give rise to any such material claim. The Company’s employment contracts with all senior employees are in good standing and in full force and effect;

- (bbb) **Insurance.** The Company and the Material Subsidiaries maintain insurance against such losses, risks and damages to their properties and assets in such amounts that are customary for the business in which they are engaged and on a basis consistent with reasonably prudent persons in comparable businesses, and all of the policies in respect of such insurance coverage are in good standing, in full force and effect in all respects and not in default. Each of the Company and the Material Subsidiaries is in compliance with the terms of such policies and instruments in all material respects and there are no material claims by the Company or the Material Subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause. The Company has no reason to believe that it will not be able to renew such existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect, and neither the Company nor any of the Material Subsidiaries has failed to promptly give any notice of any material claim thereunder;
- (ccc) **Transfer Agent and Subscription Receipt Agent.** Computershare Trust Company of Canada, at its principal offices in the City of Toronto, Ontario is the duly appointed registrar and transfer agent for the Common Shares and will at the Closing Time be the duly appointed subscription receipt agent pursuant to the terms of the Subscription Receipt Agreement;
- (ddd) **Minute Books.** The minute books and records of the Company and each of the Material Subsidiaries contain copies of all material proceedings (or certified copies thereof) of the shareholders, the boards of directors and all committees of the boards of directors of the Company and the Material Subsidiaries from their respective dates of incorporation. There have been no other meetings, resolutions or proceedings of the shareholders, boards of directors or any committees of the boards of directors of the Company or any of the Material Subsidiaries not reflected in such minute books and other records, other than those which have been disclosed to the Underwriters or which are not material in the context of the Company or the Material Subsidiaries;
- (eee) **Previous Acquisitions.** All previous material acquisitions completed by the Company or any of the Material Subsidiaries of any securities, business or assets of any other entity have been fully and properly disclosed in the Public Disclosure Documents, were completed in compliance, in all material respects, with all applicable corporate and securities laws and all necessary corporate and regulatory approvals, consents, authorizations, registrations, and filings required in connection therewith were obtained and complied with in all material respects, and the Company or the Material Subsidiaries, as the case may be, conducted all due diligence procedures in connection with such previous acquisitions as are standard and customary for transactions of such nature;

- (fff) **Anti-Bribery.** Neither the Company nor the Material Subsidiaries nor to the knowledge of the Company, any director, officer, employee, consultant, representative or agent of the foregoing, has (i) violated any anti-bribery or anti-corruption laws applicable to the Company, including but not limited to the U.S. *Foreign Corrupt Practices Act* and Canada's *Corruption of Foreign Public Officials Act* and *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, or (ii) offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, that goes beyond what is reasonable and customary and/or of modest value: (A) to any government official, whether directly or through any other person, for the purpose of influencing any act or decision of a government official in his or her official capacity; inducing a government official to do or omit to do any act in violation of his or her lawful duties; securing any improper advantage; inducing a government official to influence or affect any act or decision of any Governmental Authority; or assisting any representative of the Company in obtaining or retaining business for or with, or directing business to, any person; or (B) to any person in a manner which would constitute or have the purpose or effect of public or commercial bribery, or the acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage. Neither the Company nor the Material Subsidiaries nor to the knowledge of the Company, any director, officer, employee, consultant, representative or agent of foregoing, has (i) conducted or initiated any review, audit, or internal investigation that concluded the Company or the Material Subsidiaries, or a subsidiary or any director, officer, employee, consultant, representative or

agent of the foregoing violated such laws or committed any material wrongdoing, or (ii) made a voluntary, directed, or involuntary disclosure to any Governmental Authority responsible for enforcing anti-bribery or anti-corruption laws, in each case with respect to any alleged act or omission arising under or relating to non-compliance with any such laws, or received any notice, request, or citation from any person alleging non-compliance with any such laws;

(ggg)**OFAC Requirements.** The Company has not been, nor to the knowledge of the Company, has any director, officer, agent, employee, affiliate or person acting on behalf of the Company been or is currently subject to any United States sanctions administered by the Office of Foreign Assets Control of the United States Treasury Department (“OFAC”); and the Company will not directly or indirectly use any proceeds of the Offering, or lend, contribute or otherwise make available such proceeds to the Company or to any affiliated entity, joint venture partner or other person or entity, to finance any investments in, or make any payments to, any country or person targeted by any of the sanctions of the United States administered by OFAC;

(hhh)**Fees and Commissions.** Other than the Underwriters (or any members of their selling group) pursuant to this Agreement, there is no person acting or purporting to act at the request of the Company who is entitled to any brokerage, agency or other fiscal advisory or similar fee in connection with the Offering; and

(iii) **Escrow Release Conditions.** To the knowledge of the Company, no event has occurred which is reasonably likely to prevent the Escrow Release Conditions from being satisfied on or before the Escrow Release Deadline.

(jjj) **Acquisition Interests.**

- (i) To the knowledge of the Company, there is no material fact or circumstance, or any suit, action or proceeding pending, or threatened that, individually or in the aggregate, could reasonably be expected to (i) refrain or prevent the execution of, or the completion of the consummation of the transactions contemplated under the Purchase Agreement or (ii) have a Material Adverse Effect on the Company’s ability to complete the Acquisition;
- (ii) To the knowledge of the Company, there is no agreement, option or any other right or obligation binding upon, or which at any time in the future may become binding upon the Company or the Material Subsidiaries requiring it to sell, transfer, assign, pledge, charge, mortgage or in any other way dispose of or encumber any of the shares or the assets being acquired pursuant to the Purchase Agreement; and
- (iii) To the knowledge of the Company, immediately following the completion of the Acquisition, the Company will be, directly or indirectly, the legal owner of 100% of the Galena Complex and Company’s interest in the Galena Complex will not be subject to any third party right of first refusal or purchase or acquisition rights.

## 7. Conditions to Closing

7.1 The following are conditions to the completion of the Underwriters’ obligations as contemplated in this Agreement, which conditions shall have been fulfilled by the Company, as applicable, on or prior to the Closing Time, other than as may be waived in writing in whole or in part by the Underwriters:

- (a) the board of directors of the Company will have authorized and approved the Transaction Documents and the Offering and all matters relating to the foregoing;
- (b) the Underwriters shall have received a certificate dated the Closing Date, signed by the President and Chief Executive Officer and the Chief Financial Officer of the Company or such other senior officers of the Company as may be acceptable to the Underwriters, acting reasonably, addressed to the Underwriters, with respect to: (i) the constating documents of the Company, (ii) all resolutions of the board of directors of the Company relating to the Offering Documents and the Offering and the transactions contemplated hereby and



thereby, and (iii) the incumbency and specimen signatures of signing officers of the Company, in the form of a certificate of incumbency, and such further certificates and other documentation as may be contemplated in this Agreement or as the Underwriters may reasonably require;

- (c) the Underwriters shall have received favourable legal opinions addressed to the Underwriters and the Purchasers, in form and substance satisfactory to the Underwriters' counsel, acting reasonably, each dated the Closing Date, as applicable, from legal counsel to the Company and where appropriate, local counsel in the other applicable jurisdictions, which counsel in turn may rely, as to matters of fact, on certificates of auditors, public officials and officers of the Company, with respect to the following matters:

- (i) as to the incorporation and existence of the Company under the federal laws of Canada and as to the Company having the requisite corporate power and capacity to carry on its business as presently carried on and to own, lease and operate its properties and assets as described in the Public Disclosure Documents (including, but not limited to, the Material Properties);
- (ii) as to the Company being a "reporting issuer" not on the list of defaulting reporting issuers maintained in the Reporting Jurisdictions in which sales of Subscription Receipts are made;
- (iii) as to the authorized and issued capital of the Company;
- (iv) as to the corporate power and capacity of the Company to enter into and to carry out its obligations under the Offering Documents;
- (v) all necessary corporate action has been taken by the Company to authorize the execution and delivery of the Offering Documents as well as the performance of its obligations thereunder and hereunder;
- (vi) the Offering Documents have been duly executed and delivered by the Company, and constitute legal, valid and binding obligations of the Company enforceable against it in accordance with their respective terms;
- (vii) the execution and delivery of the Offering Documents and the performance by the Company of its obligations hereunder and thereunder does not and will not result in a breach of, or constitute a default under, and does not and will not create a state of facts which, after notice or lapse of time or both, will result in a breach of or constitute a default under any term or provision of the constating documents of the Company, Canadian Securities Laws, or the Act;
- (viii) the Subscription Receipts have been duly and validly created and issued pursuant to the Subscription Receipt Agreement;
- (ix) the Common Shares issuable upon exchange of the Subscription Receipts have been validly authorized and allotted for issuance and, upon the exchange of the Subscription Receipts in accordance with the terms of the Subscription Receipt Agreement, the Common Shares will be validly issued as fully paid and non-assessable Common Shares;
- (x) the issuance and sale by the Company of the Subscription Receipts to the Purchasers resident in the Selling Jurisdictions in accordance with the terms of this Agreement are exempt from the prospectus requirements of Canadian Securities Laws and no prospectus or other documents are required to be filed, proceedings taken or approvals, permits, consents or authorizations obtained under Canadian Securities Laws to permit such issuance and sale; it being noted, however, that the Company is required to file or cause to be filed with the applicable Securities Regulators, a report on Form 45-106F1 prepared and executed pursuant to NI 45-106, and, if applicable, a report on Form 72-503F prepared and executed pursuant to Ontario Securities Commission Rule 72-503 – *Distributions Outside Canada*, together with the prescribed filing fee, within ten days of the Closing Date;

- (xi) the issuance and delivery by the Company of the Common Shares upon the due exchange of the Subscription Receipts in accordance with the terms of this Agreement and in accordance with the terms of the Subscription Receipt Agreement, will be exempt from the prospectus requirements of Canadian Securities Laws in the Selling Jurisdictions and no prospectus or other documents are required to be filed, proceedings taken or approvals, permits, consents or authorizations obtained under Canadian Securities Laws to permit such issuance and delivery;
- (xii) the first trade in the Subscription Receipts and the Common Shares issued upon exchange of the Subscription Receipts is exempt from or is not subject to, the prospectus requirements of the Canadian Securities Laws, and no prospectus is required nor are other documents required to be filed, proceedings taken, or approvals, permits, consents, orders or authorizations of regulatory authorities under Canadian Securities Laws required to be obtained under Canadian Securities Laws (other than such as have been filed or obtained) to permit such trade through registrants registered under Canadian Securities Laws who have complied with such Canadian Securities Laws or in circumstances in which there is an exemption from the registration requirements of such Canadian Securities Laws, provided that:

- i) the Company is, and has been, a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the trade;
- ii) at the time of the trade, at least four months have elapsed from the Closing Date;
- iii) the certificates representing the Subscription Receipts and the underlying Common Shares, if any, carried a legend in the form prescribed by section 2.5(2)3.(i) of NI 45-102 stating that, unless permitted under securities legislation, the holder of this security must not trade the security before the date which is four months and one day from the Closing Date;
- iv) if the Subscription Receipts or the underlying Common Shares are entered into a direct registration or other electronic book-entry system, or if the purchaser did not directly receive a certificate representing the security, the purchaser received written notice containing the legend restriction notation set out in clause (iii) above;
- v) the trade is not a “control distribution”, as such term is defined in NI 45-102;
- vi) the trade is not a transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution;
- vii) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;
- viii) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
- ix) if the holder is an insider or officer of the Company, the holder has no reasonable grounds to believe that the Company is in default of securities legislation;

- (xiii) Computershare Trust Company of Canada, at its office in Toronto, Ontario, has been duly appointed by the Company as the registrar and transfer agent of the Common Shares and the subscription receipt agent under the Subscription Receipt Agreement; and



- (xiv) such other matters as the Underwriters or their counsel may reasonably request;
- (d) the Underwriters shall have received a favourable legal opinion addressed to the Underwriters, in form and substance satisfactory to the Underwriters' counsel, acting reasonably, dated the Closing Date, from local counsel to the Company, which counsel in turn may rely, as to matters of fact, on certificates of public officials (as appropriate), with respect to title matters and ownership interests of each of the Material Properties;
- (e) the Underwriters shall have received favourable legal opinions addressed to the Underwriters, in form and substance satisfactory to the Underwriters' counsel, acting reasonably, dated the Closing Date, from legal counsel to the Company, which counsel in turn may rely, as to matters of fact, on certificates of public officials and officers of such Material Subsidiary (as appropriate), regarding each Material Subsidiary with respect to the following matters:
- (i) as to the Material Subsidiary having been incorporated and existing under its jurisdiction of incorporation;
- (ii) as to the Material Subsidiary having all requisite corporate power and capacity to carry on business and to own, lease and operate properties and assets; and
- (iii) as to the authorized and issued share capital of the Material Subsidiary and to chain of ownership;
- (f) if any Subscription Receipts are being sold to U.S. Purchasers pursuant to this Agreement, the Company has caused a favourable legal opinion to be delivered to the Underwriters by Dorsey & Whitney LLP, as special United States counsel to the Company, in form and substance satisfactory to the Underwriters' counsel, acting reasonably, dated the Closing Date, to the effect that the sale of such Subscription Receipts to such U.S. Purchasers and the issuance of the Common Shares to such U.S. Purchasers on exchange of the Subscription Receipts is not required to be registered under the U.S. Securities Act, subject to the usual and customary assumptions, limitations and qualifications, it being understood that no opinion will be expressed as to the subsequent resale of any Subscription Receipts or Common Shares;
- (g) the Underwriters shall have received a certificate of good standing or similar certificate with respect to the jurisdiction in which each of the Company and the Material Subsidiaries is incorporated;

- (h) the Company will have caused the Subscription Receipt Agent to deliver a certificate as to its appointment as the subscription receipt agent with respect to the Subscription Receipts;
- (i) the Company will have caused its registrar and transfer agent to deliver a certificate as to its appointment as the transfer agent with respect to the Common Shares and the number of issued and outstanding Common Shares;
- (j) each of the Offering Documents shall have been executed and delivered by the parties thereto in form and substance satisfactory to the Underwriters and its counsel, acting reasonably;
- (k) the Company shall have delivered to the Underwriters the executed lock-up agreements contemplated by Section 4.1(m) hereof; and
- (l) the Offering will have been conditionally approved by the TSX and the Underwriters shall have received evidence satisfactory to the Underwriters that all requisite approvals, consents and acceptances of the appropriate regulatory authorities required to be obtained by the Company in order to complete the Offering have been made or obtained.

## 8. Closing

8.1 The Offering will be completed via electronic exchange at the Closing Time or such other date or time as may be mutually agreed to by the Company and the Underwriters; provided that if the Company has not been able to comply in any material respect with any of the covenants or conditions set out herein required to be complied with by the Closing Time or such other date and time as may be mutually agreed to or such covenant or condition has not been waived by the Underwriters, the respective obligations of the parties will terminate without further liability or obligation except for payment of expenses, indemnity and contribution provided for in this Agreement.

8.2 At the Closing Time:

- (a) the Company shall deliver to the Underwriters and the Purchasers, as applicable, the Subscription Receipts, whether by way of electronic deposit or delivery of certificates in definitive form, as directed by the Underwriters and the Purchasers, as applicable; and
- (b) the Underwriters and the Company, as applicable, will deliver the gross proceeds from the sale of the Subscription Receipts to the Subscription Receipt Agent to be deposited and held in escrow by the Subscription Receipt Agent in accordance with the terms of the Subscription Receipt Agreement.

## 9. Rights of Termination

9.1 The Underwriters (or any one of them) shall be entitled to terminate and cancel their obligations hereunder by written notice to that effect given to the Company on or before Closing if, at any time prior to the Closing Time:

- (a) **Material Change.** There shall be any material change or change in a material fact, or there should be discovered any previously undisclosed material fact required to be disclosed (other than, for greater certainty, any fact relating to the Offering, the Acquisition and the other transactions related thereto) which, in each case, in the reasonable opinion of the Underwriters (or any one of them), has or would be expected to have a significant adverse effect on the market price or value of the Subscription Receipts, Common Shares, or any other securities of the Company;
- (b) **Disaster.** (i) There should develop, occur or come into effect or existence any event, action, state, condition (including without limitation, terrorism, disease, virus or accident) or major financial occurrence of national or international consequence or a new or change in any law or regulation which in the sole opinion of the Underwriters (or any one of them), seriously adversely affects or involves or may seriously adversely affect or involve the financial markets in the United States or Canada or the business, operations or affairs of the Company and its subsidiaries, taken as a whole, or the market price or value of the securities of the Company; (ii) any inquiry, action, suit, proceeding or investigation (whether formal or informal) is commenced, announced or threatened in relation to the Company or any one of the officers or directors of the Company where wrong-doing is alleged or any order is made by any federal, provincial, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, including without limitation, the TSX or securities commission which involves a finding of wrong-doing; (iii) any order, action or proceeding which cease trades or otherwise operates to prevent or restrict the trading of the Subscription Receipts, Common Shares or any other securities of the Company is made or threatened by a securities regulatory authority; or
- (c) **Material Breach.** The Company is in breach of any material term, condition or covenant of this Agreement or any material representation or warranty given by the Company in this Agreement becomes or is false.

9.2 The rights of termination contained in this Section 9 are in addition to any other rights or remedies the Underwriters may have in respect of any default, act or failure to act or non-compliance by the Company in respect of any of the matters contemplated by this Agreement or otherwise. In the event of any such termination by an Underwriter, there shall be no further liability on the part of such Underwriter to the Company or on the part of the Company to such Underwriter except in respect of any liability which may have arisen or may arise after such termination in respect of Section 10 (Indemnity) and Section 11 (Expenses) of this Agreement.

## 10. Indemnity

10.1 The Company (the “**Indemnitor**”) hereby agrees to indemnify and hold the Underwriters, and each of their respective subsidiaries and affiliates, and each of their directors, officers, employees, shareholders and agents (the “**Personnel**” and together with the Underwriters, the “**Indemnified Parties**”) harmless from and against any and all expenses, losses (other than loss of profits), fees, claims, actions (including shareholder actions, derivative actions or otherwise), damages, obligations, or liabilities, whether joint or several, and the reasonable fees and expenses of their counsel, that may be incurred in advising with respect to and/or defending any actual or threatened action, suit, proceeding, investigation or claim that may be made against the Indemnified Parties to which the Indemnified Parties may become subject or otherwise involved in any capacity under any statute or common law, or otherwise insofar as such expenses, losses, claims, damages, liabilities or actions arise out of or are based, directly or indirectly, upon the performance of professional services rendered to the Indemnitor by the Underwriters and their Personnel hereunder (including the aggregate amount paid in reasonable settlement of any such actions, suits, investigations, proceedings or claims that may be made against the Indemnified Parties); provided, however, that this indemnity shall not apply to the extent that a court of competent jurisdiction in a final judgment that has become non-appellable shall determine that:

- (a) the Indemnified Parties have been grossly negligent or have committed any fraudulent act in the course of such performance; and
- (b) the expenses, losses, claims, damages or liabilities, as to which indemnification is claimed, were directly caused by the gross negligence or fraud referred to in (a) above.

Without limiting the generality of the foregoing, this indemnity shall apply to all expenses (including legal expenses), losses, claims and liabilities that the Indemnified Parties may incur as a result of any action or litigation that may be threatened or brought against the Underwriters and/or their Personnel.

10.2 If for any reason (other than the occurrence of any events described in Section 10.1(a) or 10.1(b) above), the foregoing indemnification is unavailable to the Underwriters or any Personnel or insufficient to hold the Underwriters or any Personnel harmless, then the Indemnitor shall contribute to the amount paid or payable by the Underwriters or any Personnel as a result of such expense, loss, claim, damage or liability in such proportion as is appropriate to reflect not only the relative benefits received by the Indemnitor, on the one hand, and the Underwriters or any Personnel, on the other hand, but also the relative fault of the Indemnitor and the Indemnified Parties, as well as any relevant equitable considerations; provided that the Indemnitor shall in any event contribute to the amount paid or payable by the Underwriters or any Personnel as a result of such expense, loss, claim, damage or liability and any excess of such amount over the amount of the fees received by the Underwriters hereunder pursuant to this Agreement.

10.3 The Indemnitor agrees that in case any legal proceeding shall be brought against the Indemnitor and/or the Underwriters or their Personnel by any governmental commission or regulatory authority or any stock exchange or other entity having regulatory authority, either domestic or foreign, or in case any such entity shall investigate the Indemnitor and/or the Underwriters, and/or any Personnel shall be required to testify in connection therewith or shall be required to respond to procedures designed to discover information regarding, in connection with, or by reason of the performance of professional services rendered to the Indemnitor by the Underwriters, the Indemnitor shall reimburse the Underwriters monthly for the time spent by its Personnel in connection therewith at their normal per diem rates and the Underwriters shall have the right to employ their own counsel in connection therewith provided the Underwriters act reasonably in selecting such counsel, and the reasonable fees and expenses of such counsel as well as the reasonable costs (including an amount to reimburse the Underwriters for time spent by the Underwriters or their Personnel in connection therewith) and out-of-pocket expenses incurred by the Underwriters or their Personnel in connection therewith shall be paid by the Indemnitor as they occur unless such proceeding has been caused as a result of an event described in Section 10.1(a) and 10.1(b) above.

10.4 Promptly after receipt of notice of the commencement of any legal proceeding against the Underwriters or their Personnel or after receipt of notice of the commencement of any investigation, which is based, directly or indirectly, upon any matter in respect of which indemnification may be sought from the Indemnitor, the Underwriters will notify the Indemnitor in writing of the commencement thereof and, throughout the course thereof, will provide copies of all relevant documentation to the Indemnitor, will keep the Indemnitor advised of the progress thereof and will discuss with the Indemnitor all significant actions proposed. However, the failure by the Underwriters to notify the Indemnitor will not relieve the Indemnitor of its obligations to indemnify the Underwriters or any Personnel. The Indemnitor shall on behalf of itself and the Underwriters or any Personnel, as applicable, be entitled (but not required) to assume the defence of any suit brought to enforce such legal proceeding; provided, however, that the defence shall be conducted through legal counsel acceptable to the Underwriters or any Personnel, as applicable, acting reasonably, that no settlement of any such legal proceeding may be made by the Indemnitor without the prior written consent of the Underwriters or any Personnel, acting reasonably, as applicable, and none of the Underwriters or any Personnel, as applicable, shall be liable for any settlement of any such legal proceeding unless it has consented in writing to such settlement, such consent not to be unreasonably withheld.

10.5 Notwithstanding the foregoing paragraph, the Indemnified Parties shall have the right, at the Indemnitor's expense, to employ counsel of such person's choice in respect of the defence of any action, suit, proceeding, claim or investigation if: (i) the employment of such counsel has been authorized in writing by the Indemnitor; (ii) the Indemnitor has not assumed the defence and employed counsel therefor within a reasonable time (which shall in any case be not less than 15 days) after receiving notice of such action, suit, proceeding, claim or investigation; or (iii) counsel retained by the Indemnitor or the Indemnified Party has advised the Indemnified Party in writing that there may be legal defences available to the Indemnified Parties which are different from or in addition to those available to the Indemnitor (in which event and to that extent, the Indemnitor shall not have the right to assume or direct the defence on the Indemnified Party's behalf) or that there is a conflict of interest between the Company and the Indemnified Party or the subject matter of the action, suit, proceeding, claim or investigation may not fall within the indemnity set forth herein (in either of which events the Indemnitor shall not have the right to assume or direct the defence on the Underwriters' behalf), provided that the Indemnitor shall not be responsible for the fees and expenses of more than one set of counsel to the Indemnified Parties.

