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**COPY**

CANZINCO LTD.

- and -

BLUE NOTE METALS INC.

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ASSET PURCHASE AGREEMENT

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DATED July 26, 2006

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## ASSET PURCHASE AGREEMENT

This Agreement dated July 26, 2006 is made

BETWEEN

CANZINCO LTD., a Canadian corporation, (the "Vendor")

AND

BLUE NOTE METALS INC., a Canadian corporation, (the  
"Purchaser")

### RECITALS

A. The Vendor owns the Assets that make up the Caribou and the Restigouche mine sites in New Brunswick and has agreed to sell the Assets to the Purchaser on the terms set forth herein; and

B. The Purchaser has agreed to purchase the Assets and to assume the Assumed Liabilities on the terms set forth herein.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE 1

#### INTERPRETATION

1.1 **Definitions.** In this Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

(1) "Additional Environmental Protection Deposit" is defined in Section 4.3(6).

(2) "Additional Reclamation Deposit" is defined in Section 4.3(6).

(3) "Affiliate" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate.

(4) "Agreement" means this Agreement, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement.

(5) **"Applicable Law"** means, with respect to any Person, property, transaction, event or other matter, any Law relating or applicable to such Person, property, transaction, event or other matter. Applicable Law also includes, where appropriate, any interpretation of the Law (or any part) by any Person having jurisdiction over it, or charged with its administration or interpretation.

(6) **"Assets"** means all the mineral properties, mine facilities, assets, interests and rights of the Vendor which comprise the Caribou and Restigouche mines in New Brunswick which, without limiting the generality of the foregoing, includes:

- (a) all of the assets of the Caribou and Restigouche mines (including the Real Property set out on Schedule 1.1(6) Part I) other than the assets set out on Schedule 1.1(6) Part II;
- (b) all rights and interests under or pursuant to all warranties, representations and guarantees, express, implied or otherwise, of or made by others in respect with the Assets or the Assumed Liabilities or otherwise Related to the Assets;
- (c) the Contracts;
- (d) the Licences and Permits that are transferable; and
- (e) the Books and Records.

(7) **"Assumed Liabilities"** means the Liabilities of the Vendor that are Related to the Assets including obligations of the Vendor that are Related to the Assets pursuant to the Contracts.

(8) **"BioteQ Development Agreement"** means the operating agreement dated October 1, 2004 between BioteQ Environmental Technologies Inc. and the Vendor.

(9) **"Books and Records"** means all books, records, files and papers Related to the Assets (whether in written, printed, electronic or computer printout form, or stored on computer discs or other data and software storage and media devices) available to the Vendor.

(10) **"Breakwater Subscription Amount"** means the subscription by the Parent for not less than \$1.0 million of securities of the Purchaser as part of the Equity Financing.

(11) **"Business Day"** means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Toronto, Ontario.

(12) **"Canadian Dollars"** means the lawful currency of Canada.

(13) **"Claim"** has the meaning given in Section 6.1.

(14) **"Closing"** means the completion of the purchase and sale of the Assets in accordance with the provisions of this Agreement.

(15) **"Closing Date"** means the day of receipt of New Brunswick Government Approvals and in any event no later than September 30, 2006 unless agreed to by the parties.

(16) **"Closing Time"** means the time of Closing on the Closing Date provided for in Section 3.1.

(17) **"Condition of the Assets"** means the condition of the Assets on an "as is, where is" basis taken as a whole as at the date of the last due diligence evaluation completed by the Purchaser on June 9, 2006.

(18) **"Consents and Approvals"** means all applicable governmental, regulatory, Exchange and third party consents and approvals (including any consents and approvals of royalty owners, shareholders and optionees as applicable) required to be obtained in connection with the execution and delivery of this Agreement and the completion of the transactions contemplated by this Agreement, as more particularly set out in Schedule 1.1(18), which, for greater certainty, shall include the New Brunswick Government Approvals.

(19) **"Contracts"** means all rights and interests of the Vendor to and in all pending and/or executory contracts, agreements, leases and arrangements Related to the Assets, including without limitation, any agreements relating to the payment of royalties, to or by which the Vendor or any of the Assets is bound or affected including the contracts or agreements outlined in Schedule 1.1(19) of this Agreement other than the New Brunswick Contract.

(20) **"Convertible Debenture"** means the convertible debenture in substantially the form attached to this Agreement as Schedule 1.1(20) to be issued by the Purchaser to the Vendor as partial payment for the Assets.

(21) **"Direct Claim"** has the meaning given in Section 6.4.

(22) **"Environmental Indemnity"** means the environmental indemnity in substantially the form attached to this Agreement as Schedule 1.1(22) to be executed and delivered to the Vendor by the Purchaser.

(23) **"Environmental Laws"** means Applicable Law in respect of the protection or conservation of natural environment, the protection and preservation of wildlife or fishery resources or the public or the undertaking of mineral resource exploration, extraction or processing operations and the decommissioning or closure of such operations, including the reclamation, remediation, rehabilitation and restoration of mining properties and of the natural environment, public or occupational health or safety, and the manufacture, importation, handling, labelling, transportation, release, storage, disposal, clean-up, removal and treatment of Hazardous Substances.

(24) **"Environmental Permits"** means all permits, certificates, approvals, consents, registrations and licences issued or required by any Environmental Laws or any court or governmental authority and relating to or required for the ownership and/or operation of the Assets.

(25) “**Environmental Protection Deposit**” means the sum of \$3,590,000 currently held in deposit by the Department of the Environment (New Brunswick) as security for the environmental protection of the Real Property included as part of the Assets together with all interest accrued or accruing due thereon, as may be applicable.

(26) “**Equity Financing**” means a private placement equity financing to be completed by the Purchaser on or before Closing in an amount of not less than \$50 million at a price and on terms satisfactory to the Purchaser in its sole discretion and “Equity Financing” includes the Breakwater Subscription Amount.

(26A) “**Escrow Agreement**” means the agreement between the Parent, the Purchaser and the Vendor’s Solicitors dated the date hereof with respect to the payment of \$5,952,220 to the Vendor’s Solicitors to be held in escrow by the Vendor’s Solicitors.

(27) “**Exchange**” means the TSX Venture Exchange.

(28) “**HST**” means goods and services tax imposed under Part IX of the *Excise Tax Act* (Canada).

(29) “**Hazardous Substance**” means and shall include any solid, substance, waste, chemical, compound, by-product, pollutant, contaminant, liquid, gas, odour, heat, sound, vibration, radiation or combination of them that may impair the natural environment, injure or damage property or plant of animal life or harm or impair the health of any individual.

(30) “**including**” means “including without limitation”, and “**includes**” means “includes without limitation”.

(31) “**Indemnified Party**” means a Person whom the Vendor and/or the Purchaser, as the case may be, has agreed to indemnify under Article 6.

(32) “**Indemnifying Party**” means, in relation to an Indemnified Party, a Party to this Agreement that has agreed to indemnify that Indemnified Party under Article 6.

(33) “**Interim Period**” means the period from the date of this Agreement to the Closing.

(34) “**Law**” means any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law.

(35) “**Liabilities**” means all costs, expenses, charges, debts, liabilities, claims, demands and obligations, whether primary or secondary, direct or indirect, fixed, contingent, absolute or otherwise, under or in respect of any contract, agreement, arrangement, lease, commitment or undertaking, Applicable Law and Taxes.

(36) “**Licences and Permits**” means all licences, permits, filings, authorizations, easements, consents, orders or approvals Related to the Assets and includes the Environmental Permits.

(37) "Lien" means any lien, mortgage, charge, hypothec, pledge, security interest, prior assignment, option, warrant, lease, sublease, right to possession, encumbrance, claim, right or restriction which affects, by way of a conflicting ownership interest or otherwise, the right, title or interest in or to any particular property.

(38) "Material Adverse Change" means a change in the Condition of the Assets which has had or could reasonably be expected to have a material adverse effect on the value of the Assets.

(39) "New Brunswick Contract" means the letter agreement between the Vendor, the Parent and the Minister of Natural Resources and Energy (New Brunswick) dated August 16, 1995.

(40) "New Brunswick Government Approvals" means all applicable consents and approvals required to be obtained from the government of New Brunswick in connection with the execution and delivery of this Agreement, the completion of the transactions contemplated by this Agreement and the operation of each of the Caribou mine and Restigouche mine in accordance with the Purchaser's proposed business plans.

(41) "Notices" means the notices required to be given to any Person under Applicable Law or pursuant to any contract or other obligation to which the Vendor is a party or by which the Vendor is bound or which is applicable to any of the Assets, in connection with the execution and delivery of this Agreement or the completion of the transactions contemplated by this Agreement, as more particularly set out in Schedule 1.1(41).

(42) "Parent" means Breakwater Resources Ltd.

(43) "Party" means a party to this Agreement and any reference to a Party includes its successors and permitted assigns; and "Parties" means every Party.

(44) "Permitted Liens" means those Liens described in Schedule 1.1(44).

(45) "Person" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity.

(46) "Prime Rate" means the prime rate of interest per annum quoted by the Bank of Montreal from time to time as its reference rate of interest for Canadian dollar demand loans made to its commercial customers in Canada and which the Bank of Montreal refers to as its "prime rate", as such rate may be changed from time to time.

(47) "Purchase Price" has the meaning given in Section 2.2.

(48) "Purchaser's Solicitors" means Blake, Cassels & Graydon LLP.

(49) "Real Property" means all interests in real property in the province of New Brunswick owned or leased by the Vendor including those set out on Schedule 1.1(6) Part I (which schedule shall be updated on the Closing Date).

(50) "Reclamation Deposit" means the sum currently held in deposit by the Department of Natural Resources (New Brunswick) as security for the reclamation and remediation of environmental impact associated with the Real Property included as part of the Assets together with all interest accrued or accruing due thereon, as may be applicable.

(51) "Related to the Assets" means, directly or indirectly, used in, arising from, or relating in any manner to the Assets.

(52) "Rights" has the meaning given in Section 3.6.

(53) "Taxes" means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax including Canada Pension Plan and provincial pension plan contributions, employment insurance payments and workers compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties, imposed by any governmental authority (including federal, state, provincial, municipal and foreign governmental authorities), and whether disputed or not.

(54) "Third Party" has the meaning given in Section 6.6.

(55) "Third Party Claim" has the meaning given in Section 6.5.

(56) "Vendor's Knowledge" or "knowledge of the Vendor" means the knowledge of any of the directors or officers of the Vendor except that for the purposes of Sections 5.1(6) and 5.1(7) means the knowledge of Bill Heath, president of Canzinco, with respect to matters arising on or after January 1, 2002.

(57) "Vendor's Solicitors" means Gowling Lafleur Henderson LLP.

**1.2 Headings and Table of Contents.** The division of this Agreement into Articles and Sections, the insertion of headings, and the provision of any table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**1.3 Number and Gender.** Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

**1.4 Business Days.** If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.

1.5 **Currency and Payment Obligations.** Except as otherwise expressly provided in this Agreement:

- (1) all dollar amounts referred to in this Agreement are stated in Canadian Dollars;
- (2) any payment contemplated by this Agreement shall be made by cash, certified cheque or any other method that provides immediately available funds; and
- (3) except in the case of any payment due on the Closing Date, any payment due on a particular day must be received and available not later than 2:00 p.m. (Toronto time) on the due date and any payment made after that time shall be deemed to have been made and received on the next Business Day.

1.6 **Statute References.** Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

1.7 **Section and Schedule References.** Unless the context requires otherwise, references in this Agreement to Sections or Schedules are to Sections or Schedules of this Agreement. The Schedules to this Agreement are as follows:

<u>Schedules</u>	<u>Subject Matter</u>
Schedule 1.1(6)	Assets
Schedule 1.1(18)	Consents and Approvals
Schedule 1.1(19)	Contracts
Schedule 1.1(20)	Convertible Debenture
Schedule 1.1(22)	Form of Environmental Indemnity
Schedule 1.1(41)	Notices
Schedule 1.1(44)	Permitted Liens
Schedule 3.2(1)	Form of General Conveyance and Assumption of Liabilities Agreement
Schedule 3.2(4)	Vendor's Bring Down Certificate
Schedule 3.2(5)	Vendor's Accredited Investor Certificate
Schedule 3.3(3)	Purchaser's Bring Down Certificate
Schedule 4.1(12)	Purchaser's Licenses and Permits
Schedule 4.1(13)	Outstanding Creditors and Discharges
Schedule 5.1(4)	Sufficiency of Assets

## ARTICLE 2

### PURCHASE OF ASSETS

**2.1 Agreement to Purchase and Sell.** At the Closing Time, subject to the terms and conditions of this Agreement:

(1) the Vendor shall sell, assign and transfer and the Purchaser shall purchase the Assets free and clear of any Liens, except for Permitted Liens; and

(2) the Purchaser shall assume the Assumed Liabilities.

**2.2 Amount of Purchase Price.** The purchase price payable by the Purchaser to the Vendor for the Assets (the "Purchase Price") shall consist of the issuance by the Purchaser to the Parent (as directed by the Vendor) at the Closing Time of the Convertible Debenture and the assumption of the Assumed Liabilities.

**2.3 HST Election.** At the Closing, the Vendor and the Purchaser shall execute jointly an election under Section 167 of the *Excise Tax Act* (Canada) to have the sale of the Assets take place on a HST-free basis under Part IX of the *Excise Tax Act* (Canada) and the Purchaser shall file such election with its HST return for the reporting period in which the sale of the Assets takes place.

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### ARTICLE 3

#### CLOSING ARRANGEMENTS

3.1 **Closing.** The Closing shall take place at 10:00 a.m. on the Closing Date at the offices of the Purchaser's Solicitors, or at such other time on the Closing Date or such other place as may be agreed orally or in writing by the Vendor and the Purchaser.

3.2 **Vendor's Closing Deliveries.** At the Closing, the Vendor shall deliver or cause to be delivered to the Purchaser the following documents:

(1) a general conveyance and assumption of liabilities agreement substantially in the form of Schedule 3.2(1) duly executed by the Vendor, together with such other bills of sale or instruments of conveyance, assignment or transfer as may be reasonably required by the Purchaser;

(2) a duly executed subscription and purchase agreement in connection with the Equity Financing;

(3) a certificate of a senior officer of the Vendor dated as of the Closing Date as relied upon by Vendor's Solicitors;

(4) a bring-down certificate of the President of the Vendor in the form of Schedule 3.2(4);

(5) an accredited investor certificate executed by a senior officer of the Vendor dated as of the Closing Date in the form of Schedule 3.2(5);

(6) the release from escrow of the Breakwater Subscription Amount;

(7) the HST election referred to in Section 2.3;

(8) an opinion of the Vendor's Solicitors addressed to the Purchaser and the Purchaser's Solicitors in the form agreed to by the Purchaser, acting reasonably;

(9) a direction from the Vendor to the Purchaser regarding the delivery of the Convertible Debenture to the Parent;

(10) an acknowledgement from the Parent in the form of Schedule 3.2(10);

(11) a marketing agreement between the Parent and the Purchaser dated as of the Closing Date in the form of Schedule 3.2(11) (the "Marketing Agreement") duly executed by the Parent;

(12) the NSR Royalty Agreement (as defined in the Convertible Debenture) duly executed by the Parent;

(13) the transfer forms and documents required by the New Brunswick government for the New Brunswick Government Approvals; and

(14) all deeds of conveyance, bills of sale, assurances, transfers, assignments, consents, and such other agreements, documents and instruments as may be reasonably required by the Purchaser to complete the transactions provided for in this Agreement;

**3.3 Purchaser's Closing Deliveries.** At the Closing, the Purchaser shall deliver or cause to be delivered to the Vendor, or as directed by the Vendor, the following documents and payments:

(1) a general conveyance and assumption of liabilities agreement substantially in the form of Schedule 3.2(1) duly executed by the Purchaser;

(2) a certificate of the President or other senior officer of the Purchaser dated as of the Closing Date;

(3) a bring down certificate of the Secretary or other officer of the Purchaser in the form of Schedule 3.3(3);

(4) the release from escrow of the Escrow Amount (as defined in the Escrow Agreement) minus the Breakwater Subscription Amount to the Parent;

(5) the New Brunswick Government Approvals;

(6) the Convertible Debenture duly executed by the Purchaser;

(7) an opinion of the Purchaser's Solicitors addressed to the Vendor and the Vendor's Solicitors in the form agreed to by the Vendor, acting reasonably;

(8) the Marketing Agreement duly executed by the Purchaser;

(9) the NSR Royalty Agreement (as defined in the Convertible Debenture), duly executed by the Purchaser;

(10) the share certificate representing the shares of the Purchaser subscribed for by the Parent;

(11) the Environmental Indemnity duly executed by the Purchaser;

(12) the transfer forms and documents required by the New Brunswick government for the New Brunswick Government Approvals; and

(13) all such other assurances, consents, agreements, documents and instruments as may be reasonably required by the Vendor to complete the transactions provided for in this Agreement.