10.6 The indemnity and contribution obligations of the Indemnitor shall be in addition to any liability which the Indemnitor may otherwise have, shall extend upon the same terms and conditions to the Personnel of the Underwriters and shall be binding upon and enure to the benefit of any successors, assigns, heirs and personal representatives of the Indemnitor, the Underwriters and any of the Personnel. The foregoing provisions shall survive the completion of professional services rendered under this Agreement or any termination of this Agreement.

## **11. Expenses**

11.1 The Company will pay all expenses and fees incurred in connection with the Offering (collectively, the "**Underwriters' Expenses**"), including the reasonable out-of-pocket expenses and fees of the Underwriters and all reasonable fees and disbursements of the Underwriters' legal counsel and all applicable taxes (to a maximum of \$100,000 in respect of legal fees, exclusive of disbursements and taxes). All individual expenses of the Underwriters over \$5,000 must be agreed upon by the Company in writing prior to such expenses being incurred. All fees and expenses payable by the Company in accordance with this Agreement shall be payable whether or not the Offering is completed.

## **12. Advertisements**

12.1 The Company acknowledges that the Underwriters shall have the right, subject always to Section 2.4, at its own expense, to place such advertisement or advertisements relating to the sale of the Subscription Receipts contemplated herein as the Underwriters may consider desirable or appropriate and as may be permitted by applicable law, including Applicable Securities Laws. The Company and the Underwriters each agree that they will not make public any advertisement in any media whatsoever relating to, or otherwise publicize, the transaction provided for herein so as

to result in any exemption from the prospectus or registration requirements of applicable securities legislation in any of the provinces of Canada or any other jurisdiction in which the Subscription Receipts shall be offered and sold not being available.

### 13. Underwriters' Fee

In consideration of the services to be rendered by the Underwriters in connection with the Offering, the Company shall pay to the Underwriters, a cash commission equal to 6.0% of the aggregate proceeds raised pursuant to the Offering (other than: (i) in respect of sales to those Purchasers on the President's List (up to a maximum of US\$3,000,000), in which case a cash commission of 3.0% shall be payable; (ii) in respect of sales to certain institutional investors as agreed between the Company and the Joint Bookrunners, in which case a cash commission of 5.0% shall be payable; and (iii) in respect of sales to certain U.S. Purchasers as agreed between the Company and the Joint Bookrunners, in which case nil cash commission shall be payable) (the "**Underwriters' Fee**"). 50% of the Underwriters' Fee shall be payable to the Underwriters upon completion of the Offering and the remainder shall be paid to the Underwriters upon satisfaction of the Escrow Release Conditions; provided, however, that if the Escrow Release Conditions are not satisfied, the 50% balance of the Underwriters' Fee shall not be payable to the Underwriters. For the avoidance of doubt, if a Termination Event occurs, the Underwriters' Fee will consist only of the amount payable to the Underwriters upon completion of the Offering.

### 14. Underwriter's Business

14.1 The Company acknowledges that the Underwriters may be engaged in securities trading and brokerage activities, and providing investment banking, investment management, financial and financial advisory services. In the ordinary course of their trading, brokerage, investment and asset management and financial activities, the Underwriters and their Affiliates may hold long or short positions, and may trade or otherwise effect or recommend transactions, for their own account or the accounts of their customers, in debt or equity securities or loans of the Company or any other company that may be involved in any transaction with the Company. The Underwriters and their Affiliates may also provide a broad range of normal course financial products and services to its customers (including, but not limited to, banking, credit derivative, hedging and foreign exchange products and services), including companies that may be involved in any transaction with the Company.

### 15. Underwriting Syndicate

15.1 Subject to the terms and conditions hereof, the respective obligations of the Underwriters to purchase the Subscription Receipts shall be several and neither joint nor joint and several. The percentage of the Subscription Receipts to be severally purchased and paid for by each of the Underwriters shall be as follows:

<u>Name of Underwriter</u>	<u>Syndicate Position</u>
Cormark Securities Inc.	55.0%
TD Securities Inc.	30.0%
Desjardins Securities Inc.	5.0%
Haywood Securities Inc.	5.0%
Canaccord Genuity Corp.	2.5%
Eight Capital	2.5%
	<b>100%</b>

15.2 In the event that any Underwriter (a "**Refusing Underwriter**") shall fail to purchase its applicable percentage of the Subscription Receipts which such Underwriter has agreed to purchase hereunder (the "**Defaulted Securities**") at the Closing Time for any reason whatsoever, including by reason of Section 9 hereof, and (i) if the number of Defaulted Securities does not exceed 5.0% of the number of Subscription Receipts to be purchased hereunder, the other non-Refusing Underwriters (the "**Continuing Underwriters**") shall be obligated to purchase the Subscription Receipts which the Refusing Underwriter fails to purchase on a *pro rata* basis according to the number of Subscription Receipts to have been acquired by the Continuing Underwriters or on such other basis as the Continuing Underwriters may agree; or (ii) if the number of Defaulted Securities exceeds 5.0% of the number of Subscription Receipts to

be purchased on such date, the Continuing Underwriters shall have the right, but shall not be obligated to purchase the Subscription Receipts which would otherwise have been purchased by the Refusing Underwriter(s). If, with respect to such Subscription Receipts, the Continuing Underwriters elect not to exercise such rights to assume the entire obligation of the Refusing Underwriter(s), then the Company will have the right to either (A) proceed with the sale of Subscription Receipts (less the Defaulted Securities) to the Continuing Underwriters pursuant to this Agreement, or (B) terminate its obligations hereunder without any further liability on the part of the Company to the Continuing Underwriters, except pursuant to the provisions of Section 10 and Section 11 in respect of the Continuing Underwriters.

15.3 No action taken pursuant to Section 15.2 shall relieve any Refusing Underwriter(s) from liability in respect of its default to the Company or to any Continuing Underwriters.

## **16. Action by the Underwriters**

All steps which must or may be taken by the Underwriters in connection with this Agreement, with the exception of the matters relating to termination contemplated by Section 9 or matters relating to indemnity and contribution contemplated by Section 10, may be taken by the Joint Bookrunners on their own behalf and on behalf of the other Underwriters and the execution and delivery of this Agreement by the Company and the Underwriters shall constitute the authority of the Company for accepting any notice, request, direction, certificate, consent or other communication from the Joint Bookrunners (or either of them) and for delivery by electronic deposit or otherwise the Subscription Receipts to Cormark. Nothing in this Agreement is intended to create any relationship in the nature of a partnership or joint venture between the Underwriters.

## **17. Survival of Warranties, Representations, Covenants and Agreements**

17.1 All representations, warranties, covenants and agreements of the Company herein contained or contained in any documents submitted pursuant to this Agreement and in connection with the transactions herein contemplated shall survive the Closing and, notwithstanding such Closing or any investigation made by or on behalf of the Underwriters or the Purchasers with respect thereto, shall continue in full force and effect for the benefit of the Underwriters and the Purchasers, as applicable for a period of two years following the Closing Date. For greater certainty, and without limiting the generality of the foregoing, the provisions contained in this Agreement in any way related to the indemnification of the Underwriters by the Company or the contribution obligations of the Underwriters or those of the Company shall survive and continue in full force and effect, indefinitely, subject only to the applicable limitation period prescribed by law.

## **18. Recognition of the U.S. Special Resolution Regimes**

18.1 In the event that any Underwriter that is a Covered Entity (as defined below) becomes subject to a proceeding under a U.S. Special Resolution Regime (as defined below), the transfer from such Underwriter of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

18.2 In the event that any Underwriter that is a Covered Entity or a BHC Act Affiliate (as defined below) of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights (as defined below) under this Agreement that may be exercised against such Underwriter are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

18.3 As used in this Section 18:

- (a) **“BHC Act Affiliate”** has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k);



- (b) **“Covered Entity”** means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b);
- (c) **“Default Right”** has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable; and
- (d) **“U.S. Special Resolution Regime”** means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

## 19. General Contract Provisions

19.1 **Notices.** Any notice or other communication to be given hereunder shall be in writing and shall be given by delivery or by email, as follows:

if to the Company:

Americas Gold and Silver Corporation  
145 King Street West, Suite 2870  
Toronto, Ontario M5H 1J8

Attention: Darren Blasutti, President & Chief Executive Officer  
Email: [dblasutti@americas-gold.com](mailto:dblasutti@americas-gold.com)

with a copy (not to constitute notice) to:

Torys LLP  
TD South Tower  
79 Wellington Street West, Suite 3000  
Toronto, Ontario M5K 1N2

Attention: Braden Jebson / Robbie Leibel  
Email: [bjebson@torys.com](mailto:bjebson@torys.com) / [rleibel@torys.com](mailto:rleibel@torys.com)

or if to the Underwriters, to the Joint Bookrunners (on behalf of the Underwriters):

Cormark Securities Inc.  
Royal Bank Plaza, North Tower  
200 Bay Street, Suite 1800  
Toronto, Ontario M5J 2J2

Attention: Kevin Carter, Managing Director, Investment Banking  
Email: [kcarter@cormark.com](mailto:kcarter@cormark.com)

and

TD Securities Inc.  
66 Wellington Street West, 9<sup>th</sup> Floor  
Toronto Dominion Bank Tower  
Toronto, Ontario M5K 1A2

Attention: Mark Tiberio, Director

with a copy (not to constitute notice to the Underwriters) to:

Cassels Brock & Blackwell LLP  
Suite 3200, Bay Adelaide Centre, North Tower  
40 Temperance St.  
Toronto, Ontario M5H 0B4

Attention: Chad Accursi  
Email: caccursi@cassels.com

and if so given, shall be deemed to have been given and received upon receipt by the addressee or a responsible officer of the addressee if delivered, or four hours after being electronically transmitted and receipt confirmed during normal business hours, as the case may be. Any party may, at any time, give notice in writing to the others in the manner provided for above of any change of address or email address.

**19.2 Singular and Plural, etc.** Where the context so requires, words importing the singular number include the plural and vice versa, and words importing gender shall include the masculine, feminine and neuter genders.

**19.3 No Fiduciary Duty.** The Company hereby acknowledges that the Underwriters are acting solely as agent in connection with the purchase and sale of the Subscription Receipts. The Company further acknowledges that the Underwriters are acting pursuant to a contractual relationship created solely by this Agreement entered into on an arm's length basis, and in no event do the parties intend that the Underwriters act or be responsible as a fiduciary to the Company or its respective management, shareholders or creditors or any other person in connection with any activity that the Underwriters may undertake or have undertaken in furtherance of such purchase and sale of any of the Company's securities, either before or after the date hereof. The Underwriters hereby expressly disclaim any fiduciary or similar obligations to the Company, either in connection with the transactions contemplated by this Agreement or any matters leading up to such transactions, and the Company hereby confirms its understanding and agreement to that effect. The Company and the Underwriters agree that they are each responsible for making their own independent judgments with respect to any such transactions and that any opinions or views expressed by the Underwriters to the Company regarding such transactions, including, but not limited to, any opinions or views with respect to the price or market for the securities of the Company, do not constitute advice or recommendations to the Company. The Company and the Underwriters agree that the Underwriters are acting solely as agent in connection with the Offering and not as an agent of or fiduciary of the Company and the Underwriters have not assumed, and the Underwriters will not assume, any advisory responsibility in favour of the Company with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether the Underwriters have advised or are currently advising the Company on other matters).

**19.4 Entire Agreement.** This Agreement constitutes the entire agreement between the Underwriters and the Company relating to the subject matter hereof, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, including the Engagement Letter.

**19.5 Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect or limit the validity or enforceability of the remaining provisions of this Agreement.

**19.6 Successors and Assigns.** The terms and provisions of this Agreement shall be binding upon and enure to the benefit of the Company and the Underwriters and their respective successors and permitted assigns; provided that, except as provided herein or in the Subscription Agreements, this Agreement shall not be assignable by any party without the written consent of the others.



**19.7 Further Assurances.** Each of the parties hereto shall do or cause to be done all such acts and things and shall execute or cause to be executed all such documents, agreements and other instruments as may reasonably be necessary or desirable for the purpose of carrying out the provisions and intent of this Agreement.

**19.8 Time of the Essence.** Time shall be of the essence for all provisions of this Agreement.

**19.9 Language.** The parties hereby acknowledge that they have expressly required this Agreement and all notices, statements of account and other documents required or permitted to be given or entered into pursuant hereto to be drawn up in the English language only. *Les parties reconnaissent avoir expressément demandé que la présente Convention ainsi que tout avis, tout état de compte et tout autre document à être ou pouvant être donné ou conclu en vertu des dispositions des présentes, soient rédigés en langue anglaise seulement.*

**19.10 Effective Date.** This Agreement is intended to and shall take effect as of the date first set forth above, notwithstanding its actual date of execution or delivery.

**19.11 Counterparts and Facsimile.** This Agreement may be executed and delivered by original, facsimile or other electronic transmission in one or more counterparts which, together, shall constitute an original copy of this Agreement as of the date first noted above.

**[Rest of page intentionally left blank]**

If this Agreement accurately reflects the terms of the transaction which we are to enter into and if such terms are agreed to by the Company, please communicate your acceptance by executing where indicated below.

Yours very truly,

**CORMARK SECURITIES INC.**

Per: "Kevin Carter"  
Name: Kevin Carter  
Title: Managing Director, Investment  
Banking

**TD SECURITIES INC.**

Per: "Mark Tiberio"  
Name: Mark Tiberio  
Title: Director

**DESJARDINS SECURITIES INC.**

Per: "Marc Mills"  
Name: Marc Mills  
Title: Managing Director, Investment  
Banking

**HAYWOOD SECURITIES INC.**

Per: "Ryan Matthiesen"  
Name: Ryan Matthiesen  
Title: Managing Director, Investment  
Banking

**CANACCORD GENUITY CORP.**

Per: "David Sadowski"

Name: David Sadowski  
Title: Managing Director, Head of  
Canadian Metals and Mining,  
Investment Banking

**EIGHT CAPITAL**

Per: "Reid Obradovich"

Name: Reid Obradovich  
Title: Principal, Managing Director

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The foregoing accurately reflects the terms of the transaction which we are to enter into and such terms are agreed to with effect as of the date provided at the top of the first page of this Agreement.

**AMERICAS GOLD AND SILVER  
CORPORATION**

Per: "Darren Blasutti"

Name: Darren Blasutti  
Title: President and Chief Executive Officer

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**SCHEDULE A**

**COMPLIANCE WITH UNITED STATES SECURITIES LAWS**

*This is Schedule "A" to the Underwriting Agreement dated as of October 30, 2024 among the Company and the Underwriters.*

As used in this Schedule "A", capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Underwriting Agreement to which this Schedule "A" is annexed and the following terms shall have the meanings indicated:

1. **"Business Day"** means a day other than a Saturday, Sunday or any other day on which the principal chartered banks located in Toronto, Ontario are not open for business;
2. **"Directed Selling Efforts"** means "directed selling efforts" as that term is defined in Rule 902(c) of Regulation S. Without limiting the foregoing, but for greater clarity in this Schedule "A", it means, subject to the exclusions from the definition of directed selling efforts contained in Regulation S, any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for any of the Subscription Receipts or the Common Shares and includes the placement of any advertisement in a publication with a general circulation in the United States that refers to the Offering;
3. **"Distribution Compliance Period"** means the 40 day period that begins on the later of (i) the date the Subscription Receipts are first offered to persons other than distributors in reliance on Regulation S or (ii)

the Closing Date; provided that, all offers and sales by a distributor of an unsold allotment or subscription shall be deemed to be made during the Distribution Compliance Period;

4. **“Foreign Issuer”** shall have the meaning ascribed thereto in Regulation S. Without limiting the foregoing, but for greater clarity, it means any issuer which is (a) the government of any country other than the United States or the government of any political subdivision thereof; or (b) a corporation or other organization incorporated or organized under the laws of any country other than the United States, except an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter: (1) more than 50 percent of the outstanding voting securities of such issuer are owned of record (as determined in accordance with Rule 405 under the U.S. Securities Act) either directly or indirectly by residents of the United States; and (2) any of the following: (i) the majority of the executive officers or directors are United States citizens or residents, (ii) more than 50 percent of the assets of the issuer are located in the United States, or (iii) the business of the issuer is administered principally in the United States;
5. **“General Solicitation”** and **“General Advertising”** means **“general solicitation”** and **“general advertising”**, respectively, as used in Rule 502(c) of Regulation D, including, but not limited to, advertisements, articles, notices or other communications published in any newspaper, magazine or similar media, broadcast over radio or television, or published or broadcast via electronic display, including the internet, or any seminar or meeting whose attendees had been invited by general solicitation or general advertising;
6. **“U.S. Affiliates”** means the duly registered United States broker-dealer affiliates of the Underwriters; and
7. **“U.S. Exchange Act”** means the United States Securities Exchange Act of 1934, as amended.

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## **REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE UNDERWRITERS**

The Underwriters acknowledge that the Subscription Receipts and Common Shares have not been and will not be registered under the U.S. Securities Act or any applicable U.S. state securities laws, and the Subscription Receipts may be offered, sold, pledged or transferred, directly or indirectly, only in transactions exempt from or not subject to the registration requirements of the U.S. Securities Act and applicable U.S. state securities laws. Accordingly, each Underwriter represents, warrants and covenants to the Company that:

1. It has not offered and sold, and will not offer and sell, any Subscription Receipts or Common Shares forming part of its allotment or otherwise as a part of the distribution except (a) to non-U.S. Purchasers in an **“offshore transaction”**, as such term is defined in Regulation S, in accordance with Rule 903 of Regulation S or (b) to, or for the account or benefit of, U.S. Purchasers, as provided in paragraphs 2 through 18 below. Accordingly, except as provided in paragraphs 2 through 18 below, none of the Underwriter, its U.S. Affiliate or any person acting on its or their behalf, has engaged or will engage in: (i) any offer to sell or any solicitation of an offer to buy, any Subscription Receipts to, or for the account or benefit of, any person in the United States or any U.S. Person, or (ii) any sale of Subscription Receipts to any Purchaser unless, at the time the buy order was or will have been originated, the Purchaser was outside the United States and not a U.S. Person, or such Underwriter, U.S. Affiliate or person acting on behalf of either reasonably believed that such Purchaser was outside the United States and not a U.S. Person, (iii) any Directed Selling Efforts, or (iv) any action in violation of Regulation M under the U.S. Exchange Act in connection with the offer and sale of the Subscription Receipts or the issuance of the Common Shares.
2. It agrees that, at or prior to confirmation of the sale of the Subscription Receipts, it will have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases Subscription Receipts from it during the Distribution Compliance Period a confirmation or notice to substantially the following effect:

“The securities covered hereby have not been registered under the U.S. Securities Act of 1933 (the **“U.S. Securities Act”**), and may not be offered or sold within the United States or to, or for the

account or benefit of, “U.S. persons” (as defined in Rule 902(k) of Regulation S under the U.S. Securities Act) (i) as part of their distribution at any time or (ii) otherwise until 40 days after the later of the commencement of the offering and closing date, except in either case in accordance with Regulation S under the U.S. Securities Act, pursuant to registration under the U.S. Securities Act, or pursuant to an available exemption from the registration requirements of the U.S. Securities Act.”

In addition, prior to the expiration of the Distribution Compliance Period, all subsequent offers and sales of the Subscription Receipts by such Underwriter shall be made only in accordance with the provisions of Rule 903 or 904 of Regulation S; pursuant to a registration of the Subscription Receipts under the U.S. Securities Act; or pursuant to an available exemption from the registration requirements of the U.S. Securities Act.

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Such Underwriter agrees to obtain substantially identical undertakings from each member of any banking and selling group formed in connection with the distribution of the Subscription Receipts contemplated hereby and to comply with the offering restriction requirements of Regulation S.

3. It has not entered and will not enter into any contractual arrangement with respect to the distribution of the Subscription Receipts, except with its U.S. Affiliate or any selling group members or with the prior written consent of the Company. It shall require each selling group member to agree in writing, for the benefit of the Company, to comply with, and shall use its best efforts to ensure that each selling group member complies with, the same provisions of this Schedule “A” as apply to such Underwriters as if such provisions applied to such selling group member.
4. All offers and sales of Subscription Receipts to, or for the account or benefit of, U.S. Purchasers have been and will be made through the Underwriter’s U.S. Affiliate in compliance with all applicable U.S. federal and state broker-dealer requirements and all applicable U.S. federal and state securities laws.
5. Its U.S. Affiliate is, and as of the Closing Date shall be, (i) registered as a broker or dealer under the U.S. Exchange Act and under the securities laws of each state where offers and sales of Subscription Receipts have been or will be made (unless exempted from such state’s broker-dealer registration requirements), and (ii) is a member of, and in good standing with, the Financial Industry Regulatory Authority, Inc.
6. Offers and sales of Subscription Receipts and Common Shares to, or for the account or benefit of, U.S. Purchasers have not been and will not be made by the Underwriter acting through its U.S. Affiliate by any form of General Solicitation or General Advertising or in any manner involving a public offering within the meaning of Section 4(a)(2) of the U.S. Securities Act.
7. Offers and sales of Subscription Receipts to, or for the account or benefit of, U.S. Purchasers may be made by the Underwriter acting through its U.S. Affiliate on behalf of the Company pursuant to the provisions of Rule 506(b) of Regulation D and/or Section 4(a)(2) of the U.S. Securities Act to persons who are or are reasonably believed by them to be U.S. Accredited Investors or Qualified Institutional Buyers.
8. All U.S. Purchasers of the Subscription Receipts shall be informed that the Subscription Receipts and Common Shares have not been and will not be registered under the U.S. Securities Act or any applicable U.S. state securities laws, and that the Subscription Receipts are being offered and sold to such Purchasers on a substituted purchaser basis in reliance on the exemption from the registration requirements of the U.S. Securities Act provided by Rule 506(b) of Regulation D and/or Section 4(a)(2) of the U.S. Securities Act and similar exemptions under applicable state securities laws.
9. The Underwriter acting through its U.S. Affiliate may offer the Subscription Receipts to, or for the account or benefit of, U.S. Purchasers only to offerees with whom it had a pre-existing business relationship and had reasonable grounds to believe were U.S. Accredited Investors or Qualified Institutional Buyers and immediately prior to making any such offer had reasonable grounds to believe and did believe that each offeree was a U.S. Accredited Investor or a Qualified Institutional Buyer, and on the date hereof, they continue to believe that each U.S. Purchaser is a U.S. Accredited Investor or a Qualified Institutional Buyer.