**3.4 Possession.** On the Closing Date, the Vendor shall deliver or cause to be delivered to the Purchaser possession of the Assets.

3.5 Notices. On the Closing Date, the Vendor shall deliver the Notices to the Persons to whom they are addressed.

3.6 Non-Transferable and Non-Assignable Assets. To the extent that any of the Assets to be transferred to the Purchaser on the Closing, or any claim, right or benefit arising under or resulting from such Assets (collectively, the "Rights") is not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of a Right would constitute a breach of any obligation under, or a violation of, any Applicable Law unless the approval, consent or waiver of such third Person is obtained (collectively, the "Non-Assignable Rights"), then, except as expressly otherwise provided in this Agreement and without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement, this Agreement shall not constitute an agreement to transfer such Non-Assignable Rights unless and until such approval, consent or waiver has been obtained. After the Closing and until all such Non-Assignable Rights are transferred to the Purchaser, the Vendor shall:

- (a) maintain its existence and hold the Non-Assignable Rights in trust for the Purchaser;
- (b) comply with the terms and provisions of the Non-Assignable Rights as agent for the Purchaser at the Purchaser's cost and for the Purchaser's benefit;
- (c) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Non-Assignable Rights to the Purchaser; and
- (d) enforce, at the request of the Purchaser and at the expense and for the account of the Purchaser, any rights of the Vendor arising from such Non-Assignable Rights against any third Person, including the right to elect to terminate any such rights in accordance with the terms of such rights upon the written direction of the Purchaser.

In order that the full value of the Non-Assignable Rights may be realized for the benefit of the Purchaser, the Vendor shall, at the request and expense and under the direction of the Purchaser, in the name of the Vendor or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the opinion of the Purchaser, necessary or proper in order that the obligations of the Vendor under such Non-Assignable Rights may be performed in such manner that the value of such Non-Assignable Rights is preserved and enures to the benefit of the Purchaser, and that any moneys due and payable and to become due and payable to the Purchaser in and under the Non-Assignable Rights are received by the Purchaser. The Vendor shall promptly pay to the Purchaser all moneys collected by or paid to the Vendor in respect of every such Non-Assignable Right. The Purchaser shall indemnify and hold the Vendor harmless from and against any claim or liability under or in respect of such Non-Assignable Rights arising because of any action of the Vendor taken pursuant to this Section.

For greater certainty, the Purchaser and the Vendor agree that the Licenses and Permits that are not transferable are not included in the Assets and that it shall be the Purchaser's obligation to

obtain, on or before closing, all Licenses and Permits that are not transferable that are required for the ownership and operation of the Assets.

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## ARTICLE 4

### CONDITIONS OF CLOSING

4.1 **Purchaser's Conditions.** The Purchaser shall not be obliged to complete the purchase and sale of the Assets pursuant to this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Purchaser and may be waived, in whole or in part, in writing by the Purchaser at any time; and the Vendor agrees with the Purchaser to take all such actions, steps and proceedings as are reasonably within its control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

(1) *Representations and Warranties.* The representations and warranties of the Vendor in Section 5.1 shall be true and correct at the Closing.

(2) *Vendor's Compliance.* The Vendor shall have performed and complied with all of the covenants, terms and conditions in this Agreement on its part to be performed or complied with at or before Closing and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 3.2 or elsewhere in this Agreement.

(3) *Material Adverse Change.* During the Interim Period, there shall have been no Material Adverse Change.

(4) *No Litigation.* There shall be no litigation or proceedings:

- (a) pending or threatened against any of the Parties hereto or against any of their respective Affiliates or any of their respective directors or officers, or involving the Assets or Properties, or any other assets or properties of any of them, for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated hereby or otherwise claiming that such completion is improper; or
- (b) pending or threatened against any of the Parties or against any of their respective Affiliates or any of their respective directors or officers which:
  - (i) in the result, could adversely affect the right of the Purchaser to acquire or retain the Assets; or
  - (ii) in the judgment of the Purchaser, would make the completion of the transactions contemplated by this Agreement inadvisable.

(5) *Consents and Approvals.* All the Consents and Approvals have been obtained.

(6) *Title Opinion.* The Purchaser shall have received an opinion from Clark Drummie, in form and substance satisfactory to it, acting reasonably, confirming that the Vendor

owns or has a valid leasehold interest in the mineral properties which comprise the Caribou and Restigouche mines and the Real Property, free and clear of all Liens, except for Permitted Liens.

(7) *Equity Financing.* The Purchaser shall have completed the Equity Financing.

(8) *Breakwater Subscription.* The Parent shall have participated in the Equity Financing by executing and delivering a subscription and purchase agreement and paying the Breakwater Subscription Amount to the Purchaser.

(9) *Kalwea Litigation Settlement Agreement* The Purchaser shall have received a copy of the release with respect to Marshall Minerals Corp. and discontinuance or dismissal of action by Marshall Minerals Corp. and Kalwea Financial Corp., in form and substance satisfactory to it, acting reasonably, confirming the settlement of claims by Marshall Minerals Corp.

(10) *Exchange Approval* The Purchaser shall have received approval of the Exchange to the purchase of the Assets, the Equity Financing and any other aspect of the transaction requiring approval of the Exchange.

(11) *Licenses and Permits* The Purchaser shall have received the licenses and permits required by the Purchaser to operate the Caribou and Restigouche mines, as more particularly set out in Schedule 4.1(12).

(12) *Outstanding Encumbrances* The Purchaser shall have received, in form and substance satisfactory to it, acting reasonably, evidence confirming that discharges have been obtained for all encumbrances set out in Schedule 4.1(13).

**4.2 Condition not Fulfilled.** If any condition in section 4.1 has not been fulfilled at or before the Closing Time, then the Purchaser in its sole discretion may, without limiting any rights or remedies available to the Purchaser at law or in equity, either:

(1) terminate this Agreement by notice to the Vendor, in which event the Purchaser shall be released from its obligations under this Agreement to complete the purchase of the Assets; or

(2) waive compliance with any such condition without prejudice to its right of termination in the event of non-fulfilment of any other condition.

**4.3 Vendor's Conditions.** The Vendor shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Vendor, and may be waived, in whole or in part, in writing by the Vendor at any time; and the Purchaser agrees with the Vendor to take all such actions, steps and proceedings within the Purchaser's reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

(1) *Representations and Warranties.* The representations and warranties of the Purchaser in Section 5.2 shall be true and correct at the Closing.

(2) *Purchaser's Compliance.* The Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed by or complied with at or before the Closing Time and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing Time all the documents contemplated in Section 3.3 or elsewhere in this Agreement.

(3) *New Brunswick Government Approvals.* The New Brunswick Government Approvals have been obtained.

(4) *New Brunswick Government Release.* The release of environmental obligations under the historical liability agreement, the Breakwater Reclamation Plan or otherwise by the New Brunswick Government of the Parent and the Vendor has been obtained.

(5) *Equity Financing.* The Purchaser shall have completed the Equity Financing.

(6) *Exchange Approval.* The Purchaser shall have received approval of the Exchange to the purchase of the Assets, the Equity Financing and any other aspect of the transaction requiring approval of the Exchange.

(7) *Deposits.* The Purchaser shall have deposited with (i) the Department of Natural Resources (New Brunswick) any additional reclamation deposits required by the Department of Natural Resources (New Brunswick) to be deposited to secure reclamation and remediation obligations with respect to the Assets (the "Additional Reclamation Deposit"); and (ii) the Department of Environment (New Brunswick) any additional environmental protection deposits required by the Department of Environment (New Brunswick) to be deposited to secure environmental protection obligations with respect to the Assets (the "Additional Environmental Protection Deposit").

**4.4 Condition not Fulfilled.** If any condition in Section 4.3 shall not have been fulfilled at or before the Closing Time, then the Vendor in its sole discretion may, without limiting any rights or remedies available to the Vendor at law or in equity, either:

(1) terminate this Agreement by notice to the Purchaser in which event the Vendor shall be released from all obligations under this Agreement; or

(2) waive compliance with any such condition without prejudice to its right of termination in the event of non-fulfilment of any other condition.

**4.5 Actions to Satisfy Closing Conditions.** Each Party shall take all such actions as are within its power and otherwise use its best efforts so as to ensure compliance with the conditions set forth in this Article 4.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES

**5.1 Representations and Warranties of the Vendor.** As a material inducement to the Purchaser's entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendor set out in this Section 5.1, the Vendor represents and warrants to the Purchaser as follows:

(1) *Incorporation and Power.* The Vendor is a corporation incorporated and validly subsisting under the laws of the jurisdiction of its incorporation. The Vendor has the corporate power and authority and is qualified to own and dispose of the Assets. No act or proceeding has been taken by or against the Vendor in connection with the dissolution, liquidation, winding up, bankruptcy or reorganization of the Vendor.

(2) *Due Authorization.* The Vendor has the corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments. The execution and delivery of this Agreement and such other agreements and instruments and the completion of the transactions contemplated by this Agreement and such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Vendor.

(3) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Vendor enforceable against the Vendor in accordance with its terms subject, however, to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of the rights of creditors or others and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.

(4) *Sufficiency of Assets.* Except as disclosed in Schedule 5.1(4), since July 5, 2005, the Vendor has not removed, sold, transferred, leased or otherwise disposed of any of the Assets or the Real Property and has not entered into any agreement or granted any option or any other right or privilege outstanding in favour of any Person for the purchase from the Vendor of the Assets.

(5) *Consents and Approvals.* All the Consents and Approvals are listed in Schedule 1.1(18). Except for the Consents and Approvals, no material consent or approval of any Person is required in connection with the execution and delivery of this Agreement and the completion of the transactions contemplated by this Agreement.

(6) *Notices.* All the Notices are listed in Schedule 1.1(41). Except for the Notices, to the Vendor's knowledge no notice is required to be delivered to any Person in connection with the execution and delivery of this Agreement and the completion of the transactions contemplated by this Agreement.

(7) *Absence of Conflicting Agreements.* To the Vendor's knowledge, the execution, delivery and performance of this Agreement by the Vendor and the completion (with any required Consents and Approvals and Notices) of the transactions contemplated by this Agreement do not and will not result in or constitute any of the following:

- (a) a default, breach or violation or an event that, with notice or lapse of time or both, would be a default, breach or violation of any of the terms, conditions or provisions of the constating documents of the Vendor or of any material Contract;
- (b) an event which, pursuant to the terms of any material Contract, causes any right or interest of the Vendor to come to an end or be amended in any way that is detrimental to the consummation of the transactions contemplated in this Agreement;
- (c) the creation or imposition of any lien, encumbrance or other restriction on any Asset; or
- (d) the violation of any Applicable Law applicable to or affecting the Vendor which is Related to the Assets.

(8) *Litigation.* To the knowledge of the Vendor, there is no material action, suit, proceeding, claim, application, complaint or investigation in any court or before any arbitrator or before or by any regulatory body or governmental or non-governmental body pending or threatened by or against the Vendor Related to the Assets or affecting the Condition of the Assets or the transactions contemplated by this Agreement.

(9) *Residence of Vendor.* The Vendor is not a non-resident of Canada within the meaning of section 116 of the *Income Tax Act* (Canada).

(10) *HST.* The Vendor is a "registrant" under Part IX of the *Excise Tax Act* (Canada). The Vendor's HST registration number is R 12554 8453 RT 0001.

(11) *Brokerage Fees.* The Vendor has not entered into any agreement which would entitle any Person to any valid claim against the Purchaser for a broker's commission, finder's fee or any like payment in respect of the purchase and sale of the Assets or any other matters contemplated by this Agreement.

(12) *Operating and Maintenance History.* The Vendor has provided to the Purchaser all data in its possession and under its control (whether in written, printed, electronic or computer printout form, or stored on computer discs or other data and software storage and media devices) regarding the operating and maintenance history of the Assets.

**5.2 Representations and Warranties of the Purchaser.** The Purchaser represents and warrants to the Vendor as follows:

(1) *Incorporation and Power.* The Purchaser is a corporation duly incorporated under the laws of the jurisdiction of its incorporation and is duly organized, validly subsisting and in good standing under such laws.

(2) *Due Authorization.* The Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments. The execution and delivery of this Agreement and such other agreements and instruments and the completion of the transactions contemplated by this Agreement and such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Purchaser.

(3) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms subject, however, to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of the rights of creditors or others and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.

(4) *HST.* The Purchaser is a "registrant" under Part IX of the *Excise Tax Act* (Canada) and its registration number is R 85844 8335 RT 0001.

(5) *Brokerage Fees.* The Purchaser has not entered into any agreement which would entitle any Person to any invalid claim against the Purchaser for a broker's commission, finder's fee or any like payment in respect of the purchase and sale of the Assets or any other matters contemplated by this Agreement.

### 5.3 Survival of Representations, Warranties and Covenants.

(1) The representations and warranties of the Vendor contained in Section 5.1 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive the Closing for a period of one year from the Closing Date, and notwithstanding the Closing and any inspection or inquiries made by or on behalf of the Purchaser, shall continue in full force and effect for the benefit of the Purchaser, after which time the Vendor shall be released from all obligations in respect of such representations and warranties except with respect to any Claims asserted by the Purchaser in writing (setting out in reasonable detail the nature of the Claim and the approximate amount of such Claim) before the expiration of such period.

(2) The representations and warranties of the Purchaser contained in Section 5.2 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive the Closing for a period of one year from the Closing Date, and notwithstanding the Closing, shall continue in full force and effect for the benefit of the Vendor, after which time the Purchaser shall be released from all obligations in respect of such representations and warranties except with respect to any Claims asserted by the Vendor in writing (setting out in reasonable detail the nature of the Claim and the appropriate amount thereof) before the expiration of such period.

(3) The covenants of the Vendor set forth in this Agreement shall survive the Closing, and notwithstanding the Closing, shall continue in full force and effect for the benefit of the Purchaser in accordance with the terms thereof.

(4) The covenants of the Purchaser set forth in this Agreement shall survive the Closing, and notwithstanding the Closing, shall continue in full force and effect for the benefit of the Vendor in accordance with the terms thereof.

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## ARTICLE 6

### INDEMNIFICATION

**6.1 Indemnity by the Vendor.** The Vendor shall indemnify and hold the Purchaser, its directors, officers, employees, agents, representatives and the Purchaser's Affiliates and their respective directors, officers and employees harmless in respect of any claim, demand, action, cause of action, damage, loss, cost, liability or expense (hereinafter referred to as "Claim") which may be made or brought against an Indemnified Party or which it may suffer or incur directly or indirectly as a result of, in respect of or arising out of:

(1) any incorrectness in or breach of any representation or warranty of the Vendor contained in this Agreement or in any other agreement, certificate or instrument executed and delivered pursuant to this Agreement; or

(2) any breach of or any non-fulfilment of any covenant or agreement on the part of the Vendor under this Agreement or under any other agreement, certificate or instrument executed and delivered pursuant to this Agreement.

**6.2 Indemnity by the Purchaser.** The Purchaser shall indemnify and hold the Vendor, its directors, officers, employees, agents, representatives and the Vendor's Affiliates and their respective directors, officers and employees harmless in respect of any Claim which may be made or brought against an Indemnified Party or which it may suffer or incur directly or indirectly as a result of in respect of or arising out of:

(1) any incorrectness in or breach of any representation or warranty of the Purchaser contained in this Agreement or in any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;

(2) any breach of or any non-fulfilment of any covenant or agreement on the part of the Purchaser under this Agreement or under any other agreement, certificate or instrument executed and delivered pursuant to this Agreement; or

(3) any termination costs payable by the Vendor with respect to the BioteQ Development Agreement.

**6.3 Environmental Indemnity.** The Purchaser will indemnify the Vendor with respect to environmental liabilities in accordance with the Environmental Indemnity.

**6.4 Limitations.** The Vendor shall not have any Liability for indemnification pursuant to Sections 6.1 unless and until the accumulated aggregate amount of Claims of the Indemnified Party exceeds \$100,000, following which the accumulated aggregate amount of all such Claims and all further Claims of the Indemnified Party shall be recoverable as provided in this Agreement; but the foregoing limitation shall not apply to any Claim by the Purchaser under Section 6.1(3).

**6.5 Notice of Claim.** If an Indemnified Party becomes aware of a Claim in respect of which indemnification is provided for pursuant to either of Section 6.1 or 6.2, as the case may be, the Indemnified Party shall promptly give written notice of the Claim to the Indemnifying Party. Such notice shall specify whether the Claim arises as a result of a claim by a Person against the Indemnified Party (a "Third Party Claim") or whether the Claim does not so arise (a "Direct Claim"), and shall also specify with reasonable particularity (to the extent that the information is available):

- (a) the factual basis for the Claim; and
- (b) the amount of the Claim, if known.

If, through the fault of the Indemnified Party, the Indemnifying Party does not receive notice of any Claim in time effectively to contest the determination of any liability susceptible of being contested, then the Liability of the Indemnifying Party to the Indemnified Party under this Article shall be reduced by the amount of any losses incurred by the Indemnifying Party resulting from the Indemnified Party's failure to give such notice on a timely basis.