10. Prior to any sale of Subscription Receipts by the Underwriter acting through its U.S. Affiliate to, or for the account or benefit of, a U.S. Accredited Investor, it will cause each such U.S. Accredited Investor to execute and deliver a Subscription Agreement and the U.S. Accredited Investor Certificate attached thereto as Schedule “C”.

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11. Prior to any sale of Subscription Receipts by the Underwriter acting through its U.S. Affiliate to, or for the account or benefit of, a Qualified Institutional Buyer, it will cause each such Qualified Institutional Buyer to execute and deliver a Subscription Agreement and the Qualified Institutional Buyer Letter attached thereto as Schedule “D”.
12. At least one Business Day prior to the Closing Date, it will provide the Company with a list of all U.S. Purchasers of the Subscription Receipts, and in each case indicate that such U.S. Purchaser is a U.S. Accredited Investor or a Qualified Institutional Buyer, as applicable, and the state or other jurisdiction in which the Subscription Receipts were offered or sold to such U.S. Purchaser that is a U.S. Accredited Investor or a Qualified Institutional Buyer, as applicable. Prior to the Closing Time, it will provide the Company with copies of all executed Subscription Agreements and schedules and exhibits attached thereto and will otherwise offer reasonable assistance to the Company with respect to the Company’s obligations to prepare and file forms and notices required under the U.S. Securities Act and applicable state securities laws in connection with the offer and sale of the Subscription Receipts, including, for the avoidance of doubt and if applicable, the filing of a Form D with the United States Securities and Exchange Commission within 15 days of the first sale of the Subscription Receipts to a U.S. Purchaser and any such related filings as may be required by applicable state securities laws to secure exemption from registration under such securities laws for the sale of the Subscription Receipts in such states.
13. The Underwriter covenants and agrees that it, its Affiliates (including the U.S. Affiliate) and any person acting on its or their behalf will not pay or give any commission or other remuneration, directly or indirectly, for soliciting the exchange of the Subscription Receipts.
14. At the Closing Time, the Underwriter will, together with its U.S. Affiliate, provide to the Company a certificate in the form of Exhibit “I” to this Schedule “A” relating to the manner of the offer and sale of the Subscription Receipts to, or for the account or benefit of, U.S. Purchasers or will be deemed to have represented and warranted that none of it, its Affiliates (including the U.S. Affiliate) or any persons acting on its or their behalf offered or sold Subscription Receipts to, or for the account or benefit of, U.S. Purchasers.
15. None of the Underwriter, its Affiliates (including the U.S. Affiliate), or any person acting on any of their behalf has taken or will take, directly or indirectly, any action in violation of Regulation M under the U.S. Exchange Act in connection with the offer and sale of the Subscription Receipts or the issuance of the Common Shares.
16. As of the Closing Date, with respect to Subscription Receipts to be offered and sold hereunder in reliance on Rule 506(b) of Regulation D, each Underwriter (and their U.S. Affiliate, except TD Securities (USA) LLC as noted below), represents that none of (i) the Underwriter or its U.S. Affiliate, (ii) the Underwriter’s or its U.S. Affiliate’s general partners or managing members, (iii) any of the Underwriter’s or its U.S. Affiliate’s directors or executive officers or any other officers participating in the offering of the Subscription Receipts, (iv) any of the Underwriter’s or its U.S. Affiliate’s general partners’ or managing members’ directors or executive officers or other officers participating in the offering of the Subscription Receipts or (v) any other person associated with any of the above persons, including any selling group members and any such persons related to such selling group members, that have been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with sale of Subscription Receipts (each, a **“Dealer Covered Person”** and, collectively, the **“Dealer Covered Persons”**), is subject to any of the **“Bad Actor”** disqualifications described in Rule 506(d) of Regulation D (a **“Disqualification Event”**). On August 14, 2024, TD Securities (USA) LLC received a waiver from the SEC of the application of the disqualification provisions of Rule 506(d)(1)(iv)(B) of Regulation D.

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17. The Underwriter will notify the Company in writing prior to the Closing Date of (i) any Disqualification Event relating to any Dealer Covered Person not previously disclosed to the Company and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Dealer Covered Person.
18. As of the Closing Date, the Underwriter represents that it is not aware of any person (other than any Dealer Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of any Subscription Receipts.

## **REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY**

The Company represents, warrants, covenants and agrees that:

1. The Company is a Foreign Issuer and reasonably believes (a) it is not now, and as a result of the sale of Subscription Receipts contemplated hereby will not be, registered or required to be registered as an **“investment company”** as such term is defined under the United States Investment Company Act of 1940, as amended, under such Act; and (b) neither the Company nor any of its predecessors or affiliates has been subject to any order, judgment or decree of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failure to comply with Rule 503 of Regulation D.
2. During the period that the Subscription Receipts are or were offered for sale, none of the Company, its subsidiaries or any of its affiliates, nor any person acting on its or their behalf (other than the Underwriter, its U.S. Affiliate and any persons acting on any of their behalf, in respect of which no representation is made) (i) has made or will make any Directed Selling Efforts, (ii) has engaged in or will engage in any form of General Solicitation or General Advertising or any manner involving a public offering within the meaning of Section 4(a)(2) of the U.S. Securities Act with respect to offers or sales of the any of the Subscription Receipts or Common Shares to, or for the account or benefit of U.S. Purchasers, or (iii) has taken or will take any other action that would cause the exclusion from registration provided by Regulation S or the exemptions from registration provided by Section 4(a)(2) and Regulation D to be unavailable with respect to offers and sales of the Subscription Receipts pursuant to this Schedule “A”.
3. Offers and sales of Subscription Receipts to, or for the account or benefit of, U.S. Purchasers may be made by the Company pursuant to the provisions of Rule 506(b) of Regulation D and/or Section 4(a)(2) of the U.S. Securities Act to persons who are or are reasonably believed by them to be U.S. Accredited Investors or Qualified Institutional Buyers.
4. All U.S. Purchasers of the Subscription Receipts from the Company shall be informed that the Subscription Receipts and Common Shares have not been and will not be registered under the U.S. Securities Act or any applicable U.S. state securities laws, and that the Subscription Receipts are being offered and sold to such Purchasers on a substituted purchaser basis in reliance on the exemption from the registration requirements of the U.S. Securities Act provided by Rule 506(b) of Regulation D and/or Section 4(a)(2) of the U.S. Securities Act and similar exemptions under applicable state securities laws.

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5. The Company may offer the Subscription Receipts to, or for the account or benefit of, U.S. Purchasers as substituted Purchasers only to offerees with whom the Company had a pre-existing business relationship and had reasonable grounds to believe were U.S. Accredited Investors or Qualified Institutional Buyers and immediately prior to making any such offer had reasonable grounds to believe and did believe that each offeree was a U.S. Accredited Investor or a Qualified Institutional Buyer, and on the date hereof, they continue to believe that each U.S. Purchaser is a U.S. Accredited Investor or a Qualified Institutional Buyer.
6. Prior to any sale of Subscription Receipts by the Company to, or for the account or benefit of, a U.S. Accredited Investor as a substituted Purchaser, it will cause each such U.S. Accredited Investor to execute and deliver a Subscription Agreement and the U.S. Accredited Investor Certificate attached thereto as Schedule “C”.



7. Prior to any sale of Subscription Receipts by the Company to, or for the account or benefit of, a Qualified Institutional Buyer as a substituted Purchaser, it will cause each such Qualified Institutional Buyer to execute and deliver a Subscription Agreement and the Qualified Institutional Buyer Letter attached thereto as Schedule “D”.
8. It has not and will not, during the period beginning 30 days prior to the start of the offering of Subscription Receipts and ending 30 days after the completion of the offering of Subscription Receipts sell, offer for sale or solicit any offer to buy any of its securities in the United States in a manner that would be integrated with and would cause the exemption from registration provided by Rule 506(b) of Regulation D to be unavailable with respect to offers and sales of the Subscription Receipts pursuant to this Schedule “A”.
9. It will, within prescribed time periods, prepare and file any forms or notices required under the U.S. Securities Act or applicable U.S. state securities laws in connection with the offer and sale of the Subscription Receipts.
10. Except with respect to offers and sales to U.S. Accredited Investors or Qualified Institutional Buyers, as applicable, who are U.S. Purchasers or who are acting for the account or benefit of U.S. Purchasers, in reliance upon an exemption from registration under Rule 506(b) of Regulation D and/or Section 4(a)(2) of the U.S. Securities Act, neither it nor its affiliates or any person acting on its or its behalf (other than the Underwriters, the U.S. Affiliates or any person acting on any of their behalf, in respect of which no representation is made) has made or will make: (A) any offer to sell, or any solicitation of an offer to buy, any Subscription Receipts to, or for the account or benefit of, any U.S. Purchaser; or (B) any sale of Subscription Receipts unless, at the time the buy order was or will have been originated, the Purchaser was outside the United States or it, its affiliates, and any person acting on its or their behalf reasonably believes that such Purchaser was outside the United States.
11. None of it, any of its affiliates or any person acting on any of their behalf (other than the Underwriters, the U.S. Affiliates, or any person acting on any of their behalf, in respect of which no representation is made) has taken or will take, directly or indirectly, any action in violation of Regulation M under the U.S. Exchange Act in connection with the offer and sale of the Subscription Receipts or the issuance of the Common Shares.
12. It covenants and agrees that it, its affiliates and any person acting on its or their behalf (other than the Underwriters, the U.S. Affiliates or any person acting on any of their behalf, in respect of which no representation is made) will not pay or give any commission or other remuneration, directly or indirectly, for soliciting the exchange of the Subscription Receipts and is not aware of any person (other than any Dealer Covered Person) that has been or will be paid (directly or indirectly) remuneration for soliciting the exchange of the Subscription Receipts.
13. As of the Closing Date, with respect to the offer and sale of the Subscription Receipts sold in reliance on Rule 506(b) of Regulation D, none of it, any of its predecessors, any affiliated issuer, any director or executive officer or any other officer of the Company participating in the offering, any beneficial owner of 20% or more of its outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the U.S. Securities Act) connected with it in any capacity at the time of sale of the Subscription Receipts (but excluding the Underwriters, the U.S. Affiliates and any selling group member, as to whom no representation, warranty or covenant is made) (each, a “**Company Covered Person**” and, collectively, the “**Company Covered Persons**”) is subject to any Disqualification Event, except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3) of Regulation D. It has exercised reasonable care to determine whether any Company Covered Person is subject to a Disqualification Event. If applicable, it has complied with its disclosure obligations under Rule 506(e) of Regulation D, and has furnished to the Underwriters and the U.S. Affiliates a copy of any disclosures provided thereunder.

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**EXHIBIT “I” TO SCHEDULE A**  
**UNDERWRITER’S CERTIFICATE**



In connection with the private placement to, or for the account or benefit of, persons in the United States and U.S. Persons of Subscription Receipts of Americas Gold and Silver Corporation (the “**Company**”) pursuant to the Underwriting Agreement dated October 30, 2024 between the Company and the Underwriters named therein (the “**Underwriting Agreement**”), each of the undersigned does hereby certify as follows:

- (i) we acknowledge that the Subscription Receipts and the Common Shares issuable upon exchange of the Subscription Receipts have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the “**U.S. Securities Act**”), and may not be offered or sold within the United States or to, or for the account or benefit of, persons in the United States or U.S. Persons, except pursuant to an available exemption from the registration requirements of the U.S. Securities Act. We have not offered or sold, and will not offer or sell, the Subscription Receipts (A) as part of our distribution at any time or (B) otherwise until 40 days after the later of the commencement of the offering and the closing date (the “**Distribution Compliance Period**”), except in accordance with Rule 903 of Regulation S under the U.S. Securities Act or as provided in paragraphs (ii) through (ix) below. We sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases Subscription Receipts from us during the restricted period a confirmation or notice substantially to the following effect:

“The Subscription Receipts covered hereby have not been registered under the U.S. Securities Act of 1933, as amended (the “**U.S. Securities Act**”), and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. Persons (i) as part of their distribution at any time or (ii) otherwise until 40 days after the later of the commencement of the offering and the closing date, except in either case in accordance with Regulation S under the U.S. Securities Act, pursuant to registration under the U.S. Securities Act, or pursuant to an available exemption from the registration requirements of the U.S. Securities Act.”;

In addition, prior to the expiration of the Distribution Compliance Period, all subsequent offers and sales of the Subscription Receipts have been made and will be made only in accordance with the provisions of Rule 903 and 904 of Regulation S; pursuant to a registration of the Subscription Receipts under the U.S. Securities Act; or pursuant to an available exemption from the registration requirements of the U.S. Securities Act;

- (ii) the U.S. affiliates of the undersigned Underwriters (the “**U.S. Affiliates**”) is (i) a duly registered broker or dealer under the U.S. Exchange Act and under the securities laws of all applicable states where the offers and sales of Subscription Receipts were made (unless otherwise exempted from such state’s broker-dealer registration requirements) and (ii) a member of, and in good standing with, the Financial Industry Regulatory Authority, Inc. on the date hereof
- (iii) all offers and sales of Subscription Receipts to, or for the account or benefit of, U.S. Purchasers have been effected in accordance with all applicable U.S. federal and state broker dealer requirements;

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- (iv) we have provided each offeree of Subscription Receipts (a) that is a U.S. Accredited Investor with a Subscription Agreement and Schedule “C” thereto for U.S. Accredited Investors and (b) that is a Qualified Institutional Buyer with a Subscription Agreement and Schedule “D” thereto for Qualified Institutional Buyers, and no other written material was used in connection with the offer and sale of the Subscription Receipts to U.S. Purchasers.
- (v) immediately prior to offering Subscription Receipts to an offeree that was in the United States, we had a pre-existing business relationship with them and had reasonable grounds to believe and did believe that each offeree was a U.S. Accredited Investor or a Qualified Institutional Buyer and, on the date hereof, we continue to believe that each U.S. Purchaser purchasing the Subscription Receipts from the Company is a U.S. Accredited Investor or a Qualified Institutional Buyer;
- (vi) no form of “general solicitation” or “general advertising” (as those terms are used in Regulation D under the U.S. Securities Act) was used by us in connection with the offer or sale of the Subscription Receipts and the issuance of the Common Shares to, or for the account or benefit of, U.S. Purchasers;

(vii) prior to any sale of Subscription Receipts by the Company to a U.S. Purchaser, we caused (a) each U.S. Purchaser that is a U.S. Accredited Investor to execute and deliver a Subscription Agreement and the U.S. Accredited Investor Certificate attached thereto as Schedule “C”, and (b) each U.S. Purchaser that is a Qualified Institutional Buyer to execute and deliver a Subscription Agreement and the Qualified Institutional Buyer Letter attached thereto as Schedule “D”;

(viii) none of us, any member of the selling group, or any of our or their affiliates, have taken or will take any action which would constitute a violation of Regulation M under the U.S. Exchange Act in connection with the offer or sale of the Subscription Receipts or the issuance of the Common Shares; and

(ix) the offer and sale of the Subscription Receipts has been conducted by us in accordance with the terms of the Underwriting Agreement, including Schedule “A” thereto.

Capitalized terms used in this certificate have the meanings given to them in the Underwriting Agreement, including Schedule “A” thereto, unless otherwise defined herein.

**DATED** this 30th day of October, 2024.

**[UNDERWRITER]**

**[U.S. UNDERWRITER AFFILIATE]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SUBSCRIPTION RECEIPT AGREEMENT**

among

**AMERICAS GOLD AND SILVER CORPORATION**

- and -

**CORMARK SECURITIES INC.**

- and -

**COMPUTERSHARE TRUST COMPANY OF CANADA**

Providing for the Issue of

Subscription Receipts

Dated as of October 30, 2024

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## SCHEDULES

**Schedule A: FORM OF SUBSCRIPTION RECEIPT CERTIFICATE**

**Schedule B: FORM OF RELEASE NOTICE**

**Schedule C: APPROVED BANKS**

## SUBSCRIPTION RECEIPT AGREEMENT

**THIS SUBSCRIPTION RECEIPT AGREEMENT** made as of October 30, 2024,

**AMONG:**

**AMERICAS GOLD AND SILVER CORPORATION**, a corporation governed by the laws of Canada

(hereinafter referred to as the “**Corporation**”)

- and -

**CORMARK SECURITIES INC.**, on behalf of the Underwriters (as defined herein)

(hereinafter referred to as “**Cormark**”)

- and -

**COMPUTERSHARE TRUST COMPANY OF CANADA**, a trust company existing under the laws of Canada

(hereinafter referred to as the “**Subscription Receipt Agent**”)

**WHEREAS** the Corporation is proposing to issue and sell Subscription Receipts (as defined herein), each Subscription Receipt representing the right to receive one Underlying Common Share (as defined herein) (subject to any applicable adjustments);

**AND WHEREAS** the Corporation is duly authorized to create and issue the Subscription Receipts as herein provided and to complete the transactions contemplated herein;

**AND WHEREAS** all things necessary have been done and performed to make the Subscription Receipts, when Authenticated (as defined herein) by the Subscription Receipt Agent and issued as provided in this Agreement, legal, valid and binding obligations of the Corporation with the benefits and subject to the terms of this Agreement;

**AND WHEREAS** the foregoing recitals are representations and statements of fact made by the Corporation and not by Cormark or the Subscription Receipt Agent;

**AND WHEREAS** the Subscription Receipt Agent hereby agrees to act as subscription receipt agent in accordance with the provisions hereof.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that for good and valuable consideration mutually given and received, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed and declared as follows:

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**ARTICLE 1**  
**INTERPRETATION**

**1.1 Definitions**

In this Agreement and the recitals, unless there is something in the subject matter or context inconsistent therewith or unless otherwise expressly provided, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

- (a) “**1933 Act**” means the United States Securities Act of 1933, as amended;

- (b) **“Acquisition Agreement”** means the purchase agreement dated October 9, 2024 among the Corporation, Sprott Mining Inc., Sprott Mining Idaho Management Inc., Sprott Mining Idaho Holdings Inc., Sprott Mining Idaho Limited Partnership, and Paul Huet, as the same may be amended or supplemented from time to time in accordance with Section 6.2(b) hereof;
- (c) **“Affiliate”** has the meaning ascribed to it under the *Securities Act* (Ontario);
- (d) **“Agreement”** means this subscription receipt agreement, as amended, supplemented or otherwise modified from time to time in accordance with the provisions hereof;
- (e) **“Authenticate”** means (a) with respect to the issuance of a Subscription Receipt Certificate, one which has been duly signed by the Corporation and authenticated by manual or electronic signature of an authorized signing officer of the Subscription Receipt Agent, (b) with respect to the issuance of an Uncertificated Subscription Receipt, one in respect of which the Subscription Receipt Agent has completed all Internal Procedures such that the particulars of such Uncertificated Subscription Receipt as required by Article 2 are entered in the register of holders of Subscription Receipts, and **“Authenticated”**, **“Authenticating”** and **“Authentication”** have the appropriate correlative meanings;
- (f) **“Balance of the Underwriters’ Commission”** means the remaining 50% of the Underwriters’ Commission, payable on the Transaction Closing Date in accordance with the Underwriting Agreement;
- (g) **“Book-Based System”** means the book-based securities transfer system administered by CDS in accordance with its operating rules and procedures in force from time to time;
- (h) **“Business Day”** means any day, other than Saturday, Sunday or a statutory or civic holiday, on which banking institutions are generally open for business in Toronto, Ontario;
- (i) **“CDS”** means CDS Clearing and Depository Services Inc. and its successors in interest;

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- (j) **“Common Shares”** means the common shares in the capital of the Corporation;
- (k) **“Cormark”** means Cormark Securities Inc.;
- (l) **“Corporation”** means Americas Gold and Silver Corporation;
- (m) **“Counsel”** means a barrister or solicitor or a firm of barristers or solicitors, who may be counsel for the Corporation, acceptable to the Subscription Receipt Agent, acting reasonably;
- (n) **“Current Market Price”** for any date means the VWAP of the Common Shares on the TSX for the 20 consecutive trading days ending on the fifth trading day preceding the date of the applicable event (or, if the Common Shares are not listed thereon, on such stock exchange on which the Common Shares are listed as may be selected by the board of directors of the Corporation or, if the Common Shares are not listed on any stock exchange, then on the over-the-counter market or, if there is no market, fair value as determined by an independent financial advisor as selected by the directors of the Corporation and as such independent financial advisor shall be approved by the Subscription Receipt Agent, acting reasonably;
- (o) **“Deemed Interest”** means interest that would have otherwise been earned on 50% of the Underwriters’ Commission and the full amount of the Underwriters’ Expenses as if such amount had been held in escrow as part of the Escrowed Funds and not paid to the Underwriters;
- (p) **“Designated Office”** means the principal Corporate Trust Office of the Subscription Receipt Agent from time to time in Toronto, Ontario;



- (q) **“Earned Interest”** means the interest or other income actually earned on the investment of the Escrowed Funds from and including the date hereof to but excluding the earlier to occur of (i) the Transaction Closing Date and (ii) the Termination Date;
- (r) **“Escrow Account”** has the meaning attributed thereto in Section 2.2(a);
- (s) **“Escrow Release Conditions”** means: (i) the satisfaction or waiver of each of the conditions to the Transaction as set out in the Acquisition Agreement (as it may be amended or supplemented in accordance with this Agreement), other than payment of the purchase price payable on the Transaction Closing in respect of the Acquisition; and (ii) the receipt of all required board, shareholder, regulatory and exchange approvals in connection with the Offering and the Transaction, including, without limitation, the approval of the TSX and NYSE American for the listing of the Underlying Common Shares having been obtained (other than such approvals that, by their nature, are to be satisfied following the Transaction Closing);

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- (t) **“Escrowed Funds”** means an amount equal to the Proceeds; minus an amount equal to 50% of the Underwriters’ Commission and the full amount of the Underwriters’ Expenses; plus the Earned Interest thereon at any given time;
- (u) **“Global Subscription Receipt”** means a Subscription Receipt Certificate or Uncertificated Subscription Receipt that is issued to and registered in the name of CDS or its nominee pursuant to Section 2.14;
- (v) **“Indemnified Parties”** has the meaning attributed thereto in Section 6.3(b);
- (w) **“Internal Procedures”** means in respect of the making of any one or more entries to, changes in or deletions of any one or more entries in the register at any time (including without limitation, original issuance or registration of transfer of ownership), the Subscription Receipt Agent’s internal procedures customary at such time for the entry, change or deletion made to be completed under the operating procedures followed at the time by the Subscription Receipt Agent;
- (x) **“Issue Time”** means the time as of which the Transaction Closing occurs;
- (y) **“Offering”** means the offering of the Subscription Receipts, by means of an underwritten “bought deal” private placement, pursuant to the terms of the Subscription Agreements and the Underwriting Agreement;
- (z) **“Offering Closing Date”** means the closing date of the Offering;
- (aa) **“Person”** means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, limited liability companies, joint ventures, associations, companies, trusts, banks, trust companies, pension funds, business trusts or other organizations, whether or not legal entities and governments, governmental agencies and political subdivisions thereof;
- (bb) **“Proceeds”** means the aggregate gross proceeds of the Offering;
- (cc) **“QIB Purchaser”** means an original purchaser of the Subscription Receipts who was originally distributed the Subscription Receipts under this Agreement on the basis that it executed and delivered a U.S. QIB Letter;
- (dd) **“Receiptholders”** or **“holders”** means the persons who are registered owners of Subscription Receipts entered in the register maintained pursuant to Section 2.5 (including purchasers of Subscription Receipts whose purchase has not yet been settled and excluding registered owners of Subscription Receipts who have sold their Subscription Receipts);
- (ee) **“Receiptholders’ Request”** means an instrument signed in one or more counterparts by Receiptholders holding in the aggregate not less than 25% of the then outstanding Subscription Receipts, requesting the Subscription Receipt Agent to take some action or proceeding specified therein;

- (ff) “**Release Notice**” has the meaning attributed thereto in Section 3.1(a);
- (gg) “**S&P**” means S&P Global Ratings, a division of S&P Global Inc., and its successors;
- (hh) “**SEC**” means the United States Securities and Exchange Commission;
- (ii) “**Shareholders**” means the holders from time to time of the Common Shares;
- (jj) “**special resolution**” has the meaning attributed thereto in Section 8.11;
- (kk) “**Subscribers**” means the subscribers for Subscription Receipts in the Offering;
- (ll) “**Subscription Agreements**” means the agreements entered into by each Subscriber and the Corporation in respect of the Subscriber’s subscription for Subscription Receipts in the form and on the terms and conditions satisfactory to the Corporation and the Underwriters, each acting reasonably, as such agreements may be amended from time to time;
- (mm) “**Subscription Price**” means \$0.40 per Subscription Receipt;
- (nn) “**Subscription Receipt Agent**” means Computershare Trust Company of Canada or its successors and assigns from time to time under this Agreement;
- (oo) “**Subscription Receipt Certificate**” means a certificate evidencing the Subscription Receipts substantially in the form attached as Schedule A and any legends inserted thereon pursuant to Section 2.19, with such appropriate insertions, deletions, substitutions and variations as may be required or permitted by the terms of this Agreement or as may be required to comply with any law or the rules of any securities exchange or as may be not inconsistent with the terms of this Agreement as the Corporation may deem necessary or desirable;
- (pp) “**Subscription Receipts**” means the subscription receipts issued and Authenticated hereunder and from time to time outstanding, each Subscription Receipt evidencing the rights of holders of Subscription Receipts, and obligations of the Corporation, as set out in this Agreement;
- (qq) “**successor entity**” has the meaning attributed thereto in Section 11.9;
- (rr) “**Termination Date**” means the date on which a Termination Event occurs;
- (ss) “**Termination Event**” means the earliest to occur of: (i) the Transaction Closing not occurring prior to the Transaction Deadline; or (ii) the Corporation delivering to Cormark and the Subscription Receipt Agent a notice, executed by the Corporation, declaring that the Acquisition Agreement has been terminated; or (iii) the Corporation announcing to the public by way of a news release that it does not intend to proceed with the Transaction prior to the Transaction Deadline;

- (tt) “**Termination Payment Time**” means 5:00 p.m. (Toronto time) on the second Business Day after the Termination Date;
- (uu) “**Transaction**” means the indirect acquisition by the Corporation of the remaining 40% interest in the Galena Complex in the Silver Valley of Northwest Idaho not indirectly owned by the Corporation, in accordance with the Acquisition Agreement;

- (vv) **“Transaction Closing”** means the closing of the Transaction in accordance with the Acquisition Agreement;
- (ww) **“Transaction Closing Date”** means the date on which the Transaction Closing occurs;
- (xx) **“Transaction Deadline”** means 5:00 p.m. (Toronto time) on February 27, 2025;
- (yy) **“Transfer Agent”** means Computershare Investor Services Inc.;
- (zz) **“TSX”** means the Toronto Stock Exchange;
- (aaa) **“U.S. Offered Securities”** has the meaning attributed thereto in Section 2.19;
- (bbb) **“U.S. Person”** means “U.S. person” as such term is defined in Regulation S under the 1933 Act;
- (ccc) **“U.S. QIB Letter”** means the Qualified Institutional Buyer Letter substantially in the form of Schedule “D” attached to the Subscription Agreements entered into between the Corporation and the United States subscribers of Subscription Receipts in the Offering;
- (ddd) **“U.S. Securities Exchange Act”** means the United States Securities Exchange Act of 1934, as amended;
- (eee) **“U.S. Receiptholder”** means a Receiptholder that is a U.S. Person or is a person in the United States, or acquired the Subscription Receipts in the United States or for the account or benefit of any U.S. Person or person in the United States;
- (fff) **“Uncertificated Subscription Receipts”** means Subscription Receipts that are issued by electronic delivery to CDS, or its nominee, for the purpose of being held by or on behalf of CDS;
- (ggg) **“Underlying Common Shares”** means the Common Shares automatically issuable to Receiptholders without payment of additional consideration in accordance with the terms and conditions of this Agreement;
- (hhh) **“Underwriters”** means, collectively, Cormark, TD Securities Inc., Desjardins Securities Inc., Haywood Securities Inc., Canaccord Genuity Corp. and Eight Capital;

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- (iii) **“Underwriters’ Commission”** means the Underwriters’ commission payable to the Underwriters in accordance with the Underwriting Agreement with respect to 125,000,000 Subscription Receipts purchased by the Underwriters on the date hereof;
- (jjj) **“Underwriters’ Expenses”** the reasonable out-of-pocket expenses of the Underwriters and the reasonable fees and disbursements of the Underwriters’ legal counsel and all applicable taxes payable thereon, incurred by the Underwriters in connection with the Offering, payable by the Corporation in accordance with, and subject to the limits set forth in, the Underwriting Agreement;
- (kkk) **“Underwriting Agreement”** means the underwriting agreement dated October 30, 2024 between the Corporation and the Underwriters in respect of the Offering;
- (lll) **“United States”** means the United States of America, its territories and possessions, any State of the United States and the District of Columbia;
- (mmm) **“VWAP”** means the volume-weighted average trading price of the Common Shares on the applicable exchange or market, as the case may be, for the applicable period (which must be calculated utilizing days in which the Common Shares actually trade), which shall be determined by dividing the aggregate sale price

of all Common Shares sold on the applicable exchange or market, as the case may be, over the applicable period by the total number of Common Shares so sold; and

- (nnn) “**written confirmation of the Corporation**”, “**written direction of the Corporation**”, “**written request of the Corporation**”, “**written notice of the Corporation**”, and any other document required to be signed by the Corporation, means, respectively, a written confirmation, direction, request, notice or other document signed in the name of the Corporation by any officer or director of the Corporation.

## **1.2 Headings**

The headings, the table of contents and the division of this Agreement into Articles and Sections are for convenience of reference only and shall not affect the interpretation of this Agreement.

## **1.3 References**

Unless otherwise specified in this Agreement:

- (a) references to Articles, Sections and Schedules are to Articles, Sections and Schedules in this Agreement; and
- (b) “hereto”, “herein”, “hereby”, “hereunder”, “hereof” and similar expressions, without reference to a particular provision, refer to this Agreement.

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## **1.4 Certain Rules of Interpretation**

Unless otherwise specified in this Agreement:

- (a) the singular includes the plural and *vice versa*; and
- (b) references to any gender shall include references to all genders.

## **1.5 Day Not a Business Day**

In the event that any day on or before which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day.

## **1.6 Conflict**

In the event of a conflict or inconsistency between a provision in the body of this Agreement and in the Subscription Receipt Certificate issued hereunder, the provision in the body of this Agreement shall prevail to the extent of the inconsistency.

## **1.7 Currency**

All dollar amounts expressed in this Agreement and in the Subscription Receipts are in lawful money of Canada and all payments required to be made hereunder and thereunder shall be made in Canadian dollars, except as otherwise provided.

## **1.8 Severability**

Each of the provisions in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any of the other provisions hereof.

## 1.9 Schedules

The following Schedules attached to this Agreement form an integral part of this Agreement:

Schedule A: Form of Subscription Receipt Certificate;

Schedule B: Form of Release Notice; and

Schedule C: Approved Banks.

## 1.10 Actions by the Underwriters

All steps which must or may be taken by the Underwriters in connection with this Agreement, shall be taken by Cormark, on its own behalf and on behalf of the other Underwriters. Cormark shall consult with the other Underwriters as necessary prior to taking any action on their behalf and shall, in any event, advise the other Underwriters of steps taken on their behalf.

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## ARTICLE 2 ISSUANCE AND PAYMENT OF SUBSCRIPTION RECEIPTS

### 2.1 Issue of Subscription Receipts

- (a) An aggregate of 125,000,000 Subscription Receipts, providing for the exchange of such Subscription Receipts in certain circumstances, as provided herein, to acquire an aggregate of 125,000,000 Underlying Common Shares, without any further action or payment of any additional consideration, subject to adjustment as provided herein, are hereby created and authorized to be issued by the Corporation for a price per Subscription Receipt equal to the Subscription Price, and one or more Subscription Receipt Certificates or Uncertificated Subscription Receipts evidencing the Subscription Receipts shall be executed by or on behalf of the Corporation, Authenticated by or on behalf of the Subscription Receipt Agent and delivered, in respect of the Subscription Receipts, as directed by the Corporation, in accordance with this Agreement.

### 2.2 Payment Acknowledgement

- (a) If Escrowed Funds are deposited with the Subscription Receipt Agent in accordance with Section 2.15 hereof, the Subscription Receipt Agent shall, in writing with a separate receipt, acknowledge receipt from the Underwriters and the Corporation (on behalf of certain Subscribers) of such funds and shall confirm that such funds have been deposited in a segregated trust account in the name of the Corporation designated as “Americas Gold and Silver 2024 Subscription Receipts” (the “**Escrow Account**”) or as otherwise jointly directed in writing by the Corporation and Cormark, on behalf of the Underwriters, and will be invested in accordance with Section 5.1 hereof and paid in accordance with Article 3 hereof;
- (b) The Corporation hereby:
  - (i) acknowledges that the amounts received by the Subscription Receipt Agent pursuant to Section 2.2(a), if any, as evidenced by the receipt referred to in Section 2.2(a), represent payment in full by the Underwriters and the Corporation of the aggregate Subscription Price for Subscription Receipts issued less 50% of the Underwriters’ Commission and the full amount of the Underwriters’ Expenses;
  - (ii) irrevocably directs the Subscription Receipt Agent to retain such amounts, if any, in accordance with the terms of this Agreement pending release of such amounts in accordance with the terms of this Agreement; and

- (iii) irrevocably directs the Subscription Receipt Agent, immediately following the execution and delivery of this Agreement, to Authenticate and deliver: (i) Uncertificated Subscription Receipts representing the Subscription Receipts issued to and registered in the name of CDS (or its nominee); and (ii) definitive Subscription Receipt Certificates to certain other Subscribers, in each case in accordance with the written direction of the Corporation.

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## **2.3 Terms of Subscription Receipts**

Each Subscription Receipt shall evidence the right of the holder to receive the securities and/or the amounts specified in Sections 3.4 and 3.6 hereof, as applicable.

## **2.4 Fractional Subscription Receipts**

No fractional Subscription Receipts shall be issued or otherwise provided for hereunder and any fractional interests shall be rounded down to the nearest whole number without any consideration therefor. In calculating such fractional interest, all Subscription Receipts held by the same registered and/or beneficial holder shall be aggregated.

## **2.5 Register for Subscription Receipts**

The Corporation hereby appoints the Subscription Receipt Agent as registrar and transfer agent of the Subscription Receipts, and the Corporation shall cause to be kept by the Subscription Receipt Agent at the Designated Office, a securities register in which shall be entered the names and addresses of the Receiptholders and the other particulars, prescribed by law, of the Subscription Receipts held by them. The Corporation shall also cause to be kept by the Subscription Receipt Agent at the Designated Office the register of transfers, and may also cause to be kept by the Subscription Receipt Agent, branch registers of transfers in which shall be recorded the particulars of the transfers of Subscription Receipts, registered in that branch register of transfers.

## **2.6 Registers Open for Inspection**

The registers referred to in Section 2.5 shall be open at all reasonable times during regular business hours of the Subscription Receipt Agent at its Designated Office on any Business Day for inspection by the Corporation, Cormark or any Receiptholder. The Subscription Receipt Agent shall, from time to time when requested to do so by the Corporation, furnish the Corporation with a list of the names and addresses of Receiptholders entered in the registers kept by the Subscription Receipt Agent and showing the number of Subscription Receipts held by each such holder.

## **2.7 Receiptholder not a Shareholder**

Nothing in this Agreement or in the holding of a Subscription Receipt shall at any time confer or be construed as conferring upon a Receiptholder any right, benefit or interest or direct or indirect entitlement whatsoever as a Shareholder, including, but not limited to, the right to vote at, to receive notice of, or to attend meetings of Shareholders. Receiptholders are entitled to exercise the rights expressly provided for in the Subscription Receipt Certificates and this Agreement on the terms and conditions set forth therein and herein.

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## **2.8 Subscription Receipts to Rank *Pari Passu***

Each Subscription Receipt shall rank *pari passu* with respect to all other issued and outstanding Subscription Receipts, regardless of their actual date of issue.

## **2.9 Signing of Subscription Receipt Certificates**

The Subscription Receipt Certificates shall be signed, if applicable, by any one officer or director of the Corporation.

The signature of such officer or director may be mechanically reproduced electronically and Subscription Receipt Certificates bearing such electronic signature shall, subject to Section 2.10, be binding upon the Corporation as if they had been manually signed by such officer or director. Notwithstanding that the person whose manual or electronic signature appears on any Subscription Receipt Certificate as such officer or director may no longer hold such position at the date of such Subscription Receipt Certificate or at the date of Authentication or delivery thereof, any Subscription Receipt Certificate signed as aforesaid shall, subject to Section 2.10, be valid and binding upon the Corporation and the holder thereof shall be entitled to the benefits of this Agreement.

## **2.10 Authentication by the Subscription Receipt Agent**

- (a) The Subscription Receipt Agent shall Authenticate Subscription Receipt Certificates or Uncertificated Subscription Receipts to be issued by the Corporation upon the written direction of the Corporation. No Subscription Receipt Certificate shall be issued or, if issued, shall be valid for any purpose or entitle the holder to the benefit hereof until it has been Authenticated by or on behalf of the Subscription Receipt Agent, and such Authentication by the Subscription Receipt Agent on any Subscription Receipt Certificate or with respect to any Uncertificated Subscription Receipt shall be conclusive evidence as against the Corporation that the Subscription Receipt Certificate or Uncertificated Subscription Receipt has been duly issued hereunder and that the holder is entitled to the benefits hereof.
- (b) The Authentication of the Subscription Receipt Agent on Subscription Receipt Certificates or Uncertificated Subscription Receipts issued hereunder shall not be construed as a representation or warranty by the Subscription Receipt Agent as to the validity of this Agreement or the Subscription Receipt Certificates or Uncertificated Subscription Receipts (except the Authentication thereof) and the Subscription Receipt Agent shall in no respect be liable or answerable for the use made of the Subscription Receipt Certificates or Uncertificated Subscription Receipts or any of them or of the consideration therefor except as otherwise specified herein. The Authentication by or on behalf of the Subscription Receipt Agent on Subscription Receipt Certificates shall constitute a representation and warranty by the Subscription Receipt Agent that the said Subscription Receipt Certificates have been duly Authenticated by or on behalf of the Subscription Receipt Agent pursuant to the provisions of this Agreement.

## **2.11 Issue in Substitution for Subscription Receipt Certificates Lost, etc.**

- (a) In case any of the Subscription Receipt Certificates issued and Authenticated pursuant to this Agreement shall become mutilated or be lost, destroyed or stolen, the Corporation, subject to applicable laws and compliance with Section 2.11(b), shall issue and thereupon the Subscription Receipt Agent shall Authenticate and deliver a new Subscription Receipt Certificate of like tenor as the one mutilated, lost, destroyed or stolen in exchange for and in place of and upon cancellation of such mutilated Subscription Receipt Certificate, or in lieu of and in substitution for such lost, destroyed or stolen Subscription Receipt Certificate, and the substituted Subscription Receipt Certificate shall be in a form approved by the Subscription Receipt Agent and shall be entitled to the benefits hereof and shall rank equally in accordance with its terms with all other Subscription Receipt Certificates issued or to be issued hereunder.
- (b) The applicant for the issue of a new Subscription Receipt Certificate pursuant to this Section 2.11 shall bear the cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation and to the Subscription Receipt Agent such evidence of ownership and of the loss, destruction or theft of the Subscription Receipt Certificate so lost, destroyed or stolen as shall be satisfactory to the Corporation and to the Subscription Receipt Agent, each in their sole discretion, and such applicant may also be required to furnish an indemnity and surety bond or security in amount and form



satisfactory to the Corporation and the Subscription Receipt Agent, each in their sole discretion, and shall pay the reasonable charges of the Corporation and the Subscription Receipt Agent in connection therewith.

## **2.12 Exchange of Subscription Receipt Certificates**

- (a) Subscription Receipt Certificates may, upon compliance with the reasonable requirements of the Subscription Receipt Agent, be exchanged for another Subscription Receipt Certificate or Subscription Receipt Certificates entitling the holder thereof to, in the aggregate, the same number of Subscription Receipts as represented by the Subscription Receipt Certificates so exchanged.
- (b) Subscription Receipt Certificates may be surrendered for exchange only at the Designated Office of the Subscription Receipt Agent during regular business hours of the Subscription Receipt Agent on a Business Day.
- (c) Except as otherwise herein provided, the Subscription Receipt Agent may charge to the holder requesting an exchange a reasonable fee for each new Subscription Receipt Certificate issued in exchange for Subscription Receipt Certificate(s).

Payment of such fees and reimbursement of the Subscription Receipt Agent or the Corporation for any and all governmental or other charges required to be paid shall be made by such holder as a condition precedent to such exchange.

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## **2.13 Transfer and Registration of Subscription Receipts**

- (a) The Subscription Receipts may only be transferred on the register kept at the Designated Office of the Subscription Receipt Agent by the holder or its legal representatives or its attorney duly appointed by an instrument in writing: (i) in the case of a Subscription Receipt Certificate, surrendering to the Subscription Receipt Agent at the Designated Office the Subscription Receipt Certificates representing the Subscription Receipts to be transferred; and (ii) in the case of Uncertificated Subscription Receipts, in accordance with procedures prescribed by CDS under the Book-Based System. Upon surrender for registration of transfer of Subscription Receipts at the Designated Office of the Subscription Receipt Agent, the Corporation shall issue and thereupon the Subscription Receipt Agent shall Authenticate and deliver, in accordance with its Internal Procedures, a new Subscription Receipt Certificate and in the case of Uncertificated Subscription Receipts, the Subscription Receipt Agent will confirm the electronic deposit in accordance with procedures prescribed by CDS in the Book-Based System, in each case of like tenor in the name of the designated transferee. If less than all of the Subscription Receipts evidenced by the Subscription Receipt Certificate(s) so surrendered are transferred, the transferor shall be entitled to receive, in the same manner, a new Subscription Receipt Certificate registered in its name evidencing the Subscription Receipts not transferred. However, notwithstanding the foregoing, Subscription Receipts shall only be transferred upon:
  - (i) payment to the Subscription Receipt Agent of a reasonable fee for each new Subscription Receipt Certificate or Uncertificated Subscription Receipt issued upon such transfer, and reimbursement of the Subscription Receipt Agent or the Corporation, as applicable, for any and all governmental or other charges required to be paid in respect of such transfer;
  - (ii) with respect to transfers of Subscription Receipts represented by certificates bearing the legend set out in Section 2.16, compliance with such legend, and with the requirements set out in Section 2.16 for the removal of such legend, as the case may be; and
  - (iii) such reasonable requirements as the Subscription Receipt Agent may prescribe;

and all such transfers shall be duly noted in such register by the Subscription Receipt Agent. Upon compliance with such requirements, the Subscription Receipt Agent shall, within five Business Days, where

applicable, issue to the transferee a Subscription Receipt Certificate or Uncertificated Subscription Receipt representing the Subscription Receipts transferred.

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- (b) If the Subscription Receipt Certificate, Uncertificated Subscription Receipt or certificate representing Underlying Common Shares issued pursuant to the Subscription Receipts tendered for transfer bears a restrictive legend as set forth in Section 2.16 hereof:
  - (i) the transfer restrictions set forth in such legend shall be complied with; and
  - (ii) if required by securities legislation, the Subscription Receipt Certificate or Uncertificated Subscription Receipt issued to such transferee shall include the legend set forth in Section 2.16, and the requirement of Section 2.16 relating to legending Underlying Common Shares upon exercise of the Subscription Receipts shall also apply.
- (c) The Corporation and the Subscription Receipt Agent will deem and treat the registered owner of any Subscription Receipt as the beneficial owner thereof for all purposes and neither the Corporation nor the Subscription Receipt Agent shall be affected by any notice to the contrary.
- (d) The transfer register in respect of Subscription Receipts shall be closed at 5:00 p.m. (Toronto time) at the Designated Office, on the earlier to occur of the Transaction Closing Date and the Termination Date (subject to settlement). Trades settling after the Transaction Closing Date will be completed by the delivery of Underlying Common Shares.
- (e) The Subscription Receipt Agent will promptly advise the Corporation of any requested transfer of Subscription Receipts. The Corporation will be entitled, and may direct the Subscription Receipt Agent, to refuse to recognize any transfer, or enter the name of any transferee, of any Subscription Receipts on the registers referred to in this Article 2, if such transfer would constitute a violation of the securities laws of any jurisdiction or the rules, regulations or policies of any regulatory authority having jurisdiction.
- (f) Subject to the provisions of this Agreement and applicable law, a Receiptholder shall be entitled to the rights and privileges attaching to the Subscription Receipts. Either (a) the issue of Underlying Common Shares as provided in Section 3.4, or (b) the payment of the Subscription Price, Earned Interest and Deemed Interest, less applicable withholding taxes, as provided in Section 3.6, all in accordance with the terms and conditions herein contained, shall discharge all responsibilities of the Corporation and the Subscription Receipt Agent with respect to such Subscription Receipts and neither the Corporation nor the Subscription Receipt Agent shall be bound to inquire into the title of a Receiptholder.

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## **2.14 Global Subscription Receipts**

- (a) Subject to Section 2.19 hereof, the Subscription Receipts may be issued in the form of one or more Global Subscription Receipts, which will be registered in the name of and deposited with CDS or its nominee and held by, or on behalf of, CDS, as depositary of the Subscription Receipts for the participants of CDS, and any Global Subscription Receipts represented by Subscription Receipt Certificates shall bear the CDS legend included on the form of Subscription Receipt Certificate appended hereto as Schedule A.
- (b) Registration of ownership and transfers of Subscription Receipts represented by Global Subscription Receipts may be effected only through the Book-Based System.