**6.6 Direct Claims.** In the case of a Direct Claim, the Indemnifying Party shall have 60 days from receipt of notice of the Claim within which to make such investigation of the Claim as the Indemnifying Party considers necessary or desirable. For the purpose of such investigation, the Indemnified Party shall make available to the Indemnifying Party the information relied upon by the Indemnified party to substantiate the Claim, together with all such other information as the Indemnifying Party may reasonably request. If both parties agree at or before the expiration of such 60 day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Indemnifying Party shall immediately pay to the Indemnified Party the full agreed upon amount of the Claim, failing which the matter shall be referred to binding arbitration in such manner as the parties may agree or shall be determined by a court of competent jurisdiction.

**6.7 Third Party Claims.** In the case of a Third Party Claim, the Indemnifying Party shall have the right, at its expense, to participate in or assume control of the negotiation, settlement or defence of the Claim. If the Indemnifying Party elects to assume such control, the Indemnifying Party shall reimburse the Indemnified Party for all of the Indemnified Party's out-of-pocket expenses incurred as a result of such participation or assumption. The Indemnified Party shall have the right to participate in the negotiation, settlement or defence of such Third Party Claim and to retain counsel to act on its behalf, provided that the fees and disbursements of such counsel shall be paid by the Indemnified Party unless the Indemnifying Party consents to the retention of such counsel at its expense or unless the named parties to any action or proceeding include both the Indemnifying Party and the Indemnified Party and a representation of both the Indemnifying Party and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences). The Indemnified Party shall cooperate with the Indemnifying Party so as to permit the Indemnifying Party to conduct such negotiation, settlement and defence and for this purpose shall preserve all relevant documents in relation to the Third Party Claim, allow the Indemnifying Party access on reasonable notice to inspect and take copies of all such documents and require its personnel to provide such statements as the Indemnifying Party may

reasonably require and to attend and give evidence at any trial or hearing in respect of the Third Party Claim. If, having elected to assume control of the negotiation, settlement or defence of the Third Party Claim, the Indemnifying Party thereafter fails to conduct such negotiation, settlement or defence with reasonable diligence, then the Indemnified Party shall be entitled to assume such control and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim. If any Third Party Claim is of a nature such that (i) the Indemnified Party is required by Applicable Law or the order of any court, tribunal or regulatory body having jurisdiction, or (ii) it is necessary in the reasonable view of the Indemnified Party acting in good faith and in a manner consistent with reasonable commercial practices, in respect of (A) a Third Party Claim by a customer relating to products or services supplied by the Vendor or (B) a Third Party Claim relating to any Contract which is necessary to the ongoing operations of the Vendor or any material part thereof in order to avoid material damage to the relationship between the Indemnified Party and any of its major customers or to preserve the rights of the Indemnified Party under such an essential contract, to make a payment to any person (a "Third Party") with respect to the Third Party Claim before the completion of settlement negotiations or related legal proceedings, as the case may be, then the Indemnified Party may make such payment and the Indemnifying Party shall, promptly after demand by the Indemnified Party, reimburse the Indemnified Party for such payment. If the amount of any liability of the Indemnified Party under the Third Party Claim in respect of which such a payment was made, as finally determined, is less than the amount which was paid by the Indemnifying Party to the Indemnified Party, the Indemnified Party shall, promptly after receipt of the difference from the Third Party, pay the amount of such difference to the Indemnifying Party. If such a payment, by resulting in settlement of the Third Party Claim, precludes a final determination of the merits of the Third Party Claim and the Indemnified Party and the Indemnifying Party are unable to agree whether such payment was unreasonable in the circumstances having regard to the amount and merits of the Third Party Claim, then such dispute shall be referred to and finally settled by binding arbitration from which there shall be no appeal.

**6.8 Settlement of Third Party Claims.** If the Indemnifying Party fails to assume control of the defence of any Third Party Claim, the Indemnified Party shall have the exclusive right to contest, settle or pay the amount claimed. Whether or not the Indemnifying Party assumes control of the negotiation, settlement or defence of any Third Party Claim, the Indemnifying Party shall not settle any Third Party Claim without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed; provided, however, that the liability of the Indemnifying Party shall be limited to the proposed settlement amount if any such consent is not obtained for any reason within a reasonable time after the request therefor.

**6.9 Interest on Claims.** The amount of any Claim submitted under Section 6.1 or Section 6.2 as damages or by way of indemnification shall bear interest from and including the date any Indemnified Party is required to make payment in respect thereof at the Prime Rate calculated from and including such date to but excluding the date reimbursement of such Claim by the Indemnifying Party is made, and the amount of such interest shall be deemed to be part of such Claim.

**6.10 HST Gross-up.** The amount of any Claim submitted under Section 6.1 or 6.2 as damages or by way of indemnification as determined without regard to this Section 6.9 shall be increased by an amount equal to the rate of HST applied to such amount.

**6.11 Set-off.** The Purchaser shall be entitled to set-off the amount of any Claim submitted under Section 6.1 as damages or by way of indemnification which has been agreed between the parties against any other amounts payable by the Purchaser to the Vendor whether under this Agreement or otherwise.

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## ARTICLE 7

### INTERIM PERIOD

7.1 **Investigation.** The Purchaser acknowledges that it and its representatives and advisers have been permitted to make such investigations, inspections, surveys or tests of the Assets, the Vendor, its predecessor companies and its Affiliates as the Purchaser deems necessary or desirable. Without limiting the generality of the foregoing, the Purchaser shall, during normal business hours, be permitted access to the Assets and all documents relating to information scheduled or required to be disclosed under this Agreement, contracts, documents, data, soil test reports, environmental reports, surveys, inspection reports, any other reports prepared by advisers and other records of the Vendor, its predecessor companies and their Affiliates (and the Vendor shall provide photocopies to the Purchaser of all such written information and documents as may be reasonably requested by the Purchaser) Related to the Assets. Any such investigations, inspections, surveys or tests shall not, however, affect or mitigate the representations and warranties of the Vendor under this Agreement which shall continue in full force and effect as provided under this Agreement. The Purchaser agrees that it shall pay to the Vendor all reasonable out-of-pocket expenses which the Vendor incurred in granting the Purchaser access during the Interim Period as well as all reasonable expenses for matters agreed to by the parties which expenses shall be paid within 30 days of receipt of an invoice from the Vendor.

7.2 **Authorizations.** The Vendor shall execute and deliver any authorizations required to permit the investigations, inspections, surveys or tests described in Section 7.1.

7.3 **Confidentiality.**

(1) Each Party shall (and shall cause each of its Representatives (as defined below) to) hold in strictest confidence and not use in any manner, other than as expressly contemplated by this Agreement, any Confidential Information (as defined below) of the other Party.

(2) Section 7.3(1) shall not apply to the disclosure of any Confidential Information where such disclosure is required by Applicable Law. In that case, the Party required to disclose (or whose Representative is required to disclose) shall, as soon as possible in the circumstances, notify the other Party of the requirement. Upon receiving such notification, the other Party may take any reasonable action to challenge the requirement, and the affected Party shall (or shall cause the applicable Representative to), at the expense of the other Party, assist the other Party in taking such reasonable action.

(3) Following the termination of this Agreement in accordance with the provisions of either of Sections 4.2 or 4.4, each Party shall (and shall cause each of its Representatives to) promptly, upon a request from the other Party, return to the requesting Party all copies of any tangible items (other than this Agreement) and electronic documents, if any, which are or which contain Confidential Information of the requesting Party; provided that if the Party so obligated to return Confidential Information or its Representatives have prepared summaries or analyses containing or concerning any Confidential Information, then such Party may, instead of returning

the summaries or analyses, destroy them and provide a certificate to that effect to the requesting Party.

(4) For the purposes of this Section 7.3:

(a) “**Confidential Information**” of a Party at any time means all information relating to such Party’s business (including business plans, way of doing business, business results and prospects and customer lists) which,

- (i) at the time is of a confidential nature (whether or not specifically identified as confidential) and is known or should be known by the other Party or its Representatives as being confidential, and
- (ii) has been or is from time to time made known to or is otherwise learned by the other Party or any of its Representatives as a result of the matters provided for in this Agreement,

including the following information:

- (iii) the terms of this Agreement, and
- (iv) a Party’s business records,

but not including any information that at such time:

- (v) has become generally available to the public other than as a result of a disclosure by the other Party or any of its Representatives;
- (vi) was available to the other Party or its Representatives on a non-confidential basis before the date of this Agreement; or
- (vii) becomes available to the other Party or its Representatives on a non-confidential basis from a Person other than the first-mentioned Party or any of its Representatives who is not, to the knowledge of such other Party or its Representatives, otherwise bound by confidentiality obligations to such first-mentioned Party in respect of such information or otherwise prohibited from transmitting the information to the other Party or its Representatives; and

(b) “**Representatives**” with respect to any party means its Affiliates and its and their respective directors, officers, employees, agents and other representatives and advisers.

**7.4 Risk of Loss.** The Assets shall be at the risk of the Vendor until the Closing. Until the Closing, the Vendor shall maintain in full force all the policies of liability insurance under which any of the Assets is insured. If before the Closing any of the Assets are lost, damaged or destroyed and the loss, damage or destruction constitutes a Material Adverse Change, then:

- (a) the Purchaser may terminate this Agreement in accordance with the provisions of Section 4.1; or
- (b) the Purchaser may agree not to terminate this Agreement without any compensation from the Vendor.

**7.5 Action During Interim Period.** During the Interim Period, the Vendor shall:

- (a) not remove, dispose of, or destroy the Assets;
- (b) preserve intact all of its rights and entitlements under the BioteQ Development Agreement until Closing at which time it will be terminated;
- (c) notify the Purchaser immediately of any Material Adverse Change and of any breach of any representation, warranty or covenant in this Agreement; and
- (d) not do any act or omit to do any act that would cause a breach of any representation, warranty, covenant or agreement contained in this Agreement.

**7.6 Exclusive Dealings.** During the Interim Period, the Vendor shall not, and shall cause its shareholders, directors, officers, employees, agents and advisors not to, take any action, directly or indirectly, to encourage, initiate, solicit, ascertain or engage in discussions or negotiations with, or provide any information to any Person, other than the Purchaser and its designated and authorized representatives, concerning any sale, transfer, assignment, licence, merger or similar transaction involving the Assets or in connection with a transaction or proposed transaction which would have a material adverse effect on the Purchaser's acquisition of the Assets as contemplated under this Agreement. The Vendor shall notify the Purchaser promptly if any such discussions, negotiations or transactions are sought or if any proposal for a sale, transfer, assignment, licence, merger or similar transaction is received or being considered.

**7.7 Consents and Approvals.** Each of the Purchaser and the Vendor shall use its best efforts to obtain all Consents and Approvals before the Closing Date at the Vendor's own expense.

**7.8 Updates to Information.** The Vendor shall update on or before the Closing, by amendment or supplement, any of the informational disclosure schedules referred to in this Agreement and any other disclosure in writing from the Vendor to the Purchaser as soon as reasonably possible after new or conflicting information comes to the attention of the Vendor. The Purchaser shall not be obligated to accept any such amendment or supplement and receipt of any such amendment or supplement shall not be deemed to be a waiver or release by the Purchaser of any provision of this Agreement.

7.9 **Cooperation.** The Vendor shall use its reasonable commercial efforts to assist the Purchaser in obtaining the New Brunswick Government Approvals.

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ARTICLE 8

POST-CLOSING MATTERS

8.1 **Non-Merger.** Each Party hereby agrees that all provisions of this Agreement, other than (a) the conditions in Article 4 and (b) the representations and warranties contained in Article 5 and the related indemnities in Sections 6.1 and 6.2 hereof (which shall be subject to the special arrangements provided in such Articles or Sections) shall forever survive the execution, delivery and performance of this Agreement, Closing and the execution, delivery and performance of any and all documents delivered in connection with this Agreement.

8.2 **Further Assurances.** Each Party shall promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and things in connection with this Agreement that the other Party may reasonably require, for the purposes of giving effect to this Agreement.

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## ARTICLE 9

### GENERAL

**9.1 Expenses.** Each Party shall be responsible for its own legal and other expenses (including any Taxes imposed on such expenses) incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement and for the payment of any broker's commission, finder's fee or like payment payable by it in respect of the purchase and sale of the Assets pursuant to this Agreement.

**9.2 Payment of Taxes.** The Purchaser shall pay all Taxes and filing or recording fees payable in connection with the instruments of transfer provided for in this Agreement. The Vendor shall pay all other Taxes applicable to, or resulting from transactions contemplated by this Agreement.

**9.3 Public Announcements.** The Parties agree that upon execution of this Agreement they will issue a joint press release regarding the terms of this transaction. Except to the extent otherwise required by law or with the prior consent of the other Party, neither Party shall make any other public announcement regarding this Agreement or the transactions contemplated by this Agreement. If a Party is required to make such a public announcement it will use reasonable efforts to provide the other Party with notice of the announcement and a copy of the proposed press release in advance of it being issued.

**9.4 Notices.**

(1) Any notice, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent prepaid by fax or other similar means of electronic communication, in each case to the applicable address set out below:

(a) if to the Vendor, to:

CanZinco Ltd.  
c/o Breakwater Resources Ltd.  
95 Wellington Street West, Suite 950  
Toronto, Ontario, M5J 2N7

Fax: (416) 363-8020

with a copy to:

Gowling Lafleur Henderson LLP  
Michael Anderson  
Suite 1600  
1 First Canadian Place

100 King Street West  
Toronto, Ontario, M5X 1G5

Fax: (416) 862-7661

(b) if to the Purchaser, to:

Blue Note Metals Inc.  
2, Place Alexis-Nihon, 3500 de Maisonneuve West  
Suite 1110  
Montreal, Quebec, H3Z 3C1

Fax: (514) 486-1317

with a copy to:

Blake, Cassels & Graydon LLP  
Frank D. Guarascio  
Suite 2800, Commerce Court West  
199 Bay Street  
Toronto, Ontario, M5L 1A9

Fax: (416) 863-2653

(2) Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed or sent before 4:30 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth Business Day following the mailing thereof; provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.

(3) Any Party may from time to time change its address under this Section 9.4 by notice to the other Party given in the manner provided by this Section.

**9.5 Time of Essence.** Time shall be of the essence of this Agreement in all respects.

**9.6 Entire Agreement.** This Agreement, including all Schedules and attachments to it, constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, warranties, representations or other agreements between the Parties in connection with the subject matter of this Agreement (whether oral or

written, express or implied, statutory or otherwise) except as specifically set out in this Agreement.

9.7 **Waiver.** A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the party to be bound by the waiver. No waiver shall be inferred from or implied by any failure to act or delay in acting by a party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other party. The waiver by a party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

9.8 **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

9.9 **Attornment.** Each party agrees (i) that any action or proceeding relating to this Agreement may (but need not) be brought in any court of competent jurisdiction in the Province of Ontario, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of such Ontario court; (ii) not to oppose any such Ontario action or proceeding on the basis of *forum non conveniens* or for any other reason; and (iii) not to oppose the enforcement against it in any other jurisdiction of any judgment or order duly obtained from an Ontario court as contemplated by this Section 9.9. The Vendor and the Purchaser irrevocably appoints the following Persons as its agents to receive on its behalf service of summons and any other legal process which may be served in any action, suit or proceeding:

For the Purchaser:

Blake, Cassels & Graydon LLP  
Frank D. Guarascio  
Suite 2800, Commerce Court West  
199 Bay Street  
Toronto, Ontario, M5L 1A9  
Fax: (416) 863-2653

with a copy to:

Blue Note Metals Inc.  
2, Place Alexis-Nihon, 3500 de Maisonneuve West  
Suite 1110  
Montreal, Quebec, H3Z 3C1

For the Vendor:

Gowling Lafleur Henderson LLP  
Michael Anderson  
Suite 1600  
1 First Canadian Place  
100 King Street West  
Toronto, Ontario, M5X 1G5

Fax: (416) 862-7661

with a copy to:

CanZinco Ltd.  
c/o Breakwater Resources Ltd.  
95 Wellington Street West, Suite 950  
Toronto, Ontario, M5J 2N7

Fax: (416) 363-8020

Such service may be made by mailing or delivering a copy of such process to the applicable party in care of its agent at the address given in this Section and each of the parties hereto hereby irrevocably authorizes and directs the respective agents to accept such service on their behalf. If and to the extent that such service and any summons or other legal process cannot for any reason be effected upon the applicable agent as in this Agreement provided, each of the parties to this Agreement further irrevocably consents to the service of any and all legal process in any such action, suit or proceeding by the mailing of copies of such process in the manner specified in Section 10.4. Nothing in this Section will affect the rights of the parties to this Agreement to serve legal process in any other manner permitted by law.


**9.10 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province and shall be treated, in all respects, as an Ontario contract.

**9.11 Successors and Assigns.** This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns. Neither party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other party.

9.12 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed.

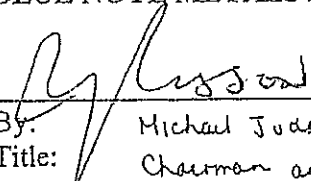
IN WITNESS WHEREOF the parties have executed this Agreement as at the date written above.

CANZINCO LTD.

  
\_\_\_\_\_  
By: George Pirie  
Title: Chairman and Chief Executive Officer

~~\_\_\_\_\_~~  
By: William Heath  
Title: President

BLUE NOTE METALS INC.

  
\_\_\_\_\_  
By: Michael Judson  
Title: Chairman and Chief Executive Officer

SCHEDULE 1.1(6)

ASSETS

PART I  
MINERAL PROPERTIES

**Leases**

ML246 Caribou Mining Lease – Exp. October 27, 2008  
ML255 Restigouche Mining Lease – Exp. July 17, 2017  
SIML2473 Restigouche Industrial Surface Mining Lease – Exp. June 30, 2017  
SIML2271 Woodside Brook Industrial Surface Mining Lease (Tailings Area) – Exp.  
May 31, 2026

**Mining Claims**

Restigouche Property (Surrounding Mining Lease) – Exp. July 26, 2006

331904 – 331910  
331915 – 331921  
331942 – 331948  
331964 – 331966  
331969 – 331970  
331988 – 331990  
331993 – 331994  
335612 – 335614  
335617 – 335618  
335636 – 335642

Woodside Brook Property (Tailings Area) – Exp. June 15, 2007

334950 – 334969  
334972 – 334977  
334980 – 334986

Armstrong Property – Exp. July 29, 2007

335452 – 335469  
335471 – 335473  
335475 – 335497

Carroll Armstrong Property – Exp. July 29, 2007

362338 – 362339  
363049  
367917 – 367918

367923 – 367927

McMaster Property – Exp. July 27, 2006

333600 – 333614

335436 – 335444

Orvan Brook Property – Exp. July 27, 2006

329142 – 329151

335445 – 335451

**Real Estate**

All that certain lot, piece and parcel of land and premises owned by the Vendor and situate, lying and being in the County of Restigouche, Province of New Brunswick identified as PID 50072032, being 509 hectares, more or less, together with all other real property owned or controlled by the Vendor and used in connection with the Mine.

**SCHEDULE 1.1(6) (continued)**

**PART II  
EXCLUDED ASSETS**

1. Boxes of files at Caribou mine.
2. Spare parts for previously removed mobile equipment.
3. Atcon Trailer located at the Restigouche Pit.
4. Assets set out on the attached list.

CMFinalInventory

Caribou February 2006

Stock code Description On Hand Actual

Stock code	Description	On Hand	Actual
<b>Quonset Hut Storage</b>			
	Dux DT30 truck front axle, rebuilt, 1000 lbs, 3' x 6'		1
	Dux DT30 truck rear axle, rebuilt, 1000 lbs, 3' x 6'		1
	Dux DT30 truck differential, new, 400 lbs, 4' x 4'		1
<b>Hold Down Yard</b>			
LSW-007-C	bucket, rebuilt, EJC210, 8' X 5' X 5'		1
LSW-008-C	bucket, rebuilt, EJC210, 8' X 5' X 5'		1
LSW-C-002	bucket, used, EJC210, 8' X 5' X 5'		1
	bucket, used, EJC210, 8' X 5' X 5'		1
<b>Shop/Tool crib wall</b>			
	control, remote, transmitter c/w harness		5

HDWBOLT 00031	1 1/4" X 16" BOLT, ND U/W REAR DIFF.	17	17
	64253282 CYLINDER, STEER, EJC 430		1
MOBSCALP00004	64116856 CALIPER, BRAKE U/W JS600	5	4.5
MOBVALVE00129	64114620 VALVE, CONTROL U/W EJC210	2	2
MOBCYLIND00030	64251848 CYLINDER, DUMP U/W EJC210	2	2
MOBCYLIND00031	64252759 CYLINDER, LIFT U/W EJC210	3	3
MOBCYLIND00001	627353-2MS CYLINDER, STABILIZER U/W ST6C	1	1
MOBRADIA00001	42407 RADIATOR, C/W MESABI CORE,(REBUILD	1	1
MOBPUMP 00009	64117799 PUMP U/W JS600 JUMBO	2	2
MOBGEAR 00014	04692461 GEAR, RING	1	1
MOBCYLIND00003	645170-12MS CYLINDER, HOIST U/W ST6C	1	1
MOBAXLE 00005	04693023 AXLE U/W EJC430 TAMROCK TRUCK	1	1
MOBCYLIND00035	64251862 CYLINDER, STEERING U/W EJC210	3	3
MOBVALVE00127	64117235 VALVE, DIRECTIONAL CONTROL U/W	1	1
MOBCYLIND00016	1687 CYLINDER, STEERING	2	2
MOBCYLIND00028	110392 CYLINDER, STEERING U/W EJC430	1	0
MOBCYLIND00029	64135124 CYLINDER, HOIST U/W EJC430	1	1
MOBHUB 00002	373306 HUB, WHEEL U/W ST6C SCOOPTRAM	1	1
MOBVALVE00054	64117687 VALVE, SPOOL U/W EJC210	6	6
MOBVALVE00054	64108863 VALVE, DUMP	2	2
MOBGEAR 00025	04700765 GEAR, RING U/W EJC430 TAMROCK	1	1
MOBVALVE00047	594922 VALVE, CHARGING U/W GETMAN	3	2
MOBCYLIND00015	494004 CYLINDER, HYDRAULIC U/W GETMAN	1	1
MOBCARRI00006	K2111519 CARRIER, PLANETARY ASSEMBLY	1	1
MOBVALVE00056	68022642 VALVE, SOLENOID	6	6
MOBPLATE00009	80347519 PLATE, BACKING TRANSFER CASE	4	4
MOBSPIND00002	69027590 SPINDLE U/W 350 SCOOPTRAM	1	1
MOBDRIVE00006	64113273 DRIVELINE ASSEMBLY (REBUILT)	1	1
MOBBOSS 00003	64801543 BOSS, BUCKET PIN U/W EJC-210	4	4
MOBCYLIND00009	16526571 CYLINDER, HYDRAULIC	1	1
MOBSHAFT00031	64115670 SHAFT, DRIVE ASSEMBLY U/W	1	1
MOBFILTER00147	64106790 FILTER U/W JS600 SCOOPTRAM	24	24
MOBVALVE00030	64101836 VALVE, LOCK U/W JUT41 SCISSOR	4	4
MOBDRIVE00003	608957-1 DRIVELINE ASSEMBLY U/W ST6C	2	2

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MOBVALVE00027	64269099 VALVE, PILOT	3	3
MOBSTART00009	1416090 STARTER, BOSCH SERIE 410 24V	2	2
MOBHUB 00005	04699914 HUB, INTERNAL GEAR U/W JS600	1	1
MOBCALIP00002	64116217 CALIPER, BRAKE	1	1
MOBVALVE00082	64113626 VALVE, PARK BRAKE 3WAY U/W	2	2
MOBFILTE00057	64102360 FILTER	14	14
MOBACCUM00007	64114634 ACCUMULATOR U/W EJC210	1	1
MOBSOLEN00001	69005273 SOLENOID, FUEL SHUT OFF	2	2
MOBVALVED0051	64117436 VALVE, PILOT OPERATOR U/W JS600	1	1
MOBMOTOR00003	VABC MOTOR, AIR U/W LOD6 SCISSOR LIFT	2	2
MOBINSER00006	64240159 INSERT U/W JS600 SCOOPTRAM	3	3
MOBFILTE00219	64117162 FILTER U/W EJC210 SCOOPTRAM	1	1
MOBHOUSI00002	64240161 HOUSING, BEARING U/W EJC-210	2	2
MOBDRIVE00002	371078-1 DRIVELINE ASSEMBLY U/W ST6C	2	2
MOBDRIVE00018	64102836 DRIVELINE U/W EJC430 TAMROCK	1	1
MOBPUMP 00017	64117679 PUMP, TRANSMISSION CHARGE U/W	1	1
MOBDRIVE00019	64102843 DRIVELINE U/W EJC430 TAMROCK	1	1
MOBDRIVE00001	622691 DRIVELINE ASSEMBLY U/W ST6C	2	2
MOBVALVE00093	68064078 VALVE, MODULATOR U/W TRUCK	1	1
MOBSLEEVE00010	04692981 SLEEVE U/W EJC-210 SCOOPTRAM	1	1
MOBWHEEL00009	64236349 WHEEL, FLY U/W JUT41 SCISSOR	1	1
MOBGEAR 00010	04699100 GEAR, SUN	8	8
MOBVALVE00085	681471 VALVE U/W 350 SCOOPTRAM	2	2
MOBVALVE00066	534034 VALVE U/W GETMAN CARRIER	2	2
MOBSHAFT00025	04699915 SHAFT, AXLE U/W #1&2 TAMROCK	2	2
MOBJOYST00001	40C-450 JOYSTICK	1	1
MOBCALIP00012	634044 CALIPER U/W GETMAN CARRIER	2	2
MOBFLANG00017	04697593 FLANGE, FRONT DIFF U/W EJC210	1	1
MOBSPIND00001	641443 SPINDLE U/W ST6C SCOOPTRAM	1	1
MOBMOUNT00006	02248925 MOUNT, ENGINE U/W DEUTZ F10L413	2	2
MOBPLATE00014	04699801 PLATE, REACTION U/W EJC210	6	6
MOBVALVE00063	69021587 VALVE, THROTTLE U/W JS600	3	3
MOBDRIVE00020	64113274 DRIVELINE ASSEMBLY U/W EJC210	1	1
MOBCYLIN00019	64109098 CYLINDER, BRAKE MASTER U/W	2	2
MOBCLAMP00001	69022364 CLAMP ASSEMBLY U/W ST6C SCOOPTR	3	3
MOBSUSPE00002	5637-6800-00 SUSPENSION, SEAT U/W ST6C	1	1
MOBCYLIN00002	644747-4MS CYLINDER, STEERING U/W ST6C	1	1
MOBPUMP 00022	64108861 PUMP, DUMP HOIST U/W JS600	1	1
MOBPUMP 00008	492221 PUMP U/W GETMAN SCISSOR LIFT	1	1
MOBINSER00005	55612352 INSERT U/W ST6C SCOOPTRAM	4	4
MOBWASHE00023	64208165 WASHER, THRUST	4	0
MOBHOLE00001	81244639 HOLDER, PILOT BEARING U/W JUT41	2	2
MOBGEAR 00023	7N9146 GEAR, RING STARTER	2	2
MOBDRIVE00017	64102031 DRIVELINE U/W EJC430 TAMROCK	1	1
MOBDISC 00003	104800 DISC, BRAKE U/W DUX DT30 30TON	1	0
MOBVALVE00012	370225 VALVE, PILOT U/W ST6C SCOOPTRAM	1	1
MOBSWTC00023	534045 SWITCH U/W GETMAN SCISSOR LIFT	4	4
MOBFLANG00001	232978 FLANGE, INPUT U/W ST6C SCOOPTRAM	2	2
MOBVALVE00010	69022420 VALVE, PRIORITY U/W ST6C	2	0
MOBGEAR 00007	68018777 GEAR, STEERING U/W JUT41	1	0
MOBPUMP 00004	69022595 PUMP, BRAKE U/W ST6C SCOOPTRAM	2	2
MOBDRIVE00005	64115669 DRIVELINE ASSEMBLY	1	1

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MOBFILTE00008	5540894500 FILTER, TRANSMISSION U/W ST6C	2	1
MOBCOVER00002	69016607 COVER ASSEMBLY U/W JS600	1	1
MOBACCUM00008	64113252 ACCUMULATOR U/W EJC210	2	2
MOBBEAR00075	64117581 BEARING U/W EJC430 TAMROCK	1	1
MOBPIN 00063	21488-01 PIN, CENTER U/W GETMAN SCISSOR	2	2
MOBSEAL 00058	17-00103 SEAL HUB U/W JS600 SCOOPTRAM	3	3
MOBJOINT00001	54803751 U-JOINT U/W JS600 SCOOPTRAM	3	3
MOBDISC 00013	64204070 DISC, BRAKE U/W EJC430 TAMROCK	1	1
MOBPUMP 00023	64117234 PUMP, BRAKE COOLING U/W EJC430	1	1
MOBSEAL 00050	69016937 SEAL	2	2
MOBSPRING00027	69011753 SPRING U/W EJC210 SCOOPTRAM	15	15
MOBDRIVE00016	64102830 DRIVELINE U/W EJC430 TAMROCK	1	1
MOBDRIVE00004	637927 DRIVELINE ASSEMBLY U/W ST6C	1	1
MOBSLEEVE00009	04692977 SLEEVE U/W EJC-210 SCOOPTRAM	1	1
MOBSTART00019	4930-308 STARTER 24V	2	2
MOBPIN 00065	21494-05 PIN U/W GETMAN SCISSOR LIFT	4	4
MOBMOUNT00005	13846-01 MOUNT U/W SCISSOR LIFT	1	1
MOBPIN 00037	CAR240634 PIN U/W JS600 SCOOPTRAM	2	2
MOBKIT 00061	RY2918730 KIT, RECHARGE U/W FSS	2	2
MOBVALVE00024	64116938 VALVE U/W JS600 SCOOPTRAM	3	3
MOBPIN 00030	240660 PIN U/W JS600 SCOOPTRAM	2	2
MOBFLANG00016	04693040 FLANGE, REAR DIFF U/W EJC210	1	1
MOBBUSH00022	64113617 BUSHING, BALL U/W ST6C	2	2
MOBSOLEN00005	P610-L1V12 SOLENOID U/W GETMAN SCISSOR	4	4
MOBROLLE00007	22303-05 ROLLER U/W GETMAN SCISSOR LIFT	2	2
MOBDISC 00014	64241385 DISC, BRAKE U/W EJC210	2	2
MOBKIT 00079	816115 KIT, SEAL BRAKE U/W EJC210	3	3
MOBBUSH00054	61388956 BUSHING, BRONZE U/W JS600	9	0
MOBPIN 00038	240156 PIN, FLANGED U/W JS600 SCOOPTRAM	2	2
MOBCOVER00015	04700364 COVER, PLANETARY U/W DUX DT30	3	3
MOBCYLIND00018	561914 CYLINDER U/W WAGNER ST6C SCOOPTRAM	1	1
MOBFILTE00091	64110298 FILTER, AIR	3	0
MOBBUSH00020	5500-6819-00 BUSHING, BRONZE U/W ST6C	4	4
MOBVALVE00050	64106045 VALVE, POWER	1	1
MOBPIN 00008	5565107100 PIN U/W ST6C SCOOPTRAM	2	2
MOBHARNE00001	42C-0052 HARNESS, SHOULDER	1	1
MOBFILTE00109	AF471M FILTER, AIR U/W DUX TRUCK	22	22
MOBBUSH00019	5500-6824-00 BUSHING, BRONZE U/W ST6C	4	4
MOBPLATE00015	CAR2PLX3S8B PLATE 2" U/W SCOOPTRAM	2	2
MOBMOUNT00004	59006507 MOUNT, DOUBLE ENGINE U/W DEUTZ	1	1
MOBCOMPE00001	RE33525 COMPENSATOR U/W SCOOPTRAM	1	1
MOBGEAR 00003	372710 GEAR, SUN U/W ST6C SCOOPTRAM	3	3
MOBSTART00001	17074 STARTER 12V	2	1
MOBVALVE00134	64105542 VALVE, SHUTTLE U/W EJC210	4	4
MOBVALVE00097	64101781 VALVE, CHECK U/W JUT41 SCISSOR	2	2
MOBSWITC00018	69018737 SWITCH U/W JS600 SCOOPTRAM	3	3
MOBWASHE00047	04697480 WASHER, THRUST U/W JS600	2	2
MOBRETAIN00003	64240158 RETAINER U/W EJC-210 SCOOPTRAM	3	3
MOBGAUGE00005	64100688 GAUGE, TEMPERATURE	4	4
MOBPISTON00006	3602A PISTON HEAD	4	4
MOBCYLIND00035	36499-00 CYLINDER, STEERING U/W GETMAN	1	1
MOBFILTE00212	64113713 FILTER, AIR U/W EJC-210	1	1