- (c) Unless the Book-Based System is terminated or required to do so by applicable law, and except for any Subscription Receipts issued to U.S. Receiptholders that are not QIB Purchasers (in which case such U.S. Receiptholders may be issued individually certificated Subscription Receipts), owners of the beneficial interests in the Subscription Receipts represented by Global Subscription Receipts shall not be entitled to have Subscription Receipts registered in their names, shall not receive or be entitled to receive Subscription Receipt Certificates in definitive form and shall not be considered owners or holders thereof under this Agreement or any supplemental agreement except in circumstances where CDS resigns or is removed from its responsibility. Beneficial interests in the Global Subscription Receipts will be represented only through the Book-Based System. Transfers of Subscription Receipts between CDS participants shall occur in accordance with CDS' rules and procedures. Neither the Corporation nor the Subscription Receipt Agent shall have any responsibility or liability for any aspects of the records relating to or payments made by CDS, or its nominee, on account of the beneficial interests in the Subscription Receipts. Nothing herein shall prevent the owners of beneficial interests in the Subscription Receipts from voting such Subscription Receipts using duly executed proxies.
- (d) Subject to Section 2.14(a) above and Section 2.14(g) below, a Subscription Receipt Certificate that is not a Global Subscription Receipt may be surrendered at CDS for cancellation by the Subscription Receipt Agent and the registration of new beneficial interest in such Subscription Receipts may be represented by a Global Subscription Receipt, which shall be increased by the number of Subscription Receipts surrendered.
- (e) All references herein to actions by, notices given or payments made to Receiptholders shall, where Subscription Receipts are represented by Global Subscription Receipts held through CDS, refer to actions taken by, or notices given or payments made to, CDS upon instruction from the CDS participants in accordance with its rules and procedures. For the purposes of any provision hereof requiring or permitting actions with the consent of or at the direction of Receiptholders evidencing a specified percentage of the aggregate Subscription Receipts outstanding, such direction or consent may be given by Receiptholders acting through CDS and the CDS participants owning Subscription Receipts evidencing the requisite percentage of the Subscription Receipts. The rights of a Receiptholder whose Subscription Receipts are represented by Global Subscription Receipts held through CDS shall be exercised only through CDS and the CDS participants and shall be limited to those established by law and agreements between such holders and CDS and the CDS participants upon instructions from the CDS participants. Each of the Subscription Receipt Agent and the Corporation may deal with CDS for all purposes (including the making of payments) as the authorized representative of the respective Receiptholders and such dealing with CDS shall constitute satisfaction or performance, as applicable, of their respective obligations hereunder.

- (f) For so long as Subscription Receipts represented by Global Subscription Receipts are held through CDS, if any notice or other communication is required to be given to Receiptholders, the Subscription Receipt Agent will give such notices and communications to CDS.
- (g) If CDS resigns or is removed from its responsibility as depository, CDS shall surrender the Global Subscription Receipts to the Subscription Receipt Agent with instructions for registration of Subscription Receipts in the name and in the amount specified by CDS and the Corporation shall issue and the Subscription Receipt Agent shall Authenticate and deliver the aggregate number of Subscription Receipts then outstanding in the form of definitive Subscription Receipt Certificates representing such Subscription Receipts.
- (h) All Subscription Receipts issued electronically to CDS in uncertificated form through the uncertificated inventory system of CDS will be evidenced by a book position on the register of holders to be maintained by the Subscription Receipt Agent in accordance with Section 2.5.
- (i) Notwithstanding any provisions made in this Agreement, any acts that may be required to be done in connection with this Agreement may be altered due to the internal procedures and processes with respect to cut-off times of CDS. It is understood and agreed to by the parties hereto that the Subscription Receipt Agent shall have no responsibility in connection with any cut-off time imposed by CDS.

## 2.15 Escrowed Funds to be Placed in Escrow

Upon any issuance of Subscription Receipts, the Escrowed Funds in respect thereof shall be delivered by Cormark, on behalf of the Underwriters, and the Corporation (on behalf of certain Subscribers) to the Subscription Receipt Agent by wire transfers of funds into a segregated trust account as directed by the Subscription Receipt Agent to be held pursuant to the terms hereof. The Subscription Receipt Agent hereby agrees to hold the same as agent on behalf of the Receiptholders and the Corporation and to invest, disburse and deal with the same as provided herein.

## 2.16 Legend

Until such time as the same is no longer required under applicable requirements of Canadian securities laws, each Book-Based System customer confirmation or Subscription Receipt Certificate representing Subscription Receipts and all certificates or Book-Based System customer confirmations representing Underlying Common Shares (and each Subscription Receipt Certificate or Common Share certificate issued in exchange therefor or in substitution or transfer thereof) shall bear the following legend:

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**All certificates:** “Unless permitted under securities legislation, the holder of this security must not trade the security before ■” *[A date to be inserted, that is four months and a day after the distribution date.]*

**Common Share certificates:** “The securities represented by this certificate are listed on the Toronto Stock Exchange (“TSX”); however, the said securities cannot be traded through the facilities of TSX since they are not freely transferable, and consequently any certificate representing such securities is not “good delivery” in settlement of transactions on TSX.”

In addition, each Book-Based System customer confirmation or Subscription Receipt Certificate representing Subscription Receipts and all certificates or Book-Based customer confirmations representing Underlying Common Shares (and each Subscription Receipt Certificate or Common Share certificate issued in exchange therefor or in substitution or transfer thereof) issued to U.S. Receiptholders, except QIB Purchasers, shall bear the following additional legend:

**“THE SECURITIES REPRESENTED HEREBY [for Subscription Receipts, add: and the securities issuable upon conversion thereof] HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “U.S. SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF, BY ACQUIRING SUCH SECURITIES, AGREES FOR THE BENEFIT OF THE ISSUER THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE ISSUER, (B) OUTSIDE THE UNITED STATES IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT, AND IN COMPLIANCE WITH APPLICABLE LOCAL LAWS AND REGULATIONS, (C) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE U.S. SECURITIES ACT, (D) IN COMPLIANCE WITH THE EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER, IF AVAILABLE, AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS OR (E) IN ANY OTHER TRANSACTION THAT DOES NOT REQUIRE REGISTRATION UNDER THE U.S. SECURITIES ACT OR ANY APPLICABLE STATE SECURITIES LAWS AND, IN THE CASE OF (D) AND (E) ABOVE, IF REQUIRED OR OTHERWISE REQUESTED, AFTER THE SELLER FURNISHES TO THE ISSUER AN OPINION OF COUNSEL OF RECOGNIZED STANDING IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE ISSUER TO SUCH EFFECT. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE “GOOD DELIVERY” IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA.”;**

*provided that*, if any of the Subscription Receipts or the Underlying Common Shares are being sold in accordance with Rule 904 of Regulation S under the 1933 Act, the legend may be removed by providing a declaration to the Subscription Receipt Agent or the registrar and transfer agent, as applicable, in the form attached as **Appendix I** hereto (or such other form as the Corporation may prescribe from time to time), together with any other evidence required by the Corporation, which may include an opinion of counsel of recognized standing reasonably satisfactory to the Corporation, to the effect that the legend is no longer required under applicable requirements of the 1933 Act; *provided further*, that if any of the Subscription Receipts or the Underlying Common Shares are being sold pursuant to Rule 144 under the 1933 Act, if available, the legend may be removed by delivering to the Corporation and the applicable registrar and transfer agent an opinion of counsel of recognized standing in form and substance reasonably satisfactory to the Corporation, to the effect that the legend is no longer required under applicable requirements of the 1933 Act; *notwithstanding the foregoing*, the Subscription Receipt Agent and any transfer agent of the Corporation may impose additional requirements for the removal of legends from such securities sold in compliance with Rule 904 of Regulation S under the 1933 Act in the future.

## **2.17 Listing and Exchange Notifications**

- (a) The Corporation confirms that application has been made for the listing for trading on the TSX and the NYSE American and that the conditional approval or authorization, as applicable, of such stock exchange for the listing of the Underlying Common Shares, has been obtained. The Corporation shall use its reasonable efforts to satisfy all of the conditions of such conditional approval as may be required for the purpose of securing such listing. For the avoidance of doubt, no application has or will be made by the Corporation for the listing for trading on the TSX or the NYSE American of the Subscription Receipts.
- (b) Notwithstanding any provision of this Agreement, in order to comply with the policies of the TSX, the Corporation agrees to the following:
  - (i) when the Corporation reasonably expects the Transaction to close, the Corporation will, without delay, provide the TSX with written notice to that effect specifying the expected Transaction Closing Date; and
  - (ii) in the event of a Termination Event, the Corporation will, on the Termination Date, give notice to the TSX that the Receiptholders on such Termination Date will be paid the amounts set forth in Section 3.6 of this Agreement on the second Business Day following the Termination Date.

## **2.18 Cancellation of Surrendered Subscription Receipt Certificates**

All Subscription Receipt Certificates surrendered to the Subscription Receipt Agent pursuant to Sections 2.11, 2.12, 2.13, 3.4, 3.6 and 6.1 shall be returned to or received by the Subscription Receipt Agent for cancellation and, if required by the Corporation, the Subscription Receipt Agent shall furnish the Corporation with a cancellation certificate identifying the Subscription Receipt Certificates so cancelled and the number of Subscription Receipts evidenced thereby.

## **2.19 U.S. Subscription Receipts**

The parties hereto hereby acknowledge and agree that: (i) neither the Subscription Receipts nor the Underlying Common Shares have been registered under the 1933 Act or the securities laws of any state of the United States; (ii) the Subscription Receipts originally sold to U.S. Receiptholders and the Underlying Common Shares issuable in exchange for such Subscription Receipts (the “**U.S. Offered Securities**”) are “restricted securities” within the meaning of Rule 144 under the 1933 Act and, accordingly, may not be offered, resold, pledged or otherwise transferred, directly or indirectly, except, in the case of U.S. Receiptholders who are not QIB Purchasers: (A) to the

Corporation; (B) outside the United States in accordance with Rule 904 of Regulation S under the 1933 Act and in compliance with local laws and regulations; (C) pursuant to Rule 144 under the 1933 Act, if available; or (D) pursuant to a registration statement that has become effective under the 1933 Act, and in the case of QIB Purchasers, except as noted in the U.S. QIB Letter; and (iii) notwithstanding any other provision of this Agreement, any U.S. Offered Securities (and any related Underlying Common Shares) may, at the option of the Corporation, be delivered in the form of definitive Subscription Receipt Certificates that are not Global Subscription Receipts (or a definitive share certificate representing the related Underlying Common Shares, where applicable) registered in the name of the holder of such U.S. Offered Securities and reflecting any legends required by applicable securities laws (subject to the next sentence). The parties further acknowledge that the purchasers of the U.S. Offered Securities that have delivered a U.S. QIB Letter in connection with the Offering shall not be required to bear a U.S. restrictive legend thereon on the basis of the covenants, representations and warranties of such purchasers as set forth in the applicable U.S. QIB Letters.

### **ARTICLE 3**

#### **ISSUANCE OF UNDERLYING COMMON SHARES OR REFUND OF SUBSCRIPTION PRICE**

##### **3.1 Notice of Transaction**

If the Escrow Release Conditions have been satisfied prior to the Transaction Deadline, the Corporation shall:

- (a) forthwith execute and deliver a notice to the Subscription Receipt Agent and Cormark, substantially in the form attached as Schedule B (the “**Release Notice**”), confirming that the Escrow Release Conditions have been satisfied and the Transaction will be completed in accordance with the Acquisition Agreement promptly following the release of the Escrowed Funds in the manner directed thereunder and specifying the amounts to be released pursuant to Section 3.2 and Section 3.4 and to whom such amounts should be released; and
- (b) no later than the Transaction Closing Date, issue and deliver to the Transfer Agent and the Subscription Receipt Agent a direction to issue to the Receiptholders one Underlying Common Share for each Subscription Receipt then-outstanding (subject to any applicable adjustments).

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##### **3.2 Release of Funds from Escrow**

If the Escrowed Funds are deposited with the Subscription Receipt Agent in accordance with Section 2.15 and if the Corporation has delivered the Release Notice in accordance with Section 3.1(a) at least two (2) Business Days prior to a required release:

- (a) the Corporation shall be entitled to receive from the Subscription Receipt Agent the Escrowed Funds less any amount paid by the Subscription Receipt Agent pursuant to Sections 3.2(b) and 3.4(a);
- (b) the Corporation shall be deemed to have instructed the Subscription Receipt Agent to pay from the Escrowed Funds to Cormark, on behalf of the Underwriters, the Balance of the Underwriters’ Commission;
- (c) the Subscription Receipt Agent shall deliver, or cause to be delivered, the funds referred to in Section 3.2(a) to or at the direction of the Corporation and the funds referred to in Section 3.2(b) to Cormark, on behalf of the Underwriters, all as provided in the Release Notice referred to in Section 3.1(a), on the Transaction Closing Date.

##### **3.3 Delivery of Underlying Common Shares**

If the Corporation has delivered the Release Notice in accordance with Section 3.1(a) before the Transaction Deadline:



- (a) the Subscription Receipt Agent shall deliver, or cause to be delivered, the Underlying Common Shares referred to in Section 3.1(b) to Receiptholders as soon as practicable following the Transaction Closing; and
- (b) the Corporation shall promptly thereafter issue a news release disclosing that the Transaction Closing has occurred and that the Underlying Common Shares have been issued.

### **3.4 Issue of Underlying Common Shares and Payment Thereon**

- (a) If the Corporation has delivered the Release Notice in accordance with Section 3.1(a) before the Transaction Deadline, the Underlying Common Shares shall be, and shall be deemed to be, automatically issued to the Receiptholders notwithstanding that a Book-Based System customer confirmation in a holder's account may not yet have been so entered, and each Receiptholder shall automatically receive, without any further action required by such Receiptholder and without the payment of any additional consideration, one Underlying Common Share for each Subscription Receipt held by such Receiptholder (subject to any applicable adjustments).
- (b) Upon the issuance or deemed issuance of the Underlying Common Shares, the Subscription Receipt Agent shall cause the Transfer Agent to cause to be entered and issued, as the case may be, to the Person or Persons in whose name or names the Underlying Common Shares have been issued, and Cormark will input a Book-Based System customer confirmation.

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- (c) Effective immediately after the Underlying Common Shares have been, or have been deemed to be, issued as contemplated by this Section 3.4 and Cormark has caused a Book-Based System customer confirmation to be entered as provided in Section 3.4(b), the Subscription Receipts relating thereto shall be void and of no value or effect.
- (d) The Subscription Receipt Agent shall not be responsible for calculating the amounts owing under Section 3.2, but shall be entitled to rely absolutely on the written direction of the Corporation specifying the payments to be made pursuant to Section 3.2.

### **3.5 Fractions**

Notwithstanding anything herein contained, the Corporation shall not be required, upon the exchange or deemed exchange of a Subscription Receipt, to issue fractions of Common Shares. In lieu of fractional Common Shares, there shall be paid to the holder an amount in lawful money of Canada equal to the then current market value of such fractional interest computed on the basis of the Current Market Price immediately prior to the Transaction Closing Date.

### **3.6 Payment on Termination**

- (a) If a Termination Event occurs, the Corporation shall forthwith notify Cormark, on behalf of the Underwriters, and the Subscription Receipt Agent and shall promptly issue a news release setting forth the Termination Date.
- (b) If a Termination Event occurs, the rights evidenced by each Subscription Receipt shall be automatically terminated and cancelled and each Receiptholder shall only be entitled to receive, commencing on the second Business Day following the Termination Date, but shall receive no earlier than at the Termination Payment Time, a cheque or wire transfer, in the aggregate amount of: (i) the Subscription Price in respect of each of such holder's Subscription Receipts; and (ii) such holder's *pro rata* share of the Earned Interest and Deemed Interest, less applicable withholding taxes, if any, pursuant to a written direction provided by the Corporation to the Subscription Receipt Agent no later than the Termination Date.
- (c) If a Termination Event occurs, the Corporation shall, as soon as practicable, and in any event no later than two (2) Business Days prior to the Termination Payment Time, pay and deliver to the Subscription



Receipt Agent: (i) an amount equal to the sum of 50% of the Underwriters' Commission and the full amount of the Underwriters' Expenses; and (ii) an amount equal to the Deemed Interest, necessary to enable the Subscription Receipt Agent to effect the payment in full to Receiptholders of the amounts due to them under Section 3.6(b).

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- (d) The amount paid to each Receiptholder under this Section 3.6 shall be satisfied by the Escrowed Funds and the amount paid pursuant to Section 3.6(c); any amount not satisfied by the Escrowed Funds and the amount paid pursuant to Section 3.6(c) shall be satisfied by the Corporation (and not the Underwriters) who shall deposit an amount equal to such shortfall in the Escrow Account prior to the time that the amount is payable to the Receiptholders under Section 3.6. The Subscription Receipt Agent shall only make payments under this Section 3.6 to the extent that the Escrowed Funds, the amount paid pursuant to Section 3.6(c) and the monies which have been deposited in the Escrow Account pursuant to Section 3.6 are sufficient.
- (e) If the Corporation has not delivered the Release Notice in accordance with Section 3.1(a) before the Transaction Deadline, the Subscription Receipt registers shall be closed at 5:00 p.m. (Toronto time) on the Termination Date (subject to settlement in accordance with this Section 3.6).
- (f) The obligation to make the payment of the amount specified in Section 3.6(b) shall be satisfied by mailing payment by cheque payable to the registered Receiptholder at its registered address or by making a wire transfer for the account of such beneficial holder through CDS or to a holder of definitive Subscription Receipt Certificates in accordance with written directions of the Corporation, as applicable.
- (g) Upon the mailing or delivery of any cheque or the making of any wire transfer as provided in Section 3.6(f) (and provided any such cheque has been honoured for payment, if presented for payment within six months of the date thereof), all rights evidenced by the Subscription Receipts relating thereto shall be satisfied and the Subscription Receipts relating thereto shall be void and of no value or effect.

## **ARTICLE 4 ADJUSTMENT**

### **4.1 Definitions**

In this Article 4, references to “record date” refer to the particular time on such relevant date stipulated for such event and otherwise refers to 5:00 p.m. (Toronto time) on such date.

### **4.2 Adjustment**

The rights attached to the Subscription Receipts are subject to adjustment from time to time in the events and in the manner provided as follows:

- (a) Share Reorganization. If at any time after the issuance of the Subscription Receipts and before the Issue Time, the Corporation:
  - (i) subdivides or changes its outstanding Common Shares into a greater number of Common Shares,

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- (ii) consolidates or changes its outstanding Common Shares into a lesser number of Common Shares, or
- (iii) issues to all or substantially all the holders of Common Shares by way of a stock distribution, stock dividend or otherwise, Common Shares,

(any of such events in Sections 4.2(a)(i), 4.2(a)(ii) and 4.2(a)(iii) being called a “**Share Reorganization**”), then the number of Underlying Common Shares with respect to each Subscription Receipt will be adjusted as of the record date at which the holders of the Common Shares are determined for the purpose of the Share Reorganization by multiplying the number of Underlying Common Shares theretofore obtainable immediately prior to such record date by a fraction, the numerator of which will be the number of Common Shares outstanding on the record date after giving effect to the Share Reorganization and the denominator of which will be the number of Common Shares outstanding on the record date before giving effect to the Share Reorganization.

- (b) Capital Reorganization. If at any time after the issuance of the Subscription Receipts and before the Issue Time there is a reclassification of Common Shares or a change of the Common Shares (other than a Share Reorganization) into other securities or property, or a consolidation, amalgamation, arrangement or merger of the Corporation with or into any corporation or other entity (other than a consolidation, amalgamation, arrangement or merger (including a business combination or exchange of like effect) which does not result in any reclassification of the outstanding Common Shares or a change of the Common Shares into other securities or property), or a transfer of the undertaking or assets of the Corporation as an entirety or substantially as an entirety to another entity, or a record date for any of the foregoing events occurs (any of such events being herein called a “**Capital Reorganization**”), any Receiptholder who is entitled to receive Underlying Common Shares after the record date or effective date of such Capital Reorganization will be entitled to receive, and will accept for the same aggregate consideration, in lieu of the number of Underlying Common Shares to which such Receiptholder was theretofore entitled, the aggregate number of securities or property which such Receiptholder would have been entitled to receive as a result of such Capital Reorganization if, on the effective date of such Capital Reorganization, the Receiptholder had been the registered holder of the number of Underlying Common Shares to which such Receiptholder was then entitled with respect to the Subscription Receipts, provided, however, that no such Capital Reorganization will be carried into effect unless all necessary steps have been taken to so entitle the Receiptholders. If determined appropriate by the Corporation, acting reasonably, appropriate adjustments will be made as a result of any such Capital Reorganization in the application of the provisions set forth in this Article 4 with respect to the rights and interests thereafter of the Receiptholders to the extent that the provisions set forth in this Article 4 will thereafter correspondingly be made applicable as nearly as may be reasonable in relation to any securities or property thereafter deliverable upon the exchange of any Subscription Receipt. Any such adjustments will be made by and set forth in terms and conditions supplemental hereto approved by the Corporation, acting reasonably, and, absent manifest error, will for all purposes be conclusively deemed to be the appropriate adjustment.

- (c) Special Distributions. If at any time after the issuance of the Subscription Receipts and prior to the Issue Time, the Corporation issues or distributes to the holders of all or substantially all of the outstanding Common Shares, securities of the Corporation, including rights, options or warrants to acquire Common Shares or securities convertible into or exchangeable for Common Shares or property or assets, including evidences of indebtedness, other than dividends or distributions paid in the ordinary course and other than as a result of a Share Reorganization or a Capital Reorganization, or a record date for any of the foregoing events occurs, there will be an appropriate adjustment in the number of Underlying Common Shares to be issued at the Issue Time in accordance with this Section 4.2 or, at the option of the Corporation, such securities, property or assets may be issued to the Subscription Receipt Agent and delivered to the Receiptholders and, for the same aggregate consideration payable, if any, in addition to the number of Underlying Common Shares to which such Receiptholder was theretofore entitled, the Receiptholder will be entitled to receive such securities, property or assets as if, on the record date at which holders of Common Shares are determined for the purpose thereof, such Receiptholder had been the registered holder of the number of Underlying Common Shares to which the Receiptholder was then entitled. Any such transaction will be subject to approval of the TSX, if required.

- (d) The adjustments provided for in this Section 4.2 are cumulative and shall apply to successive subdivisions, consolidations, changes, distributions, issues or other events resulting in any adjustments under the provisions of this Section 4.2.
- (e) In case the Corporation, after the date hereof, shall take any action affecting the Common Shares, other than the actions described in this Section 4.2, which, in the reasonable opinion of the directors of the Corporation, would materially affect the rights of the Receiptholders and/or the rights attached to the Subscription Receipts, then the number of Underlying Common Shares which are to be received pursuant to the Subscription Receipts shall be adjusted in such manner, if any, and at such time as the directors of the Corporation may, in their discretion, reasonably determine to be equitable to the Receiptholders in such circumstances. Any discretion of the Corporation to adjust the number of Underlying Common Shares which are to be received pursuant to the Subscription Receipts shall be subject to the rules of the TSX.
- (f) The Corporation shall from time to time immediately after the occurrence of any event which requires an adjustment or readjustment as provided in this Article 4, deliver a certificate of the Corporation to the Subscription Receipt Agent and Cormark specifying the nature of the event requiring the same and the amount of the adjustment necessitated thereby and setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based, which certificate shall be supported by a certificate of the Corporation's auditors verifying such calculation. The Subscription Receipt Agent shall rely, and shall be protected in so doing, upon the certificate of the Corporation or of the Corporation's auditor and any other document filed by the Corporation pursuant to this Article 4 for all purposes.