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MOBCLEAN00006	64108366 CLEANER, AIR U/W EJC430 TAMROCK	1	0
MOBBRAKE00002	68088293 BRAKE KIT	6	6
MOBNUT 00061	64233360 NUT U/W EJC-210 SCOOPTRAM	2	2
MOBCENTR00001	05962131 CENTRALIZER, FRONT U/W H205D	1	1
MOBVALVE00052	64100030 VALVE, SHUTTLE U/W JS500	7	7
MOBPIN 00009	5565107200 PIN U/W ST6C SCOOPTRAM	2	2
MOBFILTE00001	U1732769 FILTER CARTRIDGE U/W H205D	4	4
MOBPIN 00060	64232865 PIN, BOX U/W EJC430 TAMROCK	2	2
MOBBEAR00022	64113908 BEARING, PILLOW BLOCK	1	1
MOBJOINT00033	64808120 U-JOINT U/W EJC430 TAMROCK	4	4
MOBPLATE00010	5800-6522-00 PLATE, BOLT U/W ST6	4	4
MOBBOSS 00002	64801293 BOSS U/W EJC-210 SCOOPTRAM	4	4
MOBMANIF00001	5536323900 MANIFOLD U/W ST6C SCOOPTRAM	2	2
MOBSEAT 00008	342417 SEAT ASSEMBLY U/W ST6C SCOOPTRAM	1	1
MOBGEAR 00022	4N2514 GEAR, STARTER RING U/W 3406 ENGINE	1	1
MOBVALVE00066	64428058 VALVE, SOLENOID	3	3
MOBSOLEN00010	04698577 SOLENOID 24V	2	2
MOBVALVE00043	64105458 VALVE, AIR	2	2
MOBSEAT 00007	64119612 SEAT SUSPENSION	1	1
MOBFLANG00006	04697501 FLANGE U/W JS600 SCOOPTRAM	1	1
MOBBEAR00052	SP43C BEARING, SEAL MASTER 2/16	2	2
MOBCOVER00018	04699151 COVER, CLUTCH U/W EJC430	1	1
MOBINSER00002	625121 INSERT-HINGE PIN U/W ST6C	2	2
MOBHUB 00008	241992 HUB, IMPELLER COVER	1	1
MOBACCUM00009	64119861 ACCUMULATOR U/W EJC210	1	1
MOBPUMP 00016	1300487 PUMP U/W L006 SCISSOR LIFT	1	1
MOBFILTE00144	69027572 FILTER, FUEL	5	5
MOBBOTTL00001	KS0038 BOTTLE U/W FSS	11	11
MOBINSER00004	625166 INSERT-HINGE PIN U/W ST6C	2	2
MOBROLLE00008	22307-04 ROLLER U/W GETMAN SCISSOR LIFT	2	2
MOBPIN 00006	598799 PIN U/W ST6C SCOOPTRAM	2	2
MOBSTART00008	3764-24V STARTER	2	2
	physical inventory performed June 01/06 for all above		
MOBWRAP 00001	98004049 4" OMNI-WRAP COVERING	.. 50 ..	..
MOBBRACK00003	RA29193 BRACKET, ACTUATOR MOUNT U/W FSS	3	3
MOBSTART00007	3745 STARTER 24V	2	2
MOBVALVE00039	69021574 VALVE, SUB ASSEMBLY	3	3
MOBNUT 00050	04698406 NUT U/W EJC430 TAMROCK TRUCK	3	3
MOBROLLE00005	621001 ROLLER	1	1
MOBVALVE00019	772-2545 VALVE, SEQUENCE	1	1
MOBSTUD 00022	04965418 STUD U/W SCOOPTRAM	4	4
MOSSWTC00021	359748 SWITCH	2	2
MOBSTART00022	4918 STARTER 24V	1	1
MOBPIN 00071	5562923900 PIN, HOIST CYLINDER U/W ST6C	2	2
MOBTACH00001	04900563 TACHOMETER U/W EJC210 SCOOPTRAM	1	1
MOBFILTE00137	AF1733K FILTER	16	16
MOBPIN 00020	1686-7-4 PIN, STEERING U/W DUX DT30	6	6
MOBKIT 00069	789-910 KIT, SEAL AIR MOTOR U/W L006	2	2
MOBPIN 00064	21488-02 PIN U/W GETMAN SCISSOR LIFT	1	1
MOBRELAY00001	64117339 RELAY 24V SPDT	3	3

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MOBPIN 00040	64240078 PIN, FLANGED U/W JS600 SCOOPTRAM	2
MOBSTUD 00026	04698740 STUD, SPINDLE U/W EJC-210	44
MOBFILTE00215	64117836 FILTER, HYDRAULIC U/W EJC-210	2
MOBPIN 00024	240661 PIN U/W JS600 SCOOPTRAM &	2
MOBVALVE00016	64108865 VALVE, PORT RELIEF U/W JS600	1
MOBPIN 00070	6563992600 PIN, HOIST CYLINDER U/W ST6C	2
MOBBUSHI00026	204293 BUSHING	4
MOBBUSHI00080	22303-04 BUSHING U/W GETMAN SCISSOR LIFT	2
MOBADAPT00014	64246921 ADAPTER, HYDRAULIC U/W EJC-210	4
MOBDRIVE00023	80750779 PUMP, HYDRAULIC DRIVE SHAFT U/W	2
MOBINSER00001	625130 INSERT-HINGE PIN U/W ST6C	2
MOBVALVE00094	64101469 VALVE, RESISTOR U/W JUT41	5
MOBBELT 00008	64103759 BELT, SEAT U/W EJC-210	8
MOBACTUA00003	24479 ACTUATOR, REMOTE U/W FSS	1
MOBADAPT00001	6557331900 ADAPTER, SPINDLE U/W ST6C	2
MOBRING 00010	69012514 RING, BACK-UP	16
MOBALTER00011	7197 ALTERNATOR 24V	2
MOBINSER00009	625120 INSERT-HINGE PIN U/W ST6C	2
MOBVALVE00020	CV2-20-F-0-5 VALVE, CARTRIDGE	3
MOBCYLIN00024	5K7155 CYLINDER, MASTER U/W CATERPILLAR	2
MOBALTER00015	7256 ALTERNATOR 24V W/TRANSFORMER	1
MOBVALVE00009	353502 VALVE, CUSHION U/W ST6C SCOOPTRAM	1
MOBPIN 00031	19204-2 PIN U/W GETMAN SCISSOR LIFT	3
MOBBOLT 00014	80345769 BOLT, FRONT & REAR AXLE MOUNT	22
MOBFLANG00010	80347649 FLANGE, COMPANION U/W JUT41	2
MOBFLANG00014	04697492 FLANGE, OUTPUT U/W EJC430	1
MOBCAP 00035	218717 CAP FOR CLARK TORQUE CONVERTORS	1
MOBGASKED0017	69007128 GASKET SET	1
MOBSWTC00053	64119318 SWITCH, PRESSURE U/W EJC430	3
MOBSWVE00002	64119438 SWIVEL U/W JS600 SCOOPTRAM	3
MOBRING 00033	99006200 RING, FLYWHEEL U/W DEUTZ	1
MOBBUTTO00002	64116602 BUTTON, PUSH 3PH	2
MOBCARRI00003	68068285 CARRIER & LINING	4
MOBCARRI00004	68068277 CARRIER & LINING	4
MOBVALVE00034	64120111 VALVE, SOLENOID U/W JS600	3
MOBPIN 00059	5562485200 PIN, BUCKET U/W SCOOPTRAM	2
MOBFLANG00005	237637 FLANGE U/W JS600 SCOOPTRAM &	2
MOBKIT 00066	64800666 KIT, SEAL U/W JUT41 SCISSOR	4
MOBVALVE00079	M0236958 VALVE	1
MOBSQUIB00001	RA54919 SQUIB U/W FSS	2
MOBSPIN00006	476076 SPINDLE KIT U/W ARMY TRUCKS	1
MOBBOLT 00023	1686-5-25 BOLT, REAR AXLE MOUNTING U/W	17
MOBSLEEVE00001	04700576 SLEEVE, PUMP DRIVE U/W ST6C	2
MOBSEAL 00059	04692980 SEAL U/W JS600 SCOOPTRAM	3
MOBVALVE00076	534066 VALVE U/W GETMAN SCISSOR LIFT	1
MOBNEEDL00001	04699370 NEEDLE, PINION	649
MOBBRACK00008	RA30494 BRACKET, TANK MOUNTING U/W FSS	2
MOBLIGHT00012	4589 LIGHT, HEAD 28V	18
MOBDISC 00012	64109097-L DISC, BRAKE 16" U/W JUT41	1
MOBBUSHI00017	699044 BUSHING U/W ST6C SCOOPTRAM	2
MOBROTOR00003	680427 ROTOR, REAR U/W LAPLETSCH MAN	3
MOBVALVE00098	64112268 VALVE, FLOW CONTROL STEERING	4

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MOBSENS000002	04900552 SENSOR, TACHOMETER U/W	1	
MOBROD 00010	5646 ROD, REPLACEMENT	1	
MOBFILTE00069	HF6271 FILTER, HYDRAULIC U/W DUX DT30	7	
MOBFILTE00110	AF472M FILTER, AIR U/W DUX TRUCK	6	
MOBSHAFT00008	115666 SHAFT, DRIVE ASSEMBLY U/W JS600	1	
MOBLOCK00011	15680908 LOCK U/W ARMY TRUCKS	1	
MOBELEME00002	HF6491 ELEMENT U/W ST6C SCOOPTRAM	4	
MOBCOVER00003	64116585 COVER U/W JS600 SCOOPTRAM	3	
MOBSPRIND00023	22-547 SPRING U/W GMC ARMY TRUCKS	1	
MOBSOLEN00007	69021780 SOLENOID U/W JS600 SCOOPTRAM	2	
MOBPLATE00006	2WD761 PLATE U/W CAT ENGINE	2	
MOBYOKE 00010	29786J YOKE FOR SCOOPTRAM - DRIVELINE	1	
MOBFLANG00013	04697595 FLANGE, OUTPUT U/W EJC-130	1	
MOBWASHE00016	64801101 WASHER, SWIVEL	4	
MOBCOIL 00001	64125031 COIL 24V U/W JS600 SCOOPTRAM	4	
MOBBEAR00044	04693167 BEARING, CONE U/W JS600	2	
MOBBUSH00083	BB-32-40-48 BUSHING U/W GETMAN SCISSOR	4	
MOBPIN 00011	611552 PIN U/W ST6C SCOOPTRAM	3	
MOBRETAIN00004	400162 RETAINER U/W JUT SCISSOR LIFT	1	
MOBKIT 00045	69011239 KIT, LINING	6	
MOBCABLE00002	69022314 CABLE	1	
MOBPIN 00010	598518 PIN U/W ST6C SCOOPTRAM	4	
MOBBCOSS 00001	64000853 BOSS U/W EJC-210 SCOOPTRAM	1	
MOBPAN 00001	04700481 PAN, TRANSMISSION SUMP U/W	1	
MOBSTRAIN00007	52490 STRAINER, SUCTION U/W ALL GETMAN	2	
MOBLINK 00010	4106-178 LINK, DRAG	2	
MOBCUSH00001	69022139 CUSHION SEAT U/W ST6C SCOOPTRAM	2	
MOBFILTE00145	04116706 FILTER, AIR U/W JS600 SCOOPTRAM	1	
MOBBUSH00062	639751-10 BUSHING U/W 350 SCOOPTRAM	3	
MOBPIN 00046	60407089 PIN, M/J U/W JUT-1 SCISSOR	4	
MOBCONNE00009	RA79062 CONNECTOR, SQUIB U/W EJC-210	2	
MOBBEAR00045	04699923 BEARING, CONE U/W JS600 SCOOPTRAM	3	
MOBBEAR00077	152390 BEARING U/W GETMAN SCISSOR LIFT	2	
MOBRELAY00005	64116600 RELAY U/W JS600 SCOOPTRAM	3	
MOBLINING00007	BR0821 LINING, BRAKE U/W CAT 930 LOADER	4	
MOBCYLIND00011	64105439 CYLINDER, MASTER	1	
MOBALTER00019	7642 ALTERNATOR 24V 21SE	1	
MOBGUAGE00009	64402493 GAUGE, WATER TEMPERATURE U/W	2	
MOBVALVE00109	6K-8825 VALVE, CHECK U/W CATERPILLAR	3	
MOBYOKE 00011	28821J YOKE, DRIVELINE U/W TAMROCK SCOOP	1	
MOBSWIVE00005	FS66021-1010-75 SWIVEL #10 FITTING	3	
MOBRISER00001	3862 RISER, TUBE	1	
MOBBREAK00009	134008 BREAKER, 50CAP	2	
MOBSPACE00014	64240404 SPACER U/W EJC-210 SCOOPTRAM	2	
MOBALTER00010	7240 ALTERNATOR 24V (REBUILT)	1	
MOBBACK 00001	69022140 BACK SEAT U/W ST6C SCOOPTRAM	2	
MOBPIN 00012	611271 PIN U/W ST6C SCOOPTRAM	2	
MOBVALVE00026	64118036 VALVE, PILOT	1	
MOBSTRAIN00009	64102135 BASKET, STRAINER U/W JS600	3	
MOBPIN 00013	625051 PIN U/W ST6C SCOOPTRAM	2	
MOBBUSH00082	BB-4B-56-64 BUSHING U/W GETMAN SCISSOR	2	
MOBSWITC00008	64403042 SWITCH, PREHEAT	2	

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MOBWASHE00032	635000 WASHER	2
MOBSHOCK00001	69023438 SHOCK ABSORBER	3
MOBCOLLA00003	64208881 COLLAR, LOCK U/W EJC-210	4
MOBTUBE 00005	64243980 TUBE U/W EJC-210 SCOOPTRAM	2
MOBSLEEVE00007	3893588 SLEEVE U/W LAPLETSCH MAN CARRIER	8
MOBCOVER00008	H3Y518X184 COVER U/W JS600 SCOOPTRAM	2
MOBACTUA00002	RA57488 ACTUATOR U/W FSS	1
MOBWASHE00044	64801103 WASHER, SWIVEL U/W JS600	3
MOBCLEAN00001	6080200 CLEANER ASSEMBLY, AIR U/W H206D	1
MOBSILEN00001	64116596 SILENCER, EXHAUST U/W JS600	1
MOBVALVE00022	64116029 VALVE, PRESSURE U/W EJC210	1
MOBVALVE00028	64103008 VALVE, CHECK	10
MOBSWITC00043	64114570 SWITCH, REMOTE MANUAL U/W	2
MOBCALIP00006	4636588 CALIPER RH 0601MB U/W LAPLETSCH	1
MOBCALIP00007	4636589 CALIPER LH 0601MA U/W LAPLETSCH	1
MOBBREAK00005	69019092 BREAKER	7
MOBCOVER00010	118798 COVER, PLANETARY U/W JS600	2
MOBSWITC00052	64119326 SWITCH, PRESSURE U/W EJC430	2
MOBVALVE00114	694605 VALVE, DIVERTOR U/W GETMAN CARRIER	2
MOBJOINT00032	65070520 U-JOINT U/W EJC430 TAMROCK	2
MOBVALVE00101	4293184 VALVE ASSEMBLY	1
MOBNUT 00017	110559 NUT U/W JS600 SCOOPTRAM	7
MOBFILTE00078	8H7204 FILTER U/W DUX DT30 30TON TRUCK	1
MOBPISTO00011	71C4937 PISTON U/W CAT 930 LOADER	4
MOBSOLEN00011	SV1-10-4-6T-12DG SOLENOID, ELECTRIC U/W	1
MOBWASHE00043	64801102 WASHER, SWIVEL U/W JS600	3
MOBBRAKE00003	3K5801 BRAKE ASSEMBLY U/W CATERPILLAR	1
MOBCOVER00020	CPA-0295 COVER, BATTERY	1
MOBCAP 08020	532237 CAP	1
MOBPIN 00023	214471 PIN U/W JS600 SCOOPTRAM	1
MOBFILTE00106	1N3789 FILTER, BASE FUEL U/W CAT ENGINE	2
MOBVALVE00135	69009822 VALVE, PRESSURE REDUCING U/W	2
MOBSEAL 00042	80342729 SEAL	2
MOBADAPT00015	04700891 ADAPTER U/W EJC-210 SCOOPTRAM	1
MOBCABLE00004	19214-1 CABLE U/W GETMAN SCISSOR LIFT	1
MOBBUSH00086	8500-5806-00 BUSHING, STABILIZER CYLINDE	2
MOBVALVE00062	69001831 VALVE, AIR BRAKE U/W 175 CLARK	2
MOBBOLT 00044	1686-4-33 AXLE, MOUNTING BOLT FRONT U/W	12
MOBFUSE 00002	73072 FUSE, VELOCITY U/W GETMAN SCISSOR	2
MOBFILTE00048	69013753 FILTER	12
MOBSCREW00010	309021 SCREW, CAP U/W ST6C SCOOPTRAM	4
MOBCOIL 00003	04698580 COIL 24V U/W EJC210 SCOOPTRAM	2
MOBCALIP00008	C4049 CALIPER, R/R U/W LAPLETSCH MAN	3
MOBSEAT 00005	6420482 SEAT, BUCKET	1
MOBBEAR00040	26409-1 BEARING U/W GETMAN SCISSOR LIFT	4
MOBBUSH00064	64246087 BUSHING, BRONZE U/W JS600	4
MOBSWIVE00003	S2503-12-12 SWIVEL, S-SERIES U/W EJC-210	3
MOBPIN 00067	11748-05 PIN U/W GETMAN SCISSOR LIFT	1
MOBGAUGE00039	64100868 GAUGE, TEMPERATURE	1
MOBINSER00010	R1-095-HYTREL INSERT U/W L006 SCISSOR	4
MOBFILTE00015	HF6586 FILTER, OIL TRANSMISSION U/W 720A	3
MOBBRAKE00001	64208200 BRAKE RESERVOIR ASSEMBLY U/W	1