## **ARTICLE 5**

### **INVESTMENT OF ESCROWED FUNDS AND PAYMENT OF INTEREST**

#### **5.1 Investment of Escrowed Funds**

- (a) Until released in accordance with this Agreement, the Escrowed Funds shall be recorded in the segregated internal trust account records of the Subscription Receipt Agent, which account record shall be designated in the name of the Corporation, and the Escrowed Funds shall be deposited in one or more trust accounts to be maintained by the Subscription Receipt Agent in the name of the Subscription Receipt Agent at one or more banks listed in Schedule "C" to this Agreement (each such bank, an "Approved Bank"). Of the amount of interest, if any, earned by the Subscription Receipt Agent on such deposited monies, the Subscription Receipt Agent shall credit to the Escrow Account an amount that is equal to 0.25 percent less than the target overnight rate of interest announced from time to time by the Bank of Canada, converted to a daily rate, and applied to the Escrowed Funds, calculated daily. Such calculated amount shall be credited by the Subscription Receipt Agent to the Escrow Account within three (3) Business Days of each month-end. The Subscription Receipt Agent may retain the remaining amount of interest, if any, that was earned on such deposited monies for its own use and benefit. Notwithstanding the foregoing, (i) in no event will the Subscription Receipt Agent be obligated to pay or credit any amount on account of interest that exceeds the amount of interest earned from the Approved Bank(s) on the Escrowed Funds, as determined by the Subscription Receipt Agent; and (ii) if an account at any Approved Bank into which the Escrowed Funds or any part thereof has been deposited bears a negative interest rate or there is otherwise any fee or other charge assessed on the account or in respect of the amount of cash on deposit, the cost, as determined by the Subscription Receipt Agent, shall be deducted from the Escrowed Funds.
- (b) All amounts held by the Subscription Receipt Agent pursuant to this Agreement shall be held by the Subscription Receipt Agent for the Corporation and the delivery of the Escrowed Funds to the Subscription Receipt Agent shall not give rise to a debtor-creditor or other similar relationship. The amounts held by the Subscription Receipt Agent pursuant to this Agreement are at the sole risk of the Corporation and, without limiting the generality of the foregoing, the Subscription Receipt Agent shall have no responsibility or liability for any diminution of the Escrowed Funds which may result from any deposit made with an Approved Bank pursuant to Section 5.1(a), including any losses resulting from a default by the Approved Bank or other credit losses (whether or not resulting from such a default) and any credit or other losses on any

deposit liquidated or sold prior to maturity. The parties hereto acknowledge and agree that the Subscription Receipt Agent will have acted prudently in depositing the Escrowed Funds at any Approved Bank, and that the Subscription Receipt Agent is not required to make any further inquiries in respect of any such bank.

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- (c) At any time and from time to time, the Corporation shall be entitled to direct the Subscription Receipt Agent by written notice (a) not to deposit any new amounts in any Approved Bank specified in the notice and/or (b) to withdraw all or any of the Escrowed Funds that may then be deposited with any Approved Bank specified in the notice and re-deposit such amount with one or more of such other Approved Banks as specified in the notice. With respect to any withdrawal notice, the Subscription Receipt Agent will endeavor to withdraw such amount specified in the notice as soon as reasonably practicable and the parties hereto acknowledge and agree that such specified amount remains at the sole risk of the Corporation prior to and after such withdrawal.
- (d) For tax reporting purposes, all Earned Interest or other taxable income earned from the investment of the Escrowed Funds in any tax year shall (i) to the extent such interest is distributed by the Subscription Receipt Agent to any person or entity pursuant to the terms of this Agreement during such tax year, be allocated to the person or entity, or (ii) otherwise be allocated to the Corporation in the taxation year that it was earned, notwithstanding that no such amount has been distributed. The Receiptholders, the Underwriters and the Corporation agree to provide the Subscription Receipt Agent with their certified tax identification numbers and others forms, documents and information that the Subscription Receipt Agent may request in order to fulfill any tax reporting function.

## **5.2 Segregation of Escrowed Funds**

The Escrowed Funds received by the Subscription Receipt Agent shall be received as agent for, and shall be segregated in the internal trust account records of the Subscription Receipt Agent.

## **5.3 Third Party Interest**

The Corporation hereby represents to the Subscription Receipt Agent that any account to be opened by, or interest to be held by, the Subscription Receipt Agent, in connection with this Agreement, for or to the credit of the Corporation, is not intended to be used by or on behalf of any third party.

# **ARTICLE 6 RIGHTS AND COVENANTS OF THE CORPORATION**

## **6.1 Optional Purchases by the Corporation**

Subject to applicable laws and stock exchange rules, the Corporation may, from time to time, purchase by private contract or otherwise, for cancellation, any of the Subscription Receipts.

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## **6.2 General Covenants**

- (a) The Corporation covenants with the Subscription Receipt Agent and Cormark, on behalf of the Underwriters, that so long as any Subscription Receipts remain outstanding:
  - (i) it will use its best efforts to maintain its corporate existence, carry on and conduct its business, and that of its material subsidiaries, in a proper, efficient and business-like manner and keep or cause to be kept proper books of account in accordance with generally accepted accounting principles;

- (ii) it will make all requisite filings under applicable Canadian securities legislation including those necessary to remain a reporting issuer (or the equivalent) not in default in each of the provinces and territories of Canada in which it is currently a reporting issuer (or the equivalent);
  - (iii) it will promptly announce by news release the Transaction Closing Date or the Termination Date, as the case may be, in accordance with the provisions hereof;
  - (iv) it will promptly perform and carry out all of the acts or things to be done by it as provided in this Agreement;
  - (v) it will reserve for issuance a sufficient number of Common Shares for the purpose of enabling it to satisfy its obligations to issue Underlying Common Shares pursuant to the Subscription Receipts;
  - (vi) it will cause the Underlying Common Shares to be duly issued and delivered in accordance with the Subscription Receipts and the terms hereof and such Underlying Common Shares will be issued as fully paid and non-assessable shares of the Corporation; and
  - (vii) it will use its best efforts to ensure that the Underlying Common Shares are listed and posted for trading on the TSX and the NYSE American by and after the Issue Time.
- (b) The Corporation further covenants with Cormark, on behalf of the Underwriters, that, following the execution of this Agreement, the Corporation shall obtain the prior written approval of Cormark, such approval not to be unreasonably withheld, conditioned or delayed, in respect of any proposed amendment or supplement to the Acquisition Agreement which would constitute a material change to the Corporation and which would require public disclosure thereof.

### 6.3 Subscription Receipt Agent's Remuneration, Expenses and Indemnification

- (a) The Corporation covenants that it will pay to the Subscription Receipt Agent, from time to time, reasonable remuneration for its services hereunder and will pay or reimburse the Subscription Receipt Agent upon its request for all reasonable expenses and disbursements incurred or made by the Subscription Receipt Agent in the administration or execution of this Agreement (including the reasonable compensation and disbursements of its counsel and all other advisers and assistants not regularly in its employ) both before any default hereunder and thereafter until all duties of the Subscription Receipt Agent hereunder shall be finally and fully performed, except any such expense, disbursement or advance as may arise out of or result from the Subscription Receipt Agent's negligence, willful misconduct or bad faith. Any amount owing hereunder and remaining unpaid after 30 days from the invoice date will bear interest at the then current rate charged by the Subscription Receipt Agent against unpaid invoices and shall be payable on demand. This section shall survive the resignation of the Subscription Receipt Agent and/or the termination of this Agreement.
- (b) The Corporation hereby indemnifies and saves harmless the Subscription Receipt Agent and its affiliates, their successors and assigns, and each of their officers, directors, employees and agents (the "**Indemnified Parties**") from and against any and all proceedings, liabilities, damages, claims, actions, demands, costs or expenses (including expert consultant and legal fees and disbursements on a solicitor-client basis) whatsoever arising in connection with this Agreement including, without limitation, those arising out of or related to actions taken or omitted to be taken by the Indemnified Parties and expenses incurred in connection with the enforcement of this indemnity, which the Indemnified Parties, or any of them, may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of the Subscription Receipt Agent's duties, and including any services that the Subscription Receipt Agent may provide in connection with or in any way relating to this Agreement, save only in the event of the negligence, willful misconduct or bad faith of the Subscription Receipt Agent and including any action or liability brought against or incurred by the Indemnified Parties in relation to or arising out of any breach

by the Corporation. Notwithstanding any other provision hereof, the Corporation agrees that its liability hereunder shall be absolute and unconditional regardless of the correctness of any representations of any third parties and regardless of any liability of third parties to the Indemnified Parties and shall accrue and become enforceable without prior demand or any other precedent action or proceeding. Notwithstanding any other provision hereof, this indemnification shall survive the termination or the discharge of this Agreement or the resignation or removal of the Subscription Receipt Agent.

#### **6.4 Performance of Covenants by Subscription Receipt Agent**

If the Corporation shall fail to perform any of its covenants contained in this Agreement, the Subscription Receipt Agent may notify the Receiptholders and Cormark, on behalf of the Underwriters, of such failure on the part of the Corporation or may itself perform any of the said covenants capable of being performed by it, but shall be under no obligation to perform said covenants or to notify the Receiptholders or Cormark of such performance by it. All sums expended or advanced by the Subscription Receipt Agent in so doing shall be repayable as provided in Section 6.3. No such performance, expenditure or advance by the Subscription Receipt Agent shall relieve the Corporation of any default hereunder or of its continuing obligations under the covenants contained herein.

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#### **6.5 Accounting**

The Subscription Receipt Agent shall maintain accurate books, records and accounts of the transactions effected or controlled by the Subscription Receipt Agent hereunder and the receipt, investment, reinvestment and disbursement of the Escrowed Funds, and shall provide to the Corporation and Cormark records and statements thereof periodically upon written request. The Corporation shall have the right to audit any such books, records, accounts and statements from time to time.

#### **6.6 Payments by Subscription Receipt Agent**

In the event that any funds to be disbursed by the Subscription Receipt Agent in accordance herewith are received by the Subscription Receipt Agent in the form of an uncertified cheque or cheques, the Subscription Receipt Agent shall be entitled to delay the time for disbursement of such funds hereunder until such uncertified cheque or cheques have cleared in the ordinary course of the financial institution upon which the same are drawn. The Subscription Receipt Agent will disburse monies according to this Agreement only to the extent that monies have been deposited with it.

#### **6.7 Regulatory Matters**

The Corporation shall file all such documents, notices and certificates and take such steps and do such things as may be necessary under applicable securities laws and stock exchange requirements, including but not limited to those relating to shareholder approvals, to permit the issuance of the Underlying Common Shares in the circumstances contemplated by Section 3.4 such that: (i) such issuance will comply with, or will be exempt from, the prospectus requirement of applicable securities laws in each of the provinces and territories of Canada; and (ii) such Underlying Common Shares will, as of the date of their issuance, be listed on the TSX and the NYSE American (subject, as applicable, to any trading restrictions as provided in Section 2.16).

#### **6.8 Anti-Money Laundering & Privacy**

The Subscription Receipt Agent shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Subscription Receipt Agent, in its sole judgement, acting reasonably, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist or economic sanctions legislation, regulation or guideline. Further, should the Subscription Receipt Agent, in its sole judgement, acting reasonably, determine at any time that its acting under this Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist or economic sanctions legislation, regulation or guideline, then it shall have the right to resign on 10 days' prior written notice sent to all parties provided that: (i) the Subscription Receipt Agent's written notice shall describe the circumstances of such



non-compliance; and (ii) if such circumstances are rectified to the Subscription Receipt Agent's satisfaction within such 10 day period, then such resignation shall not be effective.

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The parties acknowledge that the Subscription Receipt Agent may, in the course of providing services hereunder, collect or receive financial and other personal information about such parties and/or their representatives, as individuals, or about other individuals related to the subject matter hereof, and use such information for the following purposes:

- (a) to provide the services required under this Agreement and other services that may be requested from time to time;
- (b) to help the Subscription Receipt Agent manage its servicing relationships with such individuals;
- (c) to meet the Subscription Receipt Agent's legal and regulatory requirements; and
- (d) if Social Insurance Numbers are collected by the Subscription Receipt Agent, to perform tax reporting and to assist in verification of an individual's identity for security purposes.

Each party acknowledges and agrees that the Subscription Receipt Agent may receive, collect, use and disclose personal information provided to it or acquired by it in the course of this Agreement for the purposes described above and, generally, in the manner and on the terms described in its privacy code, which the Subscription Receipt Agent shall make available on its website ([www.computershare.com](http://www.computershare.com)) or upon request, including revisions thereto.

Further, each party agrees that it shall not provide or cause to be provided to the Subscription Receipt Agent any personal information relating to an individual who is not a party to this Agreement unless that party has assured itself that such individual understands and has consented to the aforementioned uses and disclosures. The Subscription Receipt Agent may transfer personal information to other companies in or outside of Canada that provide data processing and storage or other support in order to facilitate the services it provides.

## **ARTICLE 7 ENFORCEMENT**

### **7.1 Suits by Receiptholders**

Subject to the powers of Receiptholders exercisable by special resolutions, all or any of the rights conferred upon any Receiptholder by any of the terms of the Subscription Receipt Certificates or this Agreement may be enforced by the Receiptholder by appropriate proceedings but without prejudice to the right which is hereby conferred upon the Subscription Receipt Agent to proceed in its own name to enforce each and all of the provisions contained herein for the benefit of the Receiptholders.

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### **7.2 Immunity of Shareholders, etc.**

The Subscription Receipt Agent and, by acceptance of the Subscription Receipt Certificates or Uncertificated Subscription Receipts and as part of the consideration for the issue of the Subscription Receipts, the Receiptholders (including for purposes hereof any owner of beneficial interests in the Subscription Receipts) hereby waive and release any right, cause of action or remedy now or hereafter existing in any jurisdiction against any incorporator or any past, present or future shareholder, director, officer, employee or agent of the Corporation or any successor entity for the issue of the Underlying Common Shares pursuant to any Subscription Receipt or any covenant, agreement, representation or warranty by the Corporation contained herein or in the Subscription Receipt Certificate(s).



### **7.3 Limitation of Liability**

The obligations hereunder are not personally binding upon, nor shall resort hereunder be had to, the private property of any past, present or future directors or shareholders of the Corporation or any successor entity or any of the past, present or future officers, employees or agents of the Corporation or any successor entity, but only the property of the Corporation or any successor entity shall be bound in respect hereof.

## **ARTICLE 8 MEETINGS OF RECEIPHOLDERS**

### **8.1 Right to Convene Meetings**

The Subscription Receipt Agent may, at any time and from time to time, and shall on receipt of a written request of the Corporation or of a Receiptholders' Request and upon being funded and indemnified to its reasonable satisfaction by the Corporation or by the Receiptholders signing such Receiptholders' Request, as the case may be, against the cost which may be incurred in connection with the calling and holding of such meeting, convene a meeting of the Receiptholders. In the event of the Subscription Receipt Agent failing to so convene a meeting within 10 days after receipt of such written request of the Corporation or such Receiptholders' Request and funding and indemnity given as aforesaid, the Corporation or such Receiptholders, as the case may be, may convene such meeting. Every such meeting shall be held in Toronto, Ontario, or at such other place as may be determined by the Subscription Receipt Agent and approved by the Corporation.

### **8.2 Notice**

At least 10 days' prior notice of any meeting of Receiptholders shall be given to the Receiptholders in the manner provided for in Section 11.2 and a copy of such notice shall be sent by mail to the Subscription Receipt Agent (unless the meeting has been called by the Subscription Receipt Agent) and to the Corporation (unless the meeting has been called by the Corporation). Such notice shall state the date (which shall be a Business Day) and time when, and the place where, the meeting is to be held, and shall state briefly the general nature of the business to be transacted thereat and shall contain such information as is reasonably necessary to enable the Receiptholders to make a reasoned decision on the matter, but it shall not be necessary for any such notice to set out the terms of any resolution to be proposed or any of the provisions of this Article 8.

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### **8.3 Chairperson**

An individual (who need not be a Receiptholder) designated in writing by the Subscription Receipt Agent shall be chairperson of the meeting and if no individual is so designated, or if the individual so designated is not present within 15 minutes from the time fixed for the holding of the meeting, the Receiptholders present in person or by proxy shall choose some individual present at the meeting to be chairperson.

### **8.4 Quorum**

Subject to the provisions of Section 8.11, at any meeting of the Receiptholders a quorum shall consist of at least one Receiptholder present in person or by proxy and holding, in aggregate, not less than 25% of the then-outstanding Subscription Receipts. If a quorum of the Receiptholders shall not be present within 30 minutes from the time fixed for holding of any such meeting, the meeting, if summoned by the Receiptholders or on a Receiptholders' Request, shall be dissolved; but in any other case the meeting shall be adjourned to the same day in the next week (unless such day is not a Business Day, in which case it shall be adjourned to the next following Business Day) at the same time and place and no notice of the adjournment need be given. Any business may be brought before or dealt with at an adjourned meeting which might have been dealt with at the original meeting in accordance with the notice calling the same. No business shall be transacted at any meeting unless a quorum be present at the commencement of such business. At the adjourned meeting, the Receiptholders present in person or by proxy shall form a quorum and

may transact the business for which the meeting was originally convened notwithstanding that they may not hold, in aggregate, at least 25% of the then-outstanding Subscription Receipts.

### **8.5 Power to Adjourn**

The chairperson of any meeting at which a quorum of the Receiptholders is present may, with the consent of the Receiptholders present, adjourn any such meeting and no notice of such adjournment need be given except such notice, if any, as the meeting may prescribe.

### **8.6 Show of Hands**

Every question submitted to a meeting shall be decided in the first place by a majority of the votes given on a show of hands except that votes on a special resolution shall be given in the manner hereinafter provided. At any such meeting, unless a poll is duly demanded as herein provided, a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact.

### **8.7 Poll and Voting**

On every special resolution, and on any other question submitted to a meeting and after a vote by show of hands when demanded by the chairperson or by one or more of the Receiptholders acting in person or by proxy and holding at least 5% of the Subscription Receipts then-outstanding, a poll shall be taken in such manner as the chairperson shall direct. Questions other than those required to be determined by special resolution shall be decided by a majority of the votes cast on the poll.

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On a show of hands, every Person who is present and entitled to vote, whether as a Receiptholder or as proxy for one or more absent Receiptholders, or both, shall have one vote. On a poll, each Receiptholder present in person or represented by a proxy duly appointed by instrument in writing shall be entitled to one vote in respect of each Underlying Common Share that such person is entitled to receive pursuant to the Subscription Receipt(s) then held or represented by such person. A proxy need not be a Receiptholder. In the case of joint holders, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others, but in case more than one of them shall be present in person or by proxy, they shall vote together in respect of Subscription Receipts of which they are joint registered holders. The chairperson of any meeting shall be entitled, both on a show of hands and on a poll, to vote in respect of the Subscription Receipts, if any, that are held or represented by the chairperson.

### **8.8 Regulations**

The Subscription Receipt Agent, or the Corporation with the approval of the Subscription Receipt Agent, may from time to time make and from time to time vary such regulations as it shall think fit for:

- (a) the setting of the record date for a meeting of Receiptholders for the purpose of determining Receiptholders entitled to receive notice of and vote at such meeting;
- (b) the issue of voting certificates by any bank, trust company or other depository satisfactory to the Subscription Receipt Agent stating that the Subscription Receipt Certificates specified therein have been deposited with it by a named Person and will remain on deposit until after the meeting, which voting certificate shall entitle the Persons named therein to be present and vote at any such meeting and at any adjournment thereof or to appoint a proxy or proxies to represent them and vote for them at any such meeting and at any adjournment thereof in the same manner and with the same effect as though the Persons so named in such voting certificates were the actual holders of the Subscription Receipt Certificates specified therein;
- (c) the deposit of voting certificates and instruments appointing proxies at such place and time as the Subscription Receipt Agent, the Corporation or the Receiptholders, convening the meeting, as the case may be, may in the notice convening the meeting direct;

- (d) the deposit of voting certificates and instruments appointing proxies at some approved place or places other than the place at which the meeting is to be held and enabling particulars of such instruments appointing proxies to be mailed, faxed or otherwise transmitted by electronic means before the meeting to the Corporation or to the Subscription Receipt Agent at the place where the same is to be held and for the voting of proxies so deposited as though the instruments themselves were produced at the meeting;

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- (e) the form of the instrument of proxy and the manner in which the instrument of proxy must be executed; and
- (f) generally for the calling of meetings of Receiptholders and the conduct of business thereat.

Any regulations so made shall be binding and effective and the votes given in accordance therewith shall be valid and shall be counted. Save as such regulations may provide, the only Persons who shall be recognized at any meeting as a Receiptholder, or be entitled to vote or be present at the meeting in respect thereof (subject to Section 8.9), shall be Receiptholders or their counsel, or duly appointed proxies of Receiptholders.

### **8.9 Corporation, Cormark and Subscription Receipt Agent may be Represented**

The Corporation, Cormark and the Subscription Receipt Agent, by their respective authorized agents, and the counsel for the Corporation and for the Subscription Receipt Agent may attend any meeting of the Receiptholders, but shall have no vote at such meeting unless in their capacity as Receiptholder or a proxy holder.