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MOBBUTTON00003	85213939 BUTTON, PUSH U/W H205D JUMBO	2
MOBLIGHT00007	4505 SEAL BEAM 28V	13
MOBVALVE00014	374288 VALVE U/W ST6C SCOOPTRAM	1
MOBLOCK00001	373268 LOCKNUT U/W ST6C SCOOPTRAM	3
MOBSWITCH00059	40C-0008 SWITCH, ON-ON	3
MOBKIT 00082	604560 KIT, REPAIR U/W GETMAN CARRIER	1
MOBSWITCH00017	284059 SWITCH, MAGNETIC U/W GETMAN	2
MOBLINK 00006	134011 LINK, FUSIBLE U/W GETMAN SCISSOR	2
MOBSTUD 00026	04689509 STUD, ATTACHING U/W EJC210	11
MOBSEAL 00043	80343329 SEAL	2
MOBWASHER00010	64203632 WASHER 16-5-5	2
MOBSWITCH00058	40C-0303 SWITCH, LIFT	1
MOBBEARING00056	81709189 BEARING, CLUTCH U/W JUT41	2
MOBVALVE00087	RA25627 VALVE, CHECK U/W FSS	3
MOBSEAL 00012	5537199700 SEAL, GREASE U/W ST6C	7
MOBVALVE00041	69027295 VALVE 12V	2
MOBMAGNET00001	69016501 MAGNET ASSEMBLY	2
MOBLOCK00001	64114571 BLOCK, REMOTE SWITCH U/W EJC210	5
MOBCLAMP00029	69016500 CLAMP U/W EJC210 SCOOPTRAM	1
MOBPAD 00004	80333709 PAD, BUMPER M/J U/W JUT41	4
MOBPIN 00019	64800892 PIN, UPPER U/W JUT41 SCISSOR	3
MOBSWITCH00052	64116851 SWITCH, PRESSURE	2
MOBHANDLE00001	69012886 HANDLE, STANDARD	1
MOBSCREW00013	64404173 SCREW, CAP	16
MOBPIN 00045	64800893 PIN, LOWER U/W JUT41 SCISSOR	3
MOBBUSHING00018	899045 BUSHING U/W ST6C SCOOPTRAM	2
MOBCOVER00007	H3Y610X183 COVER U/W JS600 SCOOPTRAM	2
MOBSWITCH00036	134007 SWITCH, 12V	2
MOBKIT 00037	69029331 KIT, REPAIR U/W JS600 SCOOPTRAM	1
MOBCARTRIDGE00003	SV-10-C-0-00 CARTRIDGE	2
MOBALTERNATOR00020	14301 ALTERNATOR 12V	1
MOBPLUG 00021	64103756 PLUG, GLOW U/W DEUTZ F6L912W	4
MOBSWITCH00049	2286 SWITCH, PRESSURE U/W SCISSOR	1
MOBSWIVEL00004	S2503-16-16 SWIVEL, S-SERIES U/W EJC-210	2
MOBSOLENOID00006	6N3748 SOLENOID U/W JS500 SCOOPTRAM	1
MOBTOP 00001	69004888 TOP, FILTER	2
MOBBEARING00012	04689330 BEARING CUP	5
MOBPIN 00066	11748-04 PIN U/W GETMAN SCISSOR LIFT	1
MOBELBOW00025	64107838 ELBOW, INTAKE U/W DEUTZ F6L912W	3
MOBPIN 00032	64227644 PIN U/W GETMAN SCISSOR LIFT	1
MOBPULLEY00001	64222386 PULLEY, ALTERNATOR U/W JS600	1
MOBFILTER00143	HF6340 FILTER, HYDRAULIC	2
MOBSPACE00015	64243177 SPACER U/W EJC-210 SCOOPTRAM	2
MOBALTERNATOR00014	7380 ALTERNATOR 12V	1
MOBHORN 00003	907DAP199 HORN, BACK-UP	2
MOBNUT 00008	309669 NUT JAM U/W ST6C SCOOPTRAM	8
MOBBEARING00053	80187919 BEARING, PILLOW BLOCK UNDER SEAT	4
MOBCUP 00004	69017755 CUP, BEARING U/W JS600 SCOOPTRAM	3
MOBVALVE00070	6665A VALVE, FOOT ASSEMBLY	1
MOBLEVER00005	69023362 LEVER, DIRECTION U/W EJC210	1
MOBVALVE00131	64108018 VALVE, FLOW CONTROL U/W EJC210	2
MOBALTERNATOR00012	1105500 ALTERNATOR 12V	1

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MOBPIN 00043	69021494 PIN	17
MOBBUSH100085	152230 BUSHING U/W GETMAN SCISSOR LIFT	2
MOBDIAPH00005	69001910 DIAPHRAM	1
MOBORING00021	69012512 O-RING U/W JS600 SCOOPTRAM	13
MOBVALVE00059	66863098 VALVE, AIR	1
MOBBEAR100037	688037 BEARING, INSERT U/W 350 SCOOPTRAM	1
MOBLEVER00006	69023366 LEVER, SPEED U/W EJC210	1
MOBCARTR00002	RV3-10-F-0-36/30 CARTRIDGE, RELIEF	2
MOBCOLLA00004	64208882 COLLAR, LOCK U/W EJC-210	2
MOBSPACE00002	69012885 SPACER U/W JS600 SCOOPTRAM	3
MOBRETAI00001	69007463 RETAINER, SEAL	1
MOBYOKE 00001	64106837 YOKE	1
MOBSEAL 00044	372087 SEAL, GREASE U/W 350 SCOOPTRAM	4
MOBPAD 00006	MR7084 PAD U/W LAPLETSCH MAN CARRIER	2
MOBCAP 00002	69012745 CAP	3
MOBCAP 00027	04697463 CAP	1
MOBBUSH100060	64208398 BUSHING 3 1/2" LONG U/W JUT41	3
MOBPIN 00058	64238555 PIN, DUMP CYLINDER U/W EJC430	2
MOBVALVE00016	342463 VALVE, SHUTTLE U/W ST6C SCOOPTRAM	2
MOBLEVER00002	50041918 LEVER	2
MOBBEAR100072	362120 BEARING, M/J U/W GETMAN CARRIER	1
MOBSPRIN00013	69012388 SPRING U/W 350 SCOOPTRAM	1
MOBSEAL 00039	7C4297 SEAL, GRANK CASE U/W JS600	1
MOBLINK 00012	52087663 LINK, STEERING U/W LAPLETSCH	1
MOBBRACK00016	64224079 BRACKET, PRIMER PUMP U/W	1
MOBCAP 00038	11750-01 CAP, COMPRESSION U/W GETMAN	1
MOBNUT 00009	373267 NUT U/W ST6C SCOOPTRAM	2
MOBBOOT 00001	69011178 BOOT U/W JUT41 SCISSOR LIFT	30
MOBBLOCK00002	64206961 BLOCK	5
MOBHOCK 00003	22306-04 HOOK, ROLLER U/W GETMAN SCISSOR	2
MOBREGUL00006	0101-1108-1 REGULATOR, ACETYLENE	1
MOBGREAS00001	DOW 33 GREASE, LOW TEMPERATURE U/W FSS	5
MOBCARR100002	405537 CARRIER & LINING U/W JUT41 SCISSOR	2
MOBREGUL00009	69009820 REULATOR, FLOW U/W EJC210	2
MOBPIN 00055	24420 PIN, PUNCTURE U/W FSS	2
MOBVALVE00072	64208649 VALVE, BRAKE U/W DUX DT30	2
MOBVALVE00083	69016402 VALVE, GAS U/W JS600 SCOOPTRAM	1
MOBPIN 00016	101873 PIN, ANCHOR	10
MOBSPACE00010	R89795 SPACER, MOUNTING U/W SCOOPTRAM	1
MOBSPACE00018	22302-03 SPACER U/W GETMAN SCISSOR LIFT	1
MOBGUAGE00038	69005236 GAUGE, SENDER 12V U/W SCISSOR	1
MOBGASKET00009	04700471 GASKET U/W EJC210 SCOOPTRAM	6
MOBSWITC00002	64119331 SWITCH, PRESSURE 15PSI	4
MOBUNION00011	15496 UNION, BURSTING DISC U/W FSS	2
MOBSPACE00005	64801095 SPACER U/W JS600 SCOOPTRAM	6
MOBELEM00013	69022548 ELEMENT	2
MOBGAUGE00004	74048 GAUGE, OIL PRESSURE	3
MOBCONN00008	64113477 CONNECTOR, BALL JOINT U/W	2
MOBSEAL 00022	69019948 SEAL, OIL U/W JUT41 SCISSOR	4
MOBSTUD 00020	35707-4915-0 STUD U/W M5400 KUBOTA	10
MOBPIN 00007	55669018 PIN, LOCK U/W ST6C SCOOPTRAM	2
MOBNEEDL00002	04659933 NEEDLE, ROLLER	94

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MOBRELAY00004	123121 RELAY U/W GETMAN SCISSOR LIFT	3	
MOBDIODE00002	59002747 DIODE ASSEMBLY U/W JS500	4	
MOBPLUG 00003	64117918 PLUG 2-WAY	4	
MOBLINING00006	244WS47 LINING, PARK BRAKE U/W DUX DT30	1	
MOBSEAT 00006	3605 SEAT	2	
MOBCLEAN00003	38336955 PRE CLEANER, AIR 3" U/W	2	
MOBBUTTON00001	800TN160A BUTTON, PARK BRAKE (RED)	5	
MOBBLOCK00004	369747 BLOCK U/W 350 SCOOPTRAM	4	
MOBFILTE00139	AF891M FILTER, AIR	1	
MOBSWTC00011	64119327 SWITCH, PRESSURE 60PSI/NO	2	
MOBKIT 00067	10-6202001 KIT, O-RING SWIVEL 3/4"	4	
MOBVALVE00136	69009819 VALVE, SHUTTLE U/W EJC210	2	
MOBCAP 00099	11750-04 CAP U/W GETMAN SCISSOR LIFT	2	
MOBORING00005	5638 O-RING	18	
MOBABSOR00001	5G-86853 ABSORBER, SHOCK U/W LAPLETSCH	2	
MOBBEAR000054	80175309 BEARING, PILLOW BLOCK FRONT	2	
MOBFILTE00127	HF6342 FILTER, HYDRAULIC U/W JUT41	3	
MOBBOLT 00035	36500-4938-0 BOLT U/W MS400 KUBOTA	8	
MOBBLOCK00007	69012504 BLOCK, PIVOT U/W EJC210	1	
MOBSWTC00040	64116503 SWITCH, PRESSURE SENDER	2	
MOBSLEEVE00005	123947 SLEEVE, WEAR	7	
MOBBOLT 00022	J3223416 BOLT, MOUNTING	16	
MOBSPRING00006	64102775 SPRING, AIR	2	
MOBBOLT 00025	69006173 BOLT, FLY WHEEL U/W DEUTZ	10	
MOBBUSH000084	524367 BUSHING U/W GETMAN SCISSOR LIFT	4	
MOBFILTE00177	AF336M FILTER, AIR OUTER	2	
MOBKIT 00068	10-6202101 KIT, O-RING SWIVEL 1"	3	
MOBBUSH000063	8102820 BUSHING, BALL	5	
MOBBRACK00014	E434 BRACKET U/W GMC ARMY TRUCKS	2	
MOBFILLE00001	52500 FILLER, CAP U/W GETMAN SCISSOR	3	
MOBSPRING00025	604579 SPRINGS, BELLEVILLE U/W GETMAN	5	
MOBWASHE00008	69011181 WASHER, CALIPER MOUNT U/W JUT41	4	
MOBPLUG 00002	64117815 PLUG 3-WAY	3	
MOBBEAR000036	GL743439 BEARING U/W JS600 SCOOPTRAM	3	
MOBDIAPH00006	69001860 DIAPHRAM, BRAKE BOOSTER	1	
MOBSHOE 00001	R452 SHOE, BRAKE U/W ARMY TRUCKS	1	
MOBVALVE00035	64117194 VALVE, MANUAL CARTRIDGE	1	
MOBLOCK 00004	D2E2149203 LOCK, FASTENER	9	
MOBSPACE00017	22303-02 SPACER U/W GETMAN SCISSOR LIFT	2	
MOBBEAR000066	5535720800 BEARING, SPIDER U/W ST6C	1	
MOBPAD 00009	68006143 PAD, RUBBER U/W DEUTZ F10L413	16	
MOBWASHE00054	64105538 WASHER	12	
MOBCARTRO00004	534032 CARTRIDGE U/W GETMAN SCISSOR LIFT	2	
MOBVALVE00086	15677 VALVE, RELIEF U/W FSS	2	
MOBGAUGE00016	284076 GAUGE U/W GETMAN SCISSOR LIFT	1	
MOBWASHE00048	04899916 WASHER, THRUST SUN GEAR	2	
MOBKIT 00072	64104484 KIT, FUEL TRANSFER PUMP U/W	2	
MOBWASHE00053	80450339 WASHER, THRUST 3/8" U/W JUT41	4	
MOBBUSH000055	506349 BUSHING, STABLE U/W 350 SCOOPTRAM	1	
MOBNUT 00052	33251-4917-0 NUT U/W MS400 KUBOTA	10	
MOBCUP 00008	69008847 CUP U/W EJC-210 SCOOPTRAM	1	
MOBVALVE00033	SV5-10-0-0-00 VALVE, SOLENOID U/W JS600	1	

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MOBVALVE00121	PRV1-10-S-0-2 VALVE, RELIEF 1/2" THROTTLE	1
MOBSEAL 00014	69027475 SEAL, HEAD U/W ST6C SCOOPTRAM	2
MOBBUSHI00049	64209147 BUSHING, BRONZE	1
MOBINDIC00001	64116601 INDICATOR	9
MOBPAD 00008	69008136 PAD, RUBBER U/W DEUTZ F10L413	7
MOBPUMP 00025	4W0788 PUMP, PRIMER U/W 3406CAT	1
MOBSPACE00008	64801098 SPACER U/W JS600 SCOOPTRAM	5
MOBSTUD 00017	04699375 STUD, DIFFERENTIAL SHORT U/W	12
MOBFILTE00183	AF340 FILTER, AIR	2
MOBFILTE00018	45674 FILTER U/W CHAMPION 720A GRADER	5
MOBVALVE00060	69095924 VALVE, CHECK U/W JS600	2
MOBWSH000065	32580-4497-0 WASHER U/W M5400 KUBOTA	17
MOBBRACK00003	64229764 BRACKET U/W JS600 SCOOPTRAM	2
MOBGAUGE00014	124012 GAUGE, OIL TRANSMISSION U/W GETMAN	1
MOBTEE 00011	RA16424 TEE, GALVANIZED U/W FSS	2
MOBWSH000031	243055 WASHER	4
MOBSEAL 00067	69008667 SEAL, SHAFT REAR U/W DEUTZ	1
MOBGAUGE00036	69011509 GAUGE, VACUUM U/W EJC430	2
MOBBREAK00008	69022278 BREAKER, 40CAP	2
MOBPIN 00029	69029154 PIN U/W 350 SCOOPTRAM	1
MOBKNOB 00005	04700474 KNOB U/W EJC430 TAMROCK TRUCK	2
MOBCAP 00037	69027222 CAP U/W EJC430 TAMROCK TRUCK	1
MOBSPRIN00012	69023445 SPRING, PULL SEAT U/W JS600	4
MOBPACK00002	69011174 PACKING, PREFORMED U/W JUT41	30
MOBLAMP 00010	64117552 LAMP, HEAD 24V METAL ENCASES	2
MOBSEAL 00032	64116677 SEAL, GREASE U/W JS600 SCOOPTRA	4
MOBGAUGE00057	64106197 GAUGE U/W EJC210 SCOOPTRAM	1
MOBVALVE00133	69014691 VALVE, CHECK U/W EJC210	1
MOBGASK000041	69004814 GASKET, MANIFOLD U/W DEUTZ	2
MOBWSH000037	81060369 WASHER, TRUST U/W JUT41 SCISSOR	3
MOBVALVE00031	KN32011 VALVE, QUICKRELEASE	3
MOBGEAR 00008	04697489 GEAR, SUN U/W JS500 SCOOPTRAM	1
MOBCAP 00036	532343 CAP	1
MOBMOUNT00003	32250 MOUNT, RUBBER U/W GETMAN CARRIER	4
MOBPIN 00014	64800901 PIN U/W GETMAN SCISSOR LIFT	2
MOBGASK000059	04693645 GASKET, COVER U/W EJC210	2
MOBJOINT00034	69020381 U-JOINT U/W JUT41 SCISSOR LIFT	4
MOBPIN 00026	536243 PIN, STABLE LINK U/W 350 SCOOPTRAM	1
MOBELBOV00022	604035 ELBOW, RUBBER U/W GETMAN SCISSOR	3
MOBFILTE00017	36847 FILTER U/W CHAMPION 720A GRADER	3
MOBSENDE00007	2405950 SENDER, TEMPERATURE 12V U/W	3
MOBBOOT 00009	69012498 BOOT U/W EJC210 SCOOPTRAM	1
MOBPAD 00010	69008546 PAD, RUBBER U/W DEUTZ F10L413	1
MOBBUSHI00056	524202 BUSHING U/W GETMAN SCISSOR LIFT	6
MOBSTUD 00008	69007821 STUD	16
MOBHOSE 00005	24446 HOSE, RADIATOR 2 7/8"	1
MOBVALVE00032	64105452 VALVE, CHECK 2-WAY	3
MOBBUSHI00079	622588 BUSHING, ST6C DUMP CYLINDER	1
MOBSUPPC00002	69016493 SUPPORT, UPPER U/W EJC210	1
MOBTRACK00002	048004 TRACK, BOLT & NUT	32
MOBJOINT00023	1306-1 U-JOINT U/W ALL ARMY TRUCKS	3
MOBSEAL 00091	2W1733 SEAL, GROUP U/W 3406 ENGINE	1

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MOBKIT 00077	R602RK KIT, REPAIR FOR ANFO LOADER HAND	4	
MOBSpace00007	64801097 SPACER U/W JS600 SCOOPTRAM	4	
MOBSWTC00061	40C-0474 SWITCH, LIFT ON	1	
MOBVALVE00104	41C-9714 VALVE, SHUTTLE U/W CATERPILLAR	1	
MOBHORN 00001	64109568 HORN 24 VOLT	1	
MOBFOOT 00001	75C-0045 FOOT, RUBBER	4	
MOBWASHE00050	64100194 WASHER, THRUST 3/16" U/W JUT41	4	
MOBDIAPH00003	69002201 DIAPHRAM	2	
MOBWASHE00052	80450209 WASHER, THRUST 5/16" U/W JUT41	4	
MOBCLEAN00004	38336975 PRE CLEANER, AIR 5" U/W	1	
MOBSPRIN00018	69021501 SPRING	19	
MOBLIGHT00009	4413 LIGHT, HEAD 12V	8	
MOBFILTE00079	64100018 FILTER U/W GETMAN SCISSOR LIFT	3	
MOBSpace00012	64202643 SPACER U/W EJC430 TAMROCK TRUCK	4	
MOBGAGE00022	64119932 GAUGE, PRESSURE U/W JS600	2	
MOBVALVE00021	CV1-10-F-0-S VALVE, CHECK	2	
MOBWASHE00020	81620559 WASHER, TRUST U/W JUT41	2	
MOBBOLT 00029	69004617 BOLT, HEX U/W DEUTZ F10L413	16	
MOBFILTE00181	FEG0285 FILTER, FUEL U/W LAPLETSCH MAN	2	
MOBFILTE00182	AC269 FILTER, AIR U/W LAPLETSCH MAN	2	
MOBJOINT00026	160 U-JOINT U/W LAPLETSCH MAN CARRIER	4	
MOBGAGE00031	494037 GAUGE U/W GETMAN CARRIER	1	
MOBFILTE00115	935694C7 FILTER, INNER & OUTER	1	
MOBINDIC00004	64800268 INDICATOR, GLO PLUG U/W DEUTZ	2	
MOBNUT 00064	04700308 NUT U/W EJC-210 SCOOPTRAM	2	
MOBGAGE00018	613742 GAUGE, TEMPERATURE U/W 360	1	
MOBLEVER00003	60042088 LEVER	1	
MOBPLUG 00017	117-1687 PLUG, HEATER GLOW U/W DEUTZ	2	
MOBSHIM 00002	6500-6527-00 SHIM -.020	13	
MOBJOINT00020	403769 U-JOINT	2	
MOBCAP 00022	64201655 CAP, TANK	1	
MOBKIT 00038	69027297 KIT, SEAL	2	
MOBBODY 00001	3606 BODY	1	
MOBDRING00034	5835 O-RING	7	
MOBBUSHING0073	625795 BUSHING FOR ST6C DUMP CYLINDER	2	
MOBSHIM 00004	6500-6529-00 SHIM -.005	15	
MOBSLEEVE00006	69017639 SLEEVE, WEAR	2	
MOBGAGE00003	75049 GAUGE, OIL TEMPERATURE	2	
MOBNUT 00007	55308494 NUT U/W ST6C SCOOPTRAM	13	
MOBPIN 00044	66940 PIN, PUNCTURE U/W FSS	2	
MOBSpace00005	64801096 SPACER U/W JS600 SCOOPTRAM	4	
MOBSWTC00022	694003 SWITCH, U/W GETMAN SCISSOR LIFT	1	
MOBGASKE00046	69007074 GASKET U/W DEUTZ F10L413	12	
MOBKIT 00087	306-7017 KIT, REBUILD BRAKE VALVE	1	
MOBFILTE00081	534160 FILTER, WATER SEPERATOR U/W	3	
MOBBOLT 00002	69011162 BOLT, CALIPER MOUNT U/W JUT41	6	
MOBSEAL 00096	04700476 SEAL, OIL U/W TRANSMISSION	2	
MOBREGUL00008	R272-F1-100 REGULATOR U/W AMEX LOADER	1	
MOBSTICK00003	626575 STICK, DIP TRANSMISSION U/W ST350	1	
MOBSTICK00002	69005271 STICK, DIP ENGINE OIL U/W DEUTZ	2	
MOBSpace00016	22307-08 SPACER U/W GETMAN SCISSOR LIFT	2	
MOBCAP 00030	81492959 CAP, HYDRAULIC TANK U/W JUT41	4	

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MOBSHIM 00001	5500-6523-00 SHIM -.040	10	
MOBCLAMP00008	64106592 CLAMP, EXHAUST	3	
MOBFILTE00171	LF734 FILTER, OIL ENGINE	4	
MOBSTUD 00021	32580-4496-0 STUD U/W M5400 KUBOTA	16	
MOBCAP 00001	69012746 CAP, I	3	
MOBELEME00010	930654C1 ELEMENT U/W DRESSER LOADER	1	
MOBBAR 00003	69008607 BAR, RAIL R.H.	1	
MOBBAR 00004	69008608 BAR, RAIL L.H.	1	
MOBNOZZL00003	RA16449 NOZZLE, F-1/2 U/W FSS	2	
MOBGAUGE00002	69014263 GAUGE, SIGHT U/W ST6C SCOOPTRAM	2	
MOBFILTE00140	AFB90 FILTER, AIR	1	
MOBBREAT00004	69019389 BREATHER, FUEL TANK U/W JUT41	3	
MOBFILTE00101	391032-88 FILTER, TRANSMISSION U/W JCI	4	
MOBFILTE00158	FS1209 FILTER, WATER U/W ARMY TRUCK	4	
MOBHOOD 00001	64108011 HOOD, INLET U/W EJC430 TAMROCK	1	
MOBSWITC00063	69022334 SWITCH, PRESSURE	3	
MOBSNUBB00001	64107784 SNUBBER U/W EJC430 TAMROCK	2	
MOBCOUP1.00021	DC-100-804 COUPLING, PUMP U/W L006	2	
MOBCOUP1.00022	DC-100-807 COUPLING, MOTOR U/W L006	2	
MOBBOOT 00008	DOTZ-2162-A BOOT, RUBBER FOR BRAKES	2	
MOBRING00020	04698049 O-RING	6	
MOBLIGHT00008	44-11 SEAL BEAM 12V	8	
MOBPIN 00041	205188 PIN U/W JS600 SCOOPTRAM &	1	
MOBNUT 00033	80337209 NUT, LOCK M/J U/W JUT41 SCISSOR	4	
MOBSWITC00019	1220-10 SWITCH U/W GETMAN SCISSOR LIFT	1	
MOBBOOT 00002	04700827 BOOT, BRAKE	7	
MOBSEAL 00021	69015689 SEAL, OIL U/W JS600 SCOOPTRAM	2	
MOBGOVERN00001	64102248 GOVERNOR U/W JS600 SCOOPTRAM	1	
MOBBEAR100069	9436881 BEARING, INNER U/W ARMY TRUCKS	2	
MOBRING 00018	69012515 RING, BACK-UP U/W JS600	2	
MOBPUMP 00018	240-8351 PUMP, LIFT U/W DEUTZ F10L413	1	
MOBRING 00008	599047 RING, WEAR U/W ST6C SCOOPTRAM	1	
MOBTRACK00001	R25951 TRACK, SHOE U/W CASE NOZER	1	
MOBHOSE 00009	69031648 HOSE, FUEL U/W DEUTZ F6L912W	2	
MOBFILTE00032	AF-1691 FILTER, AIR U/W V50C CATERPILLAR	2	
MOBNOZZL00002	RA66748 NOZZLE, 3C 1/2 U/W FSS	2	
MOBLIGHT00018	64116847 LIGHT, RED 24V U/W JS600	2	
MOBSEAL 00069	69008656 SEAL, SHAFT FRONT U/W DEUTZ	1	
MOBJOINT00024	69-989 U-JOINT U/W MILL HIAB TRUCK	1	
MOBSWITC00060	40C-0276 SWITCH, PUSHBUTTON	1	
MOBSWITC00066	19-1040 SWITCH, STARTER (BUTTON) U/W	6	
MOBSWITC00045	2164568 SWITCH, STOP U/W DEUTZ F6L913	1	
MOBBREAT00002	04700190 BREATHER U/W JS600 SCOOPTRAM	2	
MOBGAUGE00020	12420 GAUGE	1	
MOBETHER00001	1572143 ETHER, CONTAINER QUICK START	2	
MOBSCREW00022	J3223416 SCREW U/W LAPLETSCH MAN CARRIER	8	
MOBCABLE00010	VC57E15R CABLE, SHUT-OFF U/W ST6C	1	
MOBKIT 00071	1V4850 KIT, MASTER CYLINDER U/W 930	1	
MOBFILTE00009	AF4058 FILTER, AIR U/W H205D JUMBO	1	
MOBBOLT 00004	64117614 BOLT U/W JS600 SCOOPTRAM	1	
MOBPLUG 00026	64108858 GLASS, SIGHT U/W EJC430 TAMROCK	2	
MOBBOLT 00037	30987 BOLT, CARRIAGE 5/8" NG U/W M5400	10	

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MOBEXTEN00001	64220524 EXTENSION, RUBBER U/W F10L413	1	
MOBRING 00017	69012513 RING, BACK-UP U/W JS600	2	
MOBCLAMP00002	69008834 CLAMP U/W JS600 SCOOPTRAM	2	
MOBPIN 00033	D36511 PIN, MASTER U/W CASE 850	1	
MOBSEAT 00003	69012509 SEAT	3	
MOBFILTER00179	AF333 FILTER, AIR U/W D343 GEN. SET	1	
MOBBAND 00001	64108323 BAND, MOUNTING U/W EJC-210	2	
MOBMETER00002	124243 METER/VOLT 12V U/W GETMAN SCISSOR	1	
MOBFILTER00170	WF-2052 FILTER, COOLANT CONDITIONER	6	
MOBCALIP00009	C4048 CALIPER, LR U/W LAPLETSCH MAN	1	
MOBFILTER00132	AF20M FILTER, AIR	2	
MOBFILTER00211	AF960 FILTER, AIR U/W SNOW PLOW TRUCK	1	
MOBBREAK00003	134009 BREAKER 20 CAP. U/W GETMAN	1	
MOBLOCK 00012	6Y9459 LOCK, BUCKET TOOTH U/W CLARK 175C	12	
MOBSPRING00007	69012382 SPRING	2	
MOBSEAL 00079	242-1820 SEAL, SHAFT U/W DEUTZ F10L413	1	
MOBKIT 00080	10-62019-01 KIT, REBUILD U/W EJC-210	4	
MOBFILTER00208	FA-1617 FILTER, AIR U/W FORD (JC)	2	
MOBFUSE 00001	133163 FUSE, HOLDER U/W GETMAN SCISSOR	1	
MOBPIN 00057	8E6358 PIN, BUCKET TOOTH U/W CLARK 175C	13	
MOBBRACK00010	RA57681 BRACKET, MANUAL ACTUATOR U/W FSS	2	
MOBPAD 00007	69008047 PAD, RUBBER U/W DEUTZ F10L413	4	
MOBSPRING00026	D4700720 SPRING U/W EJC430 TAMROCK TRUCK	2	
MOBCAP 00031	69005404 CAP, FILLER ENGINE OIL U/W DEUTZ	2	
MOBSHIM 00008	69008523 SHIM U/W JS600 SCOOPTRAM	2	
MOBSHIM 00010	69008520 SHIM U/W JS600 SCOOPTRAM	2	
MOBGASKET00015	69005803 GASKET	5	
MOBBOLT 00024	F76074 BOLT U/W LAPLETSCH MAN CARRIER	2	
MOBCALIP00010	C5014 CALIPER, LEFT HAND U/W ARMY TRUCKS	1	
MOBCALIP00011	C5015 CALIPER, RIGHT HAND U/W ARMY TRUCK	1	
MOBYOKE 00007	B1863459 YOKE, FEMALE CLUTCH U/W JUT41	2	
MOBINDIC00003	64116959 INDICATOR, PLUG GLOW U/W JS600	1	
MOBNUT 00025	E5652R NUT, RIGHT OUTER BUDD	24	
MOBKIT 00078	53474-03 KIT, REPAIR BRAKE VALVE U/W	2	
MOBLIGHT00025	5972695 LIGHT, HEAD U/W ALL ARMY TRUCK	3	
MOBSHIM 00009	69008521 SHIM U/W JS600 SCOOPTRAM	2	
MOBNUT 00050	14050679 NUT U/W ARMY TRUCKS	2	
MOBBELT 00009	13568-19065 BELT, TIMING U/W TOYOTA LAND	1	
MOBROD 00016	PALW8591142 ROD, GOUGING 5/16" 50/BOX	2	
MOBSEAL 00103	BY9895 SEAL, CRANKSHAFT FRONT FOR 3306	1	
MOBGASKET00029	A50193 GASKET	2	
MOBCAP 00028	82020 CAP, FUEL	1	
MOBSEAL 00065	80202559 SEAL, TRANSFER CASE SHAFT U/W	5	
MOBTAIL 00001	73-3009 TAIL, PIG	13	
MOBCLAMP00028	69016225 CLAMP U/W EJC430 TAMROCK TRUCK	1	
MOBJOINT00027	178 U-JOINT U/W 3/4 TON TRUCK	3	
MOBGASKET00039	55625088 GASKET, EXHAUST U/W DEUTZ	8	
MOBWASHE00046	D4698035 WASHER, SEALING U/W JS600	4	
MOBPLUG 00024	D4700377 PLUG U/W EJC430 TAMROCK TRUCK	4	
MOBNUT 00037	D4694408 NUT, DIFFERENTIAL STUDS U/W	30	
MOBWASHE00024	B1701089 WASHER	4	
MOBSPACE00001	D4699371 SPACER U/W JS500 SCOOPTRAM	9	