### **8.10 Powers Exercisable by Special Resolution**

In addition to all other powers conferred upon them by any other provisions of this Agreement or by law, the Receiptholders at a meeting shall, subject to the provisions of Section 8.11, have the power, subject to all applicable regulatory and exchange approvals, exercisable from time to time by special resolution:

- (a) to agree to any modification, abrogation, alteration, compromise or arrangement of the rights of Receiptholders or the Subscription Receipt Agent (subject to the consent of the Subscription Receipt Agent) against the Corporation or against its undertaking, property and assets or any part thereof whether such rights arise under this Agreement, the Subscription Receipt Certificates or otherwise;
- (b) to amend, alter or repeal any special resolution previously passed or sanctioned by the Receiptholders;
- (c) to direct or authorize the Subscription Receipt Agent to enforce any of the covenants on the part of the Corporation contained in this Agreement or the Subscription Receipt Certificates or to enforce any of the rights of the Receiptholders in any manner specified in such special resolution or to refrain from enforcing any such covenant or right;
- (d) to waive, and to direct the Subscription Receipt Agent to waive, any default on the part of the Corporation in complying with any provisions of this Agreement or the Subscription Receipt Certificates either unconditionally or upon any conditions specified in such special resolution;

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- (e) to restrain any Receiptholder from taking or instituting any suit, action or proceeding against the Corporation for the enforcement of any of the covenants on the part of the Corporation in this Agreement or the Subscription Receipt Certificates or to enforce any of the rights of the Receiptholders;

- (f) to direct any Receiptholder who, as such, has brought any suit, action or proceeding to stay or to discontinue or otherwise to deal with the same upon payment of the costs, charges and expenses reasonably and properly incurred by such Receiptholder in connection therewith;
- (g) to assent to any modification of, change in or omission from the provisions contained in the Subscription Receipt Certificates or this Agreement or any ancillary or supplemental instrument which may be agreed to by the Corporation, and to authorize the Subscription Receipt Agent to concur in and execute any ancillary or supplemental agreement embodying the change or omission;
- (h) with the consent of the Corporation (such consent not to be unreasonably withheld), to remove the Subscription Receipt Agent or its successor in office and to appoint a new subscription receipt agent to take the place of the Subscription Receipt Agent so removed; and
- (i) to assent to any compromise or arrangement with any creditor or creditors or any class or classes of creditors, whether secured or otherwise, and with holders of any Common Shares or other securities of the Corporation.

## 8.11 Meaning of Special Resolution

- (a) The expression “special resolution” when used in this Agreement means, subject as hereinafter provided in this Section 8.11 and in Section 8.14, a resolution proposed to be passed as a special resolution at a meeting of Receiptholders duly convened for that purpose and held in accordance with the provisions of this Agreement at which at least one Receiptholder is present in person either holding personally or representing as proxies not less than, in aggregate, 25% of the number of Subscription Receipts then-outstanding and passed by the affirmative votes of Receiptholders holding at least 66⅔% of the Subscription Receipts represented at the meeting and voted upon such resolution.
- (b) Notwithstanding Section 8.4 and Section 8.11(a), if at any meeting called for the purpose of passing a special resolution at least one Receiptholder holding not less than, in aggregate, 25% of the then-outstanding Subscription Receipts are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by Receiptholders or on a Receiptholders’ Request, shall be dissolved; but in any other case it shall stand adjourned to such day, being not less than 14 nor more than 30 days later, and to such place and time as may be determined by the chairperson. Not less than seven days’ prior notice shall be given of the time and place of such adjourned meeting in the manner provided for in Section 11.2. Such notice shall state that at the adjourned meeting the Receiptholders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting:

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- (i) if the special resolution purports to exercise any of the powers conferred pursuant to Sections 8.10(a), 8.10(d) or 8.10(i) or purports to change the provisions of this Section 8.11 or of Section 8.14 or purports to amend, alter or repeal any special resolution previously passed or sanctioned by the Receiptholders in exercise of the powers referred to in this paragraph, a quorum for the transaction of business shall consist of Receiptholders holding more than 25% of the then-outstanding Subscription Receipts present in person or by proxy; and
  - (ii) in any other case, a quorum for the transaction of business shall consist of at least one Receiptholder holding not less than, in aggregate, 10% of the then-outstanding Subscription Receipts present in person or by proxy.
- (c) At any such adjourned meeting, but subject to 8.11(b)(i), any resolution passed by the requisite votes as provided in Section 8.11(a) shall be a special resolution within the meaning of this Agreement notwithstanding that Receiptholders holding more than 25% of the then-outstanding Subscription Receipts are not present in person or by proxy at such adjourned meeting.

- (d) Votes on a special resolution shall always be given on a poll or by ballot and no demand for a poll or ballot on a special resolution shall be necessary.

#### **8.12 Powers Cumulative**

Any one or more of the powers or any combination of the powers in this Agreement stated to be exercisable by the Receiptholders by special resolution or otherwise may be exercised from time to time and the exercise of any one or more of such powers or any combination of powers from time to time shall not be deemed to exhaust the right of the Receiptholders to exercise such power or powers or combination of powers then or thereafter from time to time.

#### **8.13 Minutes**

Minutes of all resolutions and proceedings at every meeting of Receiptholders shall be made and duly entered in books to be provided from time to time for that purpose by the Subscription Receipt Agent at the expense of the Corporation, and any such minutes as aforesaid, if signed by the chairperson or the secretary of the meeting at which such resolutions were passed or proceedings had or by the chairperson or secretary of the next succeeding meeting held shall be *prima facie* evidence of the matters therein stated and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes shall have been made shall be deemed to have been duly convened and held, and all resolutions passed thereat or proceedings taken shall be deemed to have been duly passed and taken.

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#### **8.14 Instruments in Writing**

All actions which may be taken and all powers that may be exercised by the Receiptholders at a meeting held as provided in this Article 8 may also be taken and exercised by an instrument in writing signed in one or more counterparts by such Receiptholders in person or by attorney duly appointed in writing, (i) holding at least a majority of then-outstanding Subscription Receipts with respect to a resolution that is not a special resolution, and the expression “resolution” when used not as part of “special resolution” in this Agreement shall include an instrument so signed, and (ii) holding at least 66⅔% of the then-outstanding Subscription Receipts with respect to a special resolution, and the expression “special resolution” when used in this Agreement shall include an instrument so signed.

#### **8.15 Binding Effect of Resolutions**

Every resolution and every special resolution passed in accordance with the provisions of this Article 8 at a meeting of Receiptholders shall be binding upon all the Receiptholders, whether present at or absent from such meeting, and every instrument in writing signed by Receiptholders in accordance with Section 8.14 shall be binding upon all the Receiptholders, whether signatories thereto or not, and each and every Receiptholder and the Subscription Receipt Agent (subject to the provisions for indemnity herein contained) shall be bound to give effect accordingly to every such resolution and instrument in writing.

#### **8.16 Holdings by Corporation Disregarded**

In determining whether Receiptholders are present at a meeting of Receiptholders for the purpose of determining a quorum or have concurred in any consent, waiver, special resolution, Receiptholders’ Request or other action under this Agreement, or otherwise for the purposes of any vote taken in accordance with Section 8.6 or 8.7 hereof, Subscription Receipts owned legally or beneficially by the Corporation or any affiliated entity of the Corporation shall be disregarded in accordance with the provisions of Section 11.7.

### **ARTICLE 9 SUPPLEMENTAL AGREEMENTS**

#### **9.1 Provision for Supplemental Agreements for Certain Purposes**

From time to time the Corporation, Cormark, on behalf of the Underwriters, and the Subscription Receipt Agent may, subject to the provisions hereof and subject to regulatory approval, and they shall, when so directed in

accordance with the provisions hereof, execute and deliver by their proper authorized representatives, agreements supplemental hereto, which thereafter shall form part hereof, for any one or more or all of the following purposes:

- (a) adding to the provisions hereof such additional covenants and enforcement provisions as, in the opinion of Counsel, are necessary or advisable in the premises, provided that the same are not in the opinion of the Subscription Receipt Agent relying on Counsel, prejudicial to the interests of the Receiptholders;

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- (b) giving effect to any special resolution passed in accordance with Article 8;
- (c) making such provisions not inconsistent with this Agreement as may be necessary or desirable with respect to matters or questions arising hereunder, provided that such provisions are not, in the opinion of the Subscription Receipt Agent, relying on Counsel, prejudicial to the interests of the Receiptholders;
- (d) adding to or altering the provisions hereof in respect of the transfer of Subscription Receipts, making provision for the exchange of Subscription Receipt Certificates, and making any modification in the form of the Subscription Receipt Certificates which does not affect the substance thereof;
- (e) modifying any of the provisions of this Agreement, including relieving the Corporation from any of the obligations, conditions or restrictions herein contained, provided that such modification or relief shall be or become operative or effective only if, in the opinion of the Subscription Receipt Agent, such modification or relief in no way prejudices any of the rights of the Receiptholders or of the Subscription Receipt Agent, and provided further that the Subscription Receipt Agent may, in its sole discretion, decline to enter into any such supplemental agreement which in its opinion may not afford adequate protection to the Subscription Receipt Agent when the same shall become operative; and
- (f) for any other purpose not inconsistent with the terms of this Agreement, including the correction or rectification of any ambiguities, defective or inconsistent provisions, errors, mistakes or omissions herein, provided that in the opinion of the Subscription Receipt Agent (relying on the opinion of Counsel) the rights of the Subscription Receipt Agent and of the Receiptholders are in no way prejudiced thereby and in the opinion of Cormark, such modification in no way prejudices the rights of the Underwriters.

## **ARTICLE 10**

### **MATTERS CONCERNING THE SUBSCRIPTION RECEIPT AGENT**

#### **10.1 Rights and Duties of Subscription Receipt Agent**

- (a) In the exercise of the rights and duties prescribed or conferred by the terms of this Agreement, the Subscription Receipt Agent shall exercise that degree of care, diligence and skill that a reasonably prudent subscription receipt agent would exercise in comparable circumstances. No provision of this Agreement shall be construed to relieve the Subscription Receipt Agent from liability for its own negligence, willful misconduct or bad faith.
- (b) The obligation of the Subscription Receipt Agent to commence or continue any act, action or proceeding for the purpose of enforcing any rights of the Subscription Receipt Agent or the Receiptholders hereunder shall be conditional upon the Receiptholders furnishing, when required by notice by the Subscription Receipt Agent, sufficient funds to commence or to continue such act, action or proceeding and an indemnity reasonably satisfactory to the Subscription Receipt Agent to protect and to hold harmless the Subscription Receipt Agent against the costs, charges, expenses and liabilities to be incurred thereby and any loss and damage it may suffer by reason thereof. None of the provisions contained in this Agreement shall require the Subscription Receipt Agent to expend or to risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

- (c) The Subscription Receipt Agent may, before commencing or at any time during the continuance of any such act, action or proceeding, require the Receiptholders at whose instance it is acting to deposit with the Subscription Receipt Agent the Subscription Receipts held by them, for which Subscription Receipts the Subscription Receipt Agent shall issue receipts.
- (d) Every provision of this Agreement that by its terms relieves the Subscription Receipt Agent of liability or entitles it to rely upon any evidence submitted to it is subject to the provisions of this Section 10.1 and Section 10.2.
- (e) The Subscription Receipt Agent shall have no duties except those expressly set forth herein, and it shall not be bound by any notice of a claim or demand with respect to, or any waiver, modification, amendment, termination or rescission of, this Agreement, unless received by it in writing and signed by the other parties hereto and, if its duties herein are affected, unless it shall have given its prior written consent thereto.
- (f) The Subscription Receipt Agent shall not be responsible for ensuring that the Proceeds are used by the Corporation in any particular manner.
- (g) The Subscription Receipt Agent shall retain the right not to act and shall not be held liable for refusing to act unless it has received clear and reasonable documentation which complies with the terms of this Agreement, which documentation does not require the exercise of any discretion or independent judgment.
- (h) The Subscription Receipt Agent shall incur no liability whatsoever with respect to the delivery or non-delivery of any certificates whether delivery by hand, mail or any other means.
- (i) The Subscription Receipt Agent shall not be responsible or liable in any manner whatsoever for the deficiency, correctness, genuineness or validity of any securities deposited with it.
- (j) Notwithstanding any other provision of this Agreement, and whether such losses or damages are foreseeable or unforeseeable, the Subscription Receipt Agent shall not be liable under any circumstances whatsoever for any (i) breach by any other party of securities law or other rule of any securities regulatory authority, (ii) lost profits or (iii) special, indirect, incidental, consequential, exemplary, aggravated or punitive losses or damages. This provision shall survive the resignation or removal of the Subscription Receipt Agent and the termination or discharge of this Agreement.

## **10.2 Evidence, Experts and Advisers**

- (a) In addition to the reports, certificates, opinions and other evidence required by this Agreement, the Corporation shall furnish to the Subscription Receipt Agent such additional evidence of compliance with any provision hereof, and in such form, as the Subscription Receipt Agent may reasonably require by written notice to the Corporation.
- (b) In the exercise of its rights and duties hereunder, the Subscription Receipt Agent may, if it is acting in good faith, act and rely as to the truth of the statements and the accuracy of the opinions expressed in statutory declarations, opinions, reports, written requests, consents, or orders of the Corporation, certificates of the Corporation or other evidence furnished to the Subscription Receipt Agent pursuant to any provision hereof or pursuant to a request of the Subscription Receipt Agent.
- (c) Whenever it is provided in this Agreement that the Corporation shall deposit with the Subscription Receipt Agent resolutions, certificates, reports, opinions, requests, orders or other documents, it is intended that the



truth, accuracy and good faith on the effective date thereof and the facts and opinions stated in all such documents so deposited shall, in each and every such case, be conditions precedent to the right of the Corporation to have the Subscription Receipt Agent take the action to be based thereon.

- (d) Proof of the execution of an instrument in writing, including a Receiptholders' Request, by any Receiptholder may be made by the certificate of a notary public, or other officer with similar powers, that the Person signing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution or in any other manner which the Subscription Receipt Agent may consider adequate.
- (e) The Subscription Receipt Agent may act and rely and shall be protected in acting and relying upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, letter, or other paper document believed by it to be genuine and to have been signed, sent or presented by or on behalf of the proper party or parties.
- (f) The Subscription Receipt Agent may employ or retain such Counsel, accountants, appraisers or other experts or advisers as it may reasonably require for the purpose of determining and discharging its right and duties hereunder and may pay reasonable remuneration for all services so performed by any of them, and will not be responsible for any misconduct or negligence on the part of any of them. The Corporation shall pay or reimburse the Subscription Receipt Agent for any reasonable fees of such counsel, accountants, appraisers, or other experts or advisors. The Subscription Receipt Agent may act and rely and shall be protected in acting or not acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraisers or other expert or advisor, whether retained or employed by the Corporation or by the Subscription Receipt Agent, in relation to any matter arising in the administration of the duties and obligations hereof.
- (g) The Subscription Receipt Agent may act and rely and shall be protected in acting and relying in good faith on the opinion, advice or reports of or information obtained from Counsel, or any accountant, appraiser, or other expert or advisor, whether retained or employed by the Corporation or by the Subscription Receipt Agent with respect to any matter arising in relation to the Agreement.

### **10.3 Documents, etc. Held by Subscription Receipt Agent**

Any securities, documents of title or other instruments that may at any time be held by the Subscription Receipt Agent pursuant to this Agreement may be placed in the deposit vaults of the Subscription Receipt Agent or of any Canadian chartered bank listed in Schedule I of the *Bank Act* (Canada) or deposited for safekeeping with any such bank.

### **10.4 Actions by Subscription Receipt Agent to Protect Interest**

The Subscription Receipt Agent shall have the power to institute and to maintain such actions and proceedings as it may consider necessary or expedient to preserve, protect or enforce its interests and the interests of the Receiptholders.

### **10.5 Subscription Receipt Agent not Required to Give Security**

The Subscription Receipt Agent shall not be required to give any bond or security in respect of the execution of this Agreement or otherwise in respect of the premises.

### **10.6 Protection of Subscription Receipt Agent**

By way of supplement to the provisions of any applicable law, it is expressly declared and agreed as follows:

- (a) the Subscription Receipt Agent shall not be liable for or by reason of any statements of fact or recitals in this Agreement or in the Subscription Receipt Certificates (except the representation contained in Section 10.8)

or be required to verify the same, but all such statements or recitals are and shall be deemed to be made by the Corporation;

- (b) nothing herein contained shall impose any obligation on the Subscription Receipt Agent to see to or to require evidence of the registration or filing (or renewal thereof) of this Agreement or any instrument ancillary or supplemental hereto;
- (c) the Subscription Receipt Agent shall not be bound to give notice to any Person or Persons of the execution hereof;

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- (d) if the Subscription Receipt Agent delivers any cheque as required hereunder, the Subscription Receipt Agent shall have no further obligation or liability for the amount represented thereby, unless any such cheque is not honoured on presentation, provided that in the event of the non-receipt of such cheque by the payee, or the loss or destruction thereof, the Subscription Receipt Agent, upon being furnished with reasonable evidence of such non-receipt, loss or destruction and, if required by the Subscription Receipt Agent, an indemnity reasonably satisfactory to it, shall issue to such payee a replacement cheque for the amount of such cheque;
- (e) the Subscription Receipt Agent will disburse funds in accordance with the provisions hereof only to the extent that funds have been deposited with it. The Subscription Receipt Agent shall not under any circumstances be required to disburse funds in excess of the amounts on deposit (including any Earned Interest) with the Subscription Receipt Agent at the time of disbursement;
- (f) the Subscription Receipt Agent shall incur no liability with respect to the delivery or non-delivery of any certificate or certificates whether delivered by hand, mail or any other means provided that they are sent in accordance with the provisions hereof;
- (g) the Subscription Receipt Agent shall not incur any liability or responsibility whatsoever or be in any way responsible for the consequence of any breach on the part of the Corporation of any of the covenants herein contained or of any acts of any directors, officers, employees, agents or servants of the Corporation;
- (h) the Subscription Receipt Agent, in its personal or any other capacity, may buy, lend upon and deal in securities of the Corporation and in the Subscription Receipts and generally may contract and enter into financial transactions with the Corporation or any related corporation without being liable to account for any profit made thereby; and
- (i) notwithstanding any other provision of this Agreement, and whether such losses or damages are foreseeable or unforeseeable, the Subscription Receipt Agent shall not be liable under any circumstances whatsoever for any (a) breach by any other party of securities law or other rule of any securities regulatory authority, (b) lost profits or (c) special, indirect, incidental, consequential, exemplary, aggravated or punitive losses or damages.

#### **10.7 Replacement of Subscription Receipt Agent; Successor by Merger**

- (a) The Subscription Receipt Agent may resign its appointment and be discharged from all other duties and liabilities hereunder, subject to this Section 10.7, by giving to the Corporation not less than 30 days' prior notice in writing or such shorter prior notice as the Corporation may accept as sufficient, provided that such resignation and discharge shall be subject to the appointment of a successor thereto in accordance with the provisions hereof. The Receiptholders by special resolution shall have the power at any time to remove the existing Subscription Receipt Agent and to appoint a new subscription receipt agent.

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- (b) Subject to Section 8.10(h), in the event of the Subscription Receipt Agent resigning or being removed as aforesaid or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, Cormark, on behalf of the Underwriters, shall forthwith appoint a new subscription receipt agent unless a new subscription receipt agent has already been appointed by the Receiptholders; failing such appointment by Cormark, on behalf of the Underwriters, the retiring Subscription Receipt Agent (at the expense of the Corporation) or any Receiptholder may apply to the Ontario Superior Court of Justice on such notice as such court may direct, for the appointment of a new subscription receipt agent; but any new subscription receipt agent so appointed by Cormark, on behalf of the Underwriters, or by the Court shall be subject to removal as aforesaid by the Receiptholders.
- (c) Any new subscription receipt agent appointed under any provision of this Section 10.7 shall be a corporation authorized to carry on the business of a trust company in the Province of Ontario and, if required by the applicable legislation for any other provinces and territories, in such other provinces and territories. On any such appointment the new subscription receipt agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as subscription receipt agent hereunder. At the request of the Corporation or the new subscription receipt agent, the retiring Subscription Receipt Agent, upon payment of the amounts, if any, due to it pursuant to Section 6.3, shall duly assign, transfer and deliver to the new subscription receipt agent at the expense of the Corporation all property and money held and all records kept by the retiring Subscription Receipt Agent hereunder or in connection herewith.
- (d) Upon the appointment of a successor subscription receipt agent, the Corporation shall promptly notify the Receiptholders thereof in the manner provided for in Article 11 hereof.
- (e) Any corporation into or with which the Subscription Receipt Agent may be merged or consolidated or amalgamated, or any corporation resulting therefrom to which the Subscription Receipt Agent shall be a party, or any corporation succeeding to the corporate trust business of the Subscription Receipt Agent shall be the successor to the Subscription Receipt Agent hereunder without any further act on its part or any of the parties hereto, provided that such corporation would be eligible for appointment as a successor subscription receipt agent under Section 10.7(c).
- (f) Any Subscription Receipt Certificate Authenticated but not delivered by a predecessor subscription receipt agent may be delivered by the successor subscription receipt agent in the name of the predecessor or successor subscription receipt agent.

## **10.8 Conflict of Interest**

- (a) The Subscription Receipt Agent represents to the best of its knowledge to the Corporation and Cormark, on behalf of the Underwriters, that at the time of execution and delivery hereof no material conflict of interest exists between its role as a subscription receipt agent hereunder and its role in any other capacity and agrees that in the event of a material conflict of interest arising hereafter it will, within 30 days after ascertaining that it has such material conflict of interest, either eliminate the same or resign its appointment as Subscription Receipt Agent hereunder. Notwithstanding the foregoing provisions of this Section 10.8(a), if any such material conflict of interest exists or hereafter shall exist, the validity and enforceability of this Agreement and the Subscription Receipt Certificates shall not be affected in any manner whatsoever by reason thereof.
- (b) Subject to Section 10.8(a), the Subscription Receipt Agent, in its personal or any other capacity, may buy, lend upon and deal in securities of the Corporation and generally may contract and enter into financial transactions with the Corporation or any affiliated entity of the Corporation without being liable to account for any profit made thereby.

## **10.9 Acceptance of Appointment**

The Subscription Receipt Agent hereby accepts the appointment as subscription receipt agent in this Agreement and agrees to perform its duties hereunder upon the terms and conditions herein set forth.

#### **10.10 Subscription Receipt Agent Not to be Appointed Receiver**

The Subscription Receipt Agent and any person related to the Subscription Receipt Agent shall not be appointed a receiver, a receiver and manager or liquidator of all or any part of the assets or undertaking of the Corporation.

#### **10.11 SEC Matters**

The Corporation confirms that it has (i) a class of securities registered pursuant to Section 12 of the U.S. Securities Exchange Act; or (ii) a reporting obligation pursuant to Section 15(d) of the U.S. Securities Exchange Act, and has provided the Subscription Receipt Agent with an officers' certificate in a form provided by the Subscription Receipt Agent certifying such reporting obligation and other information as reasonably requested by the Subscription Receipt Agent. The Corporation covenants that in the event that any such registration or reporting obligation shall be terminated by the Corporation in accordance with the U.S. Securities Exchange Act, the Corporation shall promptly notify the Subscription Receipt Agent of such termination and such other information as the Subscription Receipt Agent may require at the time. The Corporation acknowledges that the Subscription Receipt Agent is relying upon the foregoing representation and covenants in order to meet certain SEC obligations with respect to those clients who are filing with the SEC.

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#### **10.12 Force Majeure**

No party shall be liable to any other, or held in breach of this Agreement, if prevented, hindered, or delayed in the performance or observance of any provision contained herein by reason of act of God, riots, terrorism, acts of war, epidemics, pandemics, governmental action or judicial order, earthquakes, economic sanctions, or any other similar causes (including, but not limited to, mechanical, electronic or communication interruptions, disruptions or failures). Performance times under this Agreement shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section 10.12.

### **ARTICLE 11 GENERAL**

#### **11.1 Notice to the Corporation, the Subscription Receipt Agent and Cormark, on behalf of the Underwriters**

- (a) Unless herein otherwise expressly provided, any notice to be given hereunder to the Corporation, Cormark, on behalf of the Underwriters, or the Subscription Receipt Agent shall be deemed to be validly given if delivered by hand courier, facsimile, electronic mail or by first-class mail addressed as follows:

- (i) if to the Corporation:

Americas Gold and Silver Corporation  
Suite 2870, 145 King Street West  
Toronto, ON, Canada M5H 1J8

Attention: Darren Blasutti, President & Chief Executive Officer  
Email: [dblasutti@americas-gold.com](mailto:dblasutti@americas-gold.com)

with a copy to:

Torys LLP  
79 Wellington Street West, 30<sup>th</sup> Floor  
Box 270, TD South Tower

Toronto, Ontario M5K 1N2

Attention:Braden Jebson / Robbie Leibel  
Email: bjebson@torys.com / rleibel@torys.com

(ii) if to Cormark or the Underwriters:

Cormark Securities Inc.  
200 Bay Street, Suite 1800  
Royal Bank Plaza, North Tower  
Toronto, ON M5J 2J2

Attention:Paul Nieznalski  
Email: ecm@cormark.com

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with a copy to:

Cassels Brock & Blackwell LLP  
Suite 3200, Bay Adelaide Centre – North Tower  
40 Temperance Street  
Toronto, ON M5H 0B4

Attention:Chad Accursi  
Email: caccursi@cassels.com

(iii) if to the Subscription Receipt Agent:

Computershare Trust Company of Canada  
100 University Avenue, 8th Floor  
Toronto, Ontario M5J 2Y1

Attention:Manager, Corporate Trust Department  
Email: corporatetrust.toronto@computershare.com

and any such notice delivered in accordance with the foregoing shall be deemed to have been received on the date of delivery or, if faxed or otherwise transmitted by electronic means on the day of transmission or, if such day is not a Business Day, on the first Business Day following the day of transmission.

- (b) The Corporation, Cormark, on behalf of the Underwriters, or the Subscription Receipt Agent, as the case may be, may from time to time notify the other parties in the manner provided in Section 11.1(a) of a change of address which, from the effective date of such notice and until changed by like notice, shall be the address of the Corporation, Cormark, on behalf of the Underwriters, or the Subscription Receipt Agent, as the case may be, for all purposes of this Agreement.

## 11.2 Notice to Receiptholders

- (a) Any notice to the Receiptholders under the provisions of this Agreement shall be valid and effective if delivered or sent by letter or circular through the ordinary post addressed to such holders at their post office addresses appearing on the register hereinbefore mentioned and shall be deemed to have been effectively given on the date of delivery or, if mailed, five Business Days following actual posting of the notice. Accidental error or omission in giving notice or accidental failure to any Receiptholder will not invalidate any action or proceeding founded thereon.

- (b) If, by reason of a strike, lockout or other work stoppage, actual or threatened, involving postal employees, any notice to be given to the Receiptholders hereunder could reasonably be considered unlikely to reach its destination, such notice shall be valid and effective only if it is delivered personally to such Receiptholders or if delivered to the address for such Receiptholders contained in the register of Subscription Receipts maintained by the Subscription Receipt Agent.
- (c) All notices to joint Receiptholders of Subscription Receipts may be given to whichever one of the Receiptholders is named first in the appropriate register hereinbefore mentioned, and any notice so given shall be sufficient notice to all such joint holders of Subscription Receipts.

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### **11.3 Ownership of Subscription Receipts**

The Corporation and the Subscription Receipt Agent may deem and treat the registered owner of any Subscription Receipt Certificate or Uncertificated Subscription Receipt or, in the case of a transferee who has surrendered a Subscription Receipt Certificate or Uncertificated Subscription Receipt in accordance with and as contemplated in Sections 3.4 and 3.6, such transferee, as the absolute owner of the Subscription Receipt represented thereby for all purposes, and the Corporation and the Subscription Receipt Agent shall not be affected by any notice or knowledge to the contrary except where the Corporation or the Subscription Receipt Agent is required to take notice by statute or by order of a court of competent jurisdiction. A Receiptholder shall be entitled to the rights evidenced by such Subscription Receipt Certificate or Uncertificated Subscription Receipt free from all equities or rights of set off or counterclaim between the Corporation and the original or any intermediate holder thereof and all Persons may act accordingly and the receipt of any such Receiptholder for the Underlying Common Shares which may be acquired pursuant thereto shall be a good discharge to the Corporation and the Subscription Receipt Agent for the same and neither the Corporation nor the Subscription Receipt Agent shall be bound to inquire into the title of any such holder except where the Corporation or the Subscription Receipt Agent is required to take notice by statute or by order of a court of competent jurisdiction.

### **11.4 Evidence of Ownership**

- (a) Upon receipt of a certificate of any bank, trust company or other depositary satisfactory to the Subscription Receipt Agent stating that the Subscription Receipts specified therein have been deposited by a named Person with such bank, trust company or other depositary and will remain so deposited until the expiry of the period specified therein, the Corporation and the Subscription Receipt Agent may treat the Person so named as the owner, and such certificate as sufficient evidence of the ownership by such Person of such Subscription Receipt during such period, for the purpose of any requisition, direction, consent, instrument or other document to be made, signed or given by the holder of the Subscription Receipt so deposited.
- (b) The Corporation and the Subscription Receipt Agent may accept as sufficient evidence of the fact and date of the signing of any requisition, direction, consent, instrument or other document by any Person (i) the signature of any officer of any bank, trust company, or other depositary satisfactory to the Subscription Receipt Agent as witness of such execution, (ii) the certificate of any notary public or other officer authorized to take acknowledgements of deeds to be recorded at the place where such certificate is made that the Person signing acknowledged to him the execution thereof, or (iii) a statutory declaration of a witness of such execution.

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### **11.5 Satisfaction and Discharge of Agreement**

Upon the earliest of:

- (a) the entering of a Book-Based System customer confirmation or the issuance of a definitive share certificate in respect of Underlying Common Shares, as the case may be, in a CDS account or to the registered holder thereof, as the case may be, for holders of Subscription Receipts and payment of all monies required to be paid to all registered holders of Subscription Receipts as provided in Section 3.4(a) and the payment of monies if any required to be paid to the Corporation pursuant to Section 3.2; or
- (b) the payment of all monies required where a Termination Event occurs as provided in Section 3.6(b);

this Agreement shall cease to be of further effect and the Subscription Receipt Agent, on demand of and at the cost and expense of the Corporation and upon delivery to the Subscription Receipt Agent of a certificate of the Corporation stating that all conditions precedent to the satisfaction and discharge of this Agreement have been complied with, shall execute proper instruments acknowledging satisfaction of and discharging this Agreement. Notwithstanding the foregoing, the indemnities provided hereunder to the Subscription Receipt Agent by the Corporation shall remain in full force and effect and survive the termination of this Agreement.

#### **11.6 Provisions of Agreement and Subscription Receipts for the Sole Benefit of Parties and Receiptholders**

Nothing in this Agreement or in the Subscription Receipt Certificates, expressed or implied, shall give or be construed to give to any Person other than the parties hereto, the Receiptholders and the transferees of Subscription Receipts as contemplated in Section 2.13, any legal or equitable right, remedy or claim under this Agreement, or under any covenant or provision herein or therein contained, all such covenants and provisions being for the sole benefit of the parties hereto, the Receiptholders and such transferees.

#### **11.7 Subscription Receipts Owned by the Corporation or its Affiliates Certificate to be Provided**

For the purpose of disregarding any Subscription Receipts owned legally or beneficially by the Corporation or any affiliated entity of the Corporation as contemplated in Section 8.16, the Corporation shall provide to the Subscription Receipt Agent, from time to time, a certificate of the Corporation setting forth as at the date of such certificate the number of Subscription Receipts owned legally or beneficially by the Corporation or any affiliated entity of the Corporation, and the Subscription Receipt Agent, in making the computations in Section 8.16, shall be entitled to rely on such certificate without requiring further evidence thereof.

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#### **11.8 Effect of Execution**

Notwithstanding any provision of this Agreement, should any Subscription Receipts be issued and Authenticated in accordance with the terms hereof prior to the actual time of execution of this Agreement by the Corporation and the Subscription Receipt Agent, any such Subscription Receipts shall be void and of no value and effect until such actual execution.

#### **11.9 Successor Entities**

In the case of the amalgamation, consolidation, merger, transfer or statutory arrangement or other merger or reorganization or similar transaction with any person of the undertaking or assets of the Corporation as an entirety or substantially as an entirety to another person (a “**successor entity**”), the successor entity resulting from the amalgamation, consolidation, merger, transfer or statutory arrangement or other merger or reorganization or similar transaction with any person (if not the Corporation) will be bound by the provisions hereof and all obligations for the due and punctual performance and observance of each and every covenant and obligation contained in this Agreement to be performed by the Corporation and the successor entity will by supplemental agreement satisfactory in form to the Subscription Receipt Agent and executed and delivered to the Subscription Receipt Agent, expressly assume those obligations.

#### **11.10 Time of Essence**

Time is and shall remain of the essence of this Agreement.



### 11.11Governing Law

This Agreement will be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. For the purpose of all legal proceedings, this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. Each of the parties hereto hereby attorns and submits to the exclusive jurisdiction of the courts of the Province of Ontario.

### 11.12Discretion of Directors

Any matter provided herein to be determined by the directors of the Corporation will be determined by the directors in their sole discretion, acting reasonably, and a determination so made will be conclusive.

### 11.13Counterparts

This Agreement may be executed and delivered in counterparts by fax or other electronic means, each of which when so executed and delivered shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution they shall be deemed to be dated as of the date hereof.

### 11.14English Language

Each of the parties hereto hereby acknowledges that it has consented to and requested that this Agreement and all documents relating thereto, including the form of Subscription Receipt Certificate attached hereto as Schedule A, be drawn up in the English language only. *Les parties aux présentes reconnaissent avoir accepté et exigé que le présent contrat et tous les documents s'y rapportant y compris, sans restreindre la portée générale de ce qui précède, le formulaire de certificat de reçu de souscription joint aux présentes à titre d'annexe A, soient rédigés en langue anglaise seulement.*

[Signatures on following page]

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

**AMERICAS GOLD AND SILVER  
CORPORATION**

Per: "Darren Blasutti"  
Name: Darren Blasutti  
Title: President and Chief Executive  
Officer

**CORMARK SECURITIES INC.**

Per: "Kevin Carter"  
Name: Kevin Carter  
Title: Managing Director, Investment  
Banking

**COMPUTERSHARE TRUST COMPANY  
OF CANADA**

Per: "Danny Snider"

Name: Danny Snider  
Title: Corporate Trust Officer

"Mohanie Shivprasad"

Per: Name: Mohanie Shivprasad  
Title: Associate Trust Officer

[Signature page to Subscription Receipt Agreement]

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**SCHEDULE A**  
**FORM OF SUBSCRIPTION RECEIPT CERTIFICATE**

Unless this certificate is presented by an authorized representative of CDS Clearing and Depository Services Inc. ("CDS") to Americas Gold and Silver Corporation or its agent for registration of transfer, exchange or payment, and any certificate issued in respect thereof is registered in the name of CDS & CO., or in such other name as is requested by an authorized representative of CDS (and any payment is made to CDS & CO. or to such other entity as is requested by an authorized representative of CDS), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered holder hereof, CDS & CO., has a property interest in the securities represented by this certificate herein and it is a violation of its rights for another person to hold, transfer or deal with this certificate.

Unless permitted under securities legislation, the holder of this security must not trade the security before March 1, 2025.

*[For certificates or statements representing Subscription Receipts issued to U.S. Receiptholders that are not QIB Purchasers, replace the CDS legend above with the following legend:]*

THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES ISSUABLE UPON CONVERSION THEREOF HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF, BY ACQUIRING SUCH SECURITIES, AGREES FOR THE BENEFIT OF THE ISSUER THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE ISSUER, (B) OUTSIDE THE UNITED STATES IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT, AND IN COMPLIANCE WITH APPLICABLE LOCAL LAWS AND REGULATIONS, (C) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE U.S. SECURITIES ACT, (D) IN COMPLIANCE WITH THE EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER, IF AVAILABLE, AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS OR (E) IN ANY OTHER TRANSACTION THAT DOES NOT REQUIRE REGISTRATION UNDER THE U.S. SECURITIES ACT OR ANY APPLICABLE STATE SECURITIES LAWS AND, IN THE CASE OF (D) AND (E) ABOVE, IF REQUIRED OR OTHERWISE REQUESTED, AFTER THE SELLER FURNISHES TO THE ISSUER AN OPINION OF COUNSEL OF RECOGNIZED STANDING IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE ISSUER TO SUCH EFFECT. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA.

AMERICAS GOLD AND SILVER CORPORATION  
(A corporation governed by the laws of Canada)

Number: ■

CUSIP / ISIN: 03062D134/CA03062D1345

THIS IS TO CERTIFY THAT ■ is the registered holder of ■ Subscription Receipts represented hereby.

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The Subscription Receipts represented by this Subscription Receipt certificate (“**Certificate**”) are issued pursuant to a Subscription Receipt Agreement (the “**Agreement**”) dated October 30, 2024 among Americas Gold and Silver Corporation (the “**Corporation**”), Cormark Securities Inc., on its own behalf and on behalf of TD Securities Inc., Desjardins Securities Inc., Haywood Securities Inc., Canaccord Genuity Corp. and Eight Capital (collectively, the “**Underwriters**”) and Computershare Trust Company of Canada (the “**Subscription Receipt Agent**”).

Capitalized terms used in the Agreement have the same meaning herein as therein, unless otherwise defined.

Each Subscription Receipt entitles the holder, in accordance with the terms of, and subject to, the Agreement:

- (a) if the Corporation has delivered the Release Notice in accordance with Section 3.1(a) of the Agreement before the Transaction Deadline, to automatically receive, without any further action required by such holder and without the payment of any additional consideration, one Underlying Common Share for each Subscription Receipt held by the holder (subject to any applicable adjustments); or
- (b) if the Corporation has not delivered the Release Notice in accordance with Section 3.1(a) of the Agreement before the Transaction Deadline or if a Termination Event occurs, to receive, commencing on the second Business Day following the Termination Date, an amount equal to the full issue price for such Subscription Receipt and its *pro rata* share of the Earned Interest and Deemed Interest (less any applicable withholding taxes).

Reference is hereby made to the Agreement and any and all other instruments supplemental or ancillary thereto for a full description of the rights of the holders of the Subscription Receipts and the terms and conditions upon which such Subscription Receipts are, or are to be, issued and held, all to the same effect as if the provisions of the Agreement and all instruments supplemental or ancillary thereto were herein set forth, and to all of which provisions the holder of these Subscription Receipts by acceptance hereof assents. In the event of a conflict or inconsistency between the terms of the Agreement and this Certificate, the terms of the Agreement shall prevail.

The holding of the Subscription Receipts evidenced by this Certificate shall not constitute the holder hereof a Shareholder or entitle such holder to any right or interest in respect thereof except as herein and in the Agreement expressly provided.

The Agreement contains provisions making binding upon all holders of Subscription Receipts outstanding thereunder resolutions passed at meetings of such holders held in accordance with such provisions and by instruments in writing signed by the holders of a specified majority of the outstanding Subscription Receipts.

The Subscription Receipts evidenced by this Certificate may be transferred on the register kept at the offices of the Subscription Receipt Agent by the registered holder hereof or its legal representatives or its attorney duly appointed by an instrument in writing in form and execution satisfactory to the Subscription Receipt Agent, only upon payment of the charges provided for in the Agreement and upon compliance with such reasonable requirements as the Subscription Receipt Agent may prescribe. The transfer register shall be closed at 5:00 p.m. (Toronto time) on the earlier to occur of the Transaction Closing Date and the Termination Date.

Neither the Subscription Receipts evidenced by this Certificate nor the Common Shares issuable upon conversion hereof have been or will be registered under the United States Securities Act of 1933, as amended (the “**U.S. Securities Act**”) or the securities laws of any state of the United States and may not be offered or sold in the United States or by or on behalf of, or for the account or benefit of, a U.S. person or a person in the United States unless such securities have been registered under the U.S. Securities Act and the applicable state securities legislation or an exemption from such registration requirements is available. “United States” and “U.S. person” are as defined in Regulation S under the U.S. Securities Act.

This Certificate shall not be valid for any purpose whatsoever unless and until it has been Authenticated by or on behalf of the Subscription Receipt Agent.

This Certificate is governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

*[Remainder of page left intentionally blank.]*

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**IN WITNESS WHEREOF** the Corporation has caused this Certificate to be signed by a duly authorized representative as of October 30, 2024.

**AMERICAS GOLD AND SILVER  
CORPORATION**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COMPUTERSHARE TRUST COMPANY  
OF CANADA, as Subscription Receipt  
Agent**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**SCHEDULE B  
FORM OF RELEASE NOTICE**

**TO: COMPUTERSHARE TRUST COMPANY OF CANADA (the “Subscription Receipt Agent”)**

**AND CORMARK SECURITIES INC. (“Cormark”)  
TO:**

**DATE: ■, 202■**

Reference is made to the subscription receipt agreement (the “**Subscription Receipt Agreement**”) dated as of October 30, 2024 among Americas Gold and Silver Corporation (the “**Corporation**”), Cormark, on its own behalf and on behalf of TD Securities Inc., Desjardins Securities Inc., Haywood Securities Inc., Canaccord Genuity Corp. and Eight

Capital (collectively, the “**Underwriters**”) and the Subscription Receipt Agent (capitalized terms used herein without definition having the meanings specified in the Subscription Receipt Agreement).

The Corporation represents, warrants and confirms that:

1. each of the Escrow Release Conditions have been satisfied; and
2. the Transaction will be completed in accordance with the Acquisition Agreement promptly following the release of Escrowed Funds in the manner directed hereunder.

In accordance with Sections 3.2 and 3.4 of the Subscription Receipt Agreement, as applicable, the Subscription Receipt Agent is hereby authorized and directed to:

- release \$■ of the Escrowed Funds (which, for greater certainty, excludes any amount of Earned Interest) to Cormark by means of a wire transfer to Cormark, on behalf of the Underwriters, in satisfaction of the Balance of the Underwriters’ Commission; and
- pay the remainder of the Escrowed Funds to the Corporation or as it may direct.

The foregoing notice and direction, which may be signed in counterparts and delivered by facsimile or PDF, is irrevocable and shall constitute your good and sufficient authority for making such payments as directed above.

*[Remainder of page left intentionally blank.]*

**DATED** as of the date first written above.

**AMERICAS GOLD AND SILVER  
CORPORATION**

Per: \_\_\_\_\_  
Name:  
Title:

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**SCHEDULE C  
APPROVED BANKS**

<b>Bank</b>	<b>Relevant S&amp;P Issuer Credit Rating (as at October 1, 2024)</b>
Bank of America NA	A+
Bank of Montreal	A+
The Bank of Nova Scotia	A+
Bank of Scotland	A+
Bank of Tokyo-Mitsubishi UFJ	A
BNP Paribas	A+
Canadian Imperial Bank of Commerce	A+
Citibank NA	A+
National Bank of Canada	A

Royal Bank of Canada	AA-
Societe Generale (Canada Branch)	A
The Toronto-Dominion Bank	AA-

## APPENDIX I

### FORM OF DECLARATION FOR REMOVAL OF LEGEND

TO: **COMPUTERSHARE TRUST COMPANY OF CANADA**  
AND  
TO: **AMERICAS GOLD AND SILVER CORPORATION** (the “Corporation”)

The undersigned (A) acknowledges that the sale of \_\_\_\_\_ of the Corporation represented by certificate number \_\_\_\_\_ to which this declaration relates is being made in reliance on Rule 904 of Regulation S (“**Regulation S**”) under the United States Securities Act of 1933, as amended (the “**U.S. Securities Act**”), and (B) certifies that (1) the undersigned is not (a) an “affiliate” (as that term is defined in Rule 405 under the U.S. Securities Act) of the Corporation, except any officer or director who is an affiliate solely virtue of holding such position, (b) a “distributor” as defined in Regulation S or (c) an affiliate of a distributor; (2) the offer of such securities was not made to a person in the United States and either (a) at the time the buy order was originated, the buyer was outside the United States, or the seller and any person acting on its behalf reasonably believed that the buyer was outside the United States, or (b) the transaction was executed on or through the facilities of a designated offshore securities market (such as the TSX Venture Exchange or the Toronto Stock Exchange) and neither the seller nor any person acting on its behalf knows that the transaction has been prearranged with a buyer in the United States; (3) neither the seller nor any affiliate of the seller nor any person acting on their behalf has engaged or will engage in any directed selling efforts in the United States in connection with the offer and sale of such securities; (4) the sale is bona fide and not for the purpose of “washing off” the resale restrictions imposed because the securities are “restricted securities” (as that term is defined in Rule 144(a)(3) under the U.S. Securities Act); (5) the seller does not intend to replace securities sold in reliance on Rule 904 of Regulation S with fungible unrestricted securities; and (6) the sale is not a transaction, or part of a series of transactions, which, although in technical compliance with Regulation S, is part of a plan or scheme to evade the registration provisions of the U.S. Securities Act. The Corporation and legal counsel to the Corporation shall be entitled to rely upon the representations, warranties and covenants contained in this affirmation to the same extent as if this letter had been addressed to them, it being agreed that such representations shall be deemed to be made as of the date of this letter and at the time of the sale of the securities. Except as otherwise indicated, terms used herein have the meanings given to them by Regulation S.

Dated: \_\_\_\_\_

**X** \_\_\_\_\_  
Authorized signatory

\_\_\_\_\_  
Name of Seller (**please print**)

\_\_\_\_\_  
Name of authorized signatory (**please print**)

\_\_\_\_\_  
Title of authorized signatory(**please print**)

### Affirmation By Seller’s Broker-Dealer (required for sales in accordance with Section (B)(2)(b) above)

We have read the foregoing representations of our customer, \_\_\_\_\_ (the “**Seller**”), dated \_\_\_\_\_, with regard to our sale, for such Seller’s account, of the securities of the Corporation described therein, and on behalf of ourselves we certify and affirm that (A) we have no knowledge that the transaction

was prearranged with a buyer in the United States, (B) the transaction was executed on or through the facilities of a designated offshore securities market, (C) neither we, nor any person acting on our behalf, engaged in any directed selling efforts in connection with the offer and sale of such securities, and (D) no selling concession, fee or other remuneration is being paid to us in connection with this offer and sale other than the usual and customary broker's commission that would be received by a person executing such transaction as agent. The Corporation and legal counsel to the Corporation shall be entitled to rely upon the representations, warranties and covenants contained in this affirmation to the same extent as if this letter had been addressed to them, it being agreed that such representations shall be deemed to be made as of the date of this letter and at the time of the sale of the securities. Terms used herein have the meanings given to them by Regulation S under the U.S. Securities Act.

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Name of Firm

By: \_\_\_\_\_  
Authorized officer

Date: \_\_\_\_\_