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MOBBOLT 00016	80357269 BOLT, BRAKE DRUM U/W JUT41	16
MOBLIGHT00023	84940 LIGHT ASSEMBLY (LARGE)	2
MOBGASKE00040	65320089 GASKET, DONUT U/W DEUTZ F8L912W	2
MOBBLEED00001	04699701 BLEEDER U/W EJC430 TAMROCK	9
MOBSWITC00024	04699683 SWITCH U/W GETMAN SCISSOR LIFT	2
MOBSTICK00007	04694142 STICK, DIP U/W EJC210 SCOOPTRAM	1
MOBSTICK00004	24256 STICK, DIP U/W GETMAN CARRIER	1
MOBSEAL 00088	463748 SEAL U/W ARMY TRUCKS	2
MOBFILTE00024	FA-1015 FILTER, AIR	2
MOBBOLT 00013	5/8" X 2 1/2" BOLTS & NUTS, CUTTING EDGE	29
MOBRESIS00001	64117573 RESISTOR, DROP U/W JS600 SCOOPTR	2
MOBFILTE00178	HF6341 FILTER, TRANSMISSION (930)	1
MOBORING00043	69016340 O-RING U/W JS600 SCOOPTRAM	4
MOBFILTE00175	FF203 FILTER, FUEL U/W BOBCAT 1735C	4
MOBFILTE00033	AF-1890M FILTER, AIR U/W V50C CATERPILLAR	1
MOBCLAMP00025	69008867 CLAMP ASSEMBLY U/W EJC-210	1
MOBBUSHI00057	524203 BUSHING, TENSION U/W GETMAN	2
MOBSTICK00005	64244674 STICK, DIP U/W EJC430 TAMROCK	1
MOBKEEPER00001	9085-02 KEEPER U/W GETMAN SCISSOR LIFT	2
MOBWASHE00015	04699369 WASHER U/W JS600 SCOOPTRAM	6
MOBLIGHT00013	4570 SEAL BEAM 28V 150W	2
MOBSPRIND00024	69020646 SPRING U/W EJC-210 SCOOPTRAMP	2
MOBPLUG 00028	2A3852 PLUG U/W FINAL DRIVES ON 824	1
MOBSEAL 00109	04699737 SEAL U/W EJC-210 SCOOPTRAM	3
MOBFILTE00020	64105650 FILTER KIT	1
MOBKNOB 00003	69020647 KNOB U/W EJC-210 SCOOPTRAMP	2
MOBSEAL 00108	04699940 SEAL, OUTPUT U/W EJC430 TAMROCK	3
MOBBEARING00070	14009626 BEARING KIT U/W ARMY TRUCKS	1
MOBBOOT 00005	26037370 BOOT, SHIFTING U/W 1990 CHEV	1
MOBFUSE 00013	GOU66M212 FUSE, REMOTE CONTROL 2.5A	20
MOBRING 00011	85322839 RING, RETAINING U/W JUT41	12
MOBFILTE00107	5682 FILTER, AIR CAPSULE	2
MOBFILTE00022	FD-829 FILTER, FUEL	1
MOBFILTE00219	1R-0749 FILTER, FUEL U/W JS500 SCOOPTRAM	2
MOBBLOCK00009	40C-0475 BLOCK, CONTACT	1
MOBFILTE00164	AF1935M FILTER, AIR SECONDARY GRADER	1
MOBSHIM 00003	5500-6528-00 SHIM -.010	7
MOBBULB 00006	64803338 BULB U/W EJC430 TAMROCK	4
MOBWASHE00030	599237 WASHER U/W 350 SCOOPTRAM	56
MOBBOOT 00006	56789 BOOT, ACTUATOR U/W FSS	5
MOBBOLT 00032	051576 BOLT, FLYWHEEL MOUNTING U/W 3406	24
MOBCLAMP00009	64108486 CLAMP, HOSE U/W JS600 SCOOPTRAM	4
MOBSEAL 00052	3648A SEAL CW O-RING	2
MOBSENDE00004	64119927 SENDER, OIL TEMPERATURE U/W	2
MOBBELT 00010	90916-02330 BELT, FAN U/W TOYOTA LAND	1
MOBFILTE00096	HF6243 FILTER	1
MOBBOLT 00025	44221850 BOLT, JUMBO CHAIN M16X40 8.8	13
MOBSLEEVE00009	2P3858 SLEEVE U/W JS600 SCOOPTRAM	1
MOBFILTE00155	LF3682 FILTER, ENGINE OIL	5
MOBBOOT 00003	69012889 BOOT	1
MOBSTICK00001	80359569 STICK, DIP TRANSMISSION U/W	2
MOBKNOB 00006	64118197 KNOB, SHIFTER U/W EJC210	2

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MOBLIGHT00029	6956201 LIGHT U/W AMBULANCE	3	
MOBREGUL00003	7E3361 REGULATOR U/W JS500 SCOOPTRAM	1	
MOBWASHED00069	00364998 WASHER U/W SCOOPTRAM	1	
MOBFILTE00138	AF418 FILTER: AIR	1	
MOBPLATE00011	08003194 PLATE, ADAPTER U/W EJC-210	2	
MOBSTICK00006	04693598 STICK, DIP U/W EJC430 TAMROCK	1	
MOBADAPT00003	117629 ADAPTER, SNUBBER	1	
MOBBREAK00004	5535-3019-00 BREAKER 30 CAP.	1	
MOBNIPPL00032	5670 NIPPLE	2	
MOBSPRIN00008	69012383 SPRING U/W JS500 SCOOPTRAM	2	
MOBFILTE00205	HF6555 FILTER, OIL HYDRAULIC U/W BOBCAT	1	
MOBNUT 00049	15582233 NUT, U/W ARMY TRUCKS	1	
MOBHORN 00002	21-832 HORN, 12V U/W SCISSOR LIFT	2	
MOBSTEM 00001	244-17 STEM U/W FSS	2	
MOBDOWEL00001	04692418 DOWEL	4	
MOBFILTE00023	FL-784 FILTER, OIL	2	
MOBESHIM 00017	B1456989 SHIM U/W JUT41 SCISSOR LIFT	3	
MOBSPACE00019	11750-02 SPACER U/W GETMAN SCISSOR LIFT	1	
MOBWASHED00066	36500-4941-0 WASHER U/W M5400 KUBOTA	4	
MOBGASKE00010	04700497 GASKET U/W JS500 SCOOPTRAM	2	
MOBYOKE 00009	69019622 YOKE, FEMALE SHIFTER U/W JUT41	2	
MOBDIODE00001	64110464 DIODE	8	
MOBFILTE00167	AF4636 FILTER, CABIN AIR U/W CLARIC 175	1	
MOBRING 00032	14038051 RING U/W ARMY TRUCKS	2	
MOBGASKE00011	04700487 GASKET	3	
MOBSWITC00009	64100643 SWITCH, PUSH BUTTON	4	
MOBFILTE00208	FS-1298 FILTER, FUEL U/W FORD (JC)	1	
MOBFILTE00100	FE00302 FILTER, ENGINE OIL U/W LAPLETSCH	2	
MOBSEAL 00104	04700462 SEAL, CONVERTER OUTPUT U/W	2	
MOBGLASS00001	53011 GLASS, SIGHT U/W GETMAN CARRIER	1	
MOBCLAMP00032	64117577 INLET, T-BAR U/W EJC430 TAMROCK	2	
MOBVENT 00001	64110580 VENT, AXLE U/W JS500 SCOOPTRAM	2	
MOBFILTE00216	LF3608 FILTER, OIL U/W TOYOTA LAND	1	
MOBSPRIN00014	69012389 SPRING U/W 350 SCOOPTRAM	1	
MOBINDIC00006	64117340 INDICATOR U/W EJC210 SCOOPTRAM	2	
MOBGASKE00016	69008272 GASKET	8	
MOBPAD 00005	80202969 PAD, CLUTCH BEARING U/W JUT41	4	
MOBBUSH00068	68021509 BUSHING	40	
MOBYOKE 00008	69019117 YOKE, FEMALE PEDAL U/W JUT41	2	
MOBARM 00001	69012528 ARM, LEVER U/W EJC210 SCOOPTRAM	1	
MOBBOLT 00003	04700945 BOLT U/W JS500 SCOOPTRAM	12	
MOBRING 00031	69004763 RING, COMPRESSION U/W DEUTZ	4	
MOBBREAK00006	64100128 BREAKER, CIRCUIT U/W 350 SCOOPTR	6	
MOBFILTE00189	HF6005 FILTER, HYDRAULIC	3	
MOBSEAL 00013	69022639 SEAL U/W ST6C SCOOPTRAM	2	
MOBBASE 00001	06003265 BASE, RELAY (TIMER) U/W EJC210	2	
MOBDIVID00001	64119915 DIVIDER, VOLTAGE	5	
MOBSEAL 00006	346599 SEAL, OIL U/W ST6C SCOOPTRAM	2	
MOBVALVE00126	64101665 VALVE, RELIEF U/W EJC430	1	
MOBNUT 00054	36500-4939-0 NUT U/W M5400 KUBOTA	8	
MOBFILTE00038	LF3363 FILTER	1	
MOBGASKE00024	G46017 GASKET	2	

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MOBBEAR00073	D80554 BEARING (NEEDLE)U/W CASE LOADER	1
MOBCABLE00008	614615 CABLE, BATTERY TO BATTERY	3
MOBNUT 00058	04700503 NUT, FLANGE U/W EJC430 TAMROCK	2
MOBBOLT 00019	64100850 BOLT, BANJO U/W DEUTZ F6L912W	5
MOBSEAL 00102	4K1557 SEAL FOR FILTER	2
MOBBREAT00010	64103153 BREATHER U/W EJC430 TAMROCK	1
MOBSPACE00020	11730-03 SPACER U/W GETMAN SCISSOR LIFT	1
MOBRING 00019	331294 RING, SEAL U/W JS600 SCOOPTRAM	2
MOBSHIM 00014	A50198 SHIM	1
MOBWASHE00071	04700460 WASHER, FLANGE U/W EJC430	2
MOBGASKE00001	6536298900 GASKET U/W ST6C SCOOPTRAM	4
MOBPIN 00062	98123819 PIN, DRIVE TACHOMETER U/W	1
MOBSTUD 00028	1103255 STUD, M.M. 10.9 THREAD	6
MOBVALVE00077	434108 VALVE U/W GETMAN SCISSOR LIFT	1
MOBLIGHT00028	5966200 LIGHT U/W AMBULANCE	2
MOBFILTE00120	LF4154 FILTER, OIL	2
MOBFILTE00056	FF211 FILTER, FUEL U/W DUX DT30 30TON	2
MOBGASKE00068	04700461 GASKET, TRANSMISSION PAN U/W	2
MOBNZZL 00005	MG294014 NOZZLE, WATER U/W SHOP STEAM	1
MOBSHIM 00018	80108509 SHIM U/W JUT41 SCISSOR LIFT	3
MOBHOSE 00012	64108423 HOSE, HUMP 6" U/W EJC430	1
MOBBELT 00005	4L420 BELT, ALTERNATOR U/W H206D JUMBO	1
MOBBALL 00002	3664 BALL, STOP U/W SPEDE PUMP	2
MOBNUT 00059	04700922 NUT, FLANGE U/W EJC430 TAMROCK	1
MOBSEAL 00064	80353919 SEAL, TRANSMISSION OUTPUT SHAFT	2
MOBSEAL 00034	5B3718 SEAL U/W CAT 930 LOADER	6
MOBKIT 00084	69018031 KIT, SEAL U/W EJC210 SCOOPTRAM	1
MOBCLAMP00031	64117545 INLET, T-BAR U/W EJC430 TAMROCK	2
MOBLIGHT00027	64100647 LIGHT U/W EJC430 TAMROCK TRUCK	1
MOBORING00026	69012516 O-RING U/W JS600 SCOOPTRAM	8
MOBFILTE00080	69016524 FILTER, ADAPTER U/W JS500 &	2
MOBGAUGE00035	100067 GAUGE, MINI 0-100 PSI FOR	1
MOBSEAL 00084	01170541 O-SEAL U/W DEUTZ F10L413	6
MOBLIGHT00006	6015 LIGHT, BEAM SEAL	2
MOBBEAR00069	9428908 BEARING, OUTER U/W ARMY TRUCKS	1
MOBGASKE00062	3371692 GASKET, ROCKET COVER U/W	6
MOBSTUD 00024	04700981 STUD U/W EJC-210 SCOOPTRAM	6
MOBJOINT00025	153 U-JOINT U/W LAPLETSCH MAN CARRIER	2
MOBFUSE 00015	GOUGM10 FUSE, REMOTE CONTROL 10A 125V	15
MOBGASKE00021	1342354C1 GASKET	2
MOBCLAMP00013	H300 CLAMP, MUFFLER 3" U/W LAPLETSCH	8
MOBSEAL 00074	373271 SEAL, OIL INPUT SHAFT U/W ST6C	1
MOBBREAK00010	660-10 BREAKER, CIRCUIT U/W JS600	5
MOBNLT 00057	64806933 NUT, WING U/W EJC430 TAMROCK	2
MOBCHAIN00003	40 CHAIN U/W SWENSON SANDER	4
MOBNUT 00006	341434 NUT U/W ST6C SCOOPTRAM	2
MOBSONAL00001	50C-0012 SONALERT	1
MOBBREAK00002	660-20 BREAKER, CIRCUIT	6
MOBKNOB 00001	16470 KNOB, PUNCTURE PIN U/W FSS	4
MOBSWITC00010	69023385 SWITCH, ELECTRIC U/W JS600	1
MOBSEAL 00100	6F9163 SEAL FOR FILTER	2
MOBSEAL 00105	04700506 SEAL, OIL U/W EJC430 TAMROCK	2

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MOBBREAK00011	64105354 BREAKER, SOLENOID U/W JS600	2
MOBPIN 00042	56104 PIN, PUNCTURE U/W FSS	2
MOBPIN 00061	68012860 PIN U/W EJC210 SCOOPTRAM	1
MOBR0D 00011	PALW8591 1132 ROD, GOUGING 1/4" 50/BOX	50
MOBLIGHT00019	4880 LIGHT, BULB 24V 60W U/WSCOOPTRAMS	1
MOBLIGHT00024	64930 LIGHT ASSEMBLY (SMALL)	1
MOBORING00013	69026786 O-RING U/W ST6C SCOOPTRAM	2
MOBORING00060	80244209 O-RING	5
MOBNUT 00038	81662859 NUT, BRAKE DRUM U/W JUT41	16
MOBSEAL 00058	80370129 SEAL, FELLOW BLOCK FRONT DRIVE	4
MOBORING00012	64244812 O-RING U/W ST6C SCOOPTRAM	2
MOBFILTE00160	LF3679 FILTER, ENGINE OIL	3
MOBORING00042	69028562 O-RING U/W JS600 SCOOPTRAM	6
MOBWASHE00078	1107286 WASHER, M.M.	9
MOBPIECE00012	69006850 PIECE, CONNECTING U/W DEUTZ	1
MOBORING00008	5536782000 O-RING U/W ST6C SCOOPTRAM	4
MOBFILTE00146	69005105 FILTER U/W JS600 SCOOPTRAM	1
MOBFILTE00157	WP2054 FILTER, WATER	1
MOBBELT 00007	11A1105 V-BELT U/W EJC430 TAMROCK TRUCK	2
MOBCLEAN00005	88895 CLEANER, BRAKE 12/CASE	3
MOBFILTE00184	FF147 FILTER, FUEL U/W 210 SCOOPTRAM	2
MOBSEAL 00060	FL198 SEAL, PULL RING RETAINER U/W FSS	100
MOBCLAMP00030	69006854 CLAMP, HOSE U/W F10L413 DEUTZ	3
MOBADAPT00004	64101831 ADAPTER F/A	6
MOBBOLT 00009	04700903 BOLT	12
MOBBRACK00012	69019382 BRACKET, MOUNTING U/W JUT41	2
MOBBRACK00001	64101872 BRACKET, ANCHOR	10
MOBSEAL 00101	2H3935 SEAL FOR FILTER	2
MOBSEAL 00033	04700781 SEAL, OIL U/W JS600 SCOOPTRAM	2
MOBLOCK 00003	64404228 LOCKNUT	2
MOBNUT 00072	1102659 NUT, 10.9 THREAD	6
MOBORING00024	80342859 O-RING	1
MOBWASHE00011	28335810 WASHER	4
MOBFILTE00173	AF1824 FILTER, AIR U/W BOBCAT LOADER	1
MOBPLUG 00004	04699935 PLUG	2
MOBFILTE00210	LF870 FILTER, OIL U/W SNOW PLOW TRUCK	1
MOBUNION00012	64101307 UNION U/W EJC-210 SCOOPTRAM	1
MOBBOOT 00004	81264 BOOT, TOGGLE SWITCH	2
MOBBOLT 00043	17GC12120 BOLT U/W GETMAN SCISSOR LIFT	1
MOBPLUG 00010	04700708 PLUG, DIFF FILLER HOLE U/WJS600	2
MOBELBOW00021	64110819 ELBOW, RUBBER U/W JS600 SCOOPTR	1
MOBSEAL 00075	362225 SEAL, OIL INPUT SHAFT U/W ST6C	1
MOBFILTE00159	AF1985 FILTER, AIR U/W ARMY TRUCK	1
MOBSWITC00031	641117426 SWITCH, TOGGLE U/W JS600	2
MOBSTUD 00027	114-4478 STUD U/W F10L413 DEUTZ	3
MOBVENT 00002	64800158 VENT, BREATHER U/W EJC210	1
MOBPLUG 00005	64800343 PLUG 2"	2
MOBCLAMP00003	89626K CLAMP U/W JS600 SCOOPTRAM	1
MOBORING00084	64112654 O-RING U/W EJC210 SCOOPTRAM	2
MOBSEAL 00063	80364549 SEAL, TRANSMISSION INPUT SHAFT	2
MOBRING 00039	163122 RING, SNAP U/W GETMAN SCISSOR	1
MOBWASHE00058	1S3809 WASHER U/W FINAL DRIVES ON B24	1

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MOBDIAPH00010	5K7105 DIAPHRAM, SERVICE BRAKE	1	
MOBGASKE00037	64101351 GASKET, OIL FILTER HOUSING	2	
MOBNUT 00043	4167924 NUT U/W LAPLETSCH MAN CARRIER	2	
MOBBOLT 00042	17GC12120 BOLT U/W GETMAN SCISSOR LIFT	1	
MOBFILTE00197	LF3487 FILTER, OIL U/W F150 FORD TRUCK	1	
MOBSPRIN00021	4313530 SPRING U/W LAPLETSCH MAN CARRIER	2	
MOBWASHE00057	0578994 WASHER U/W LAPLETSCH MAN CARRIER	2	
MOBFILTE00193	AF466 FILTER, AIR U/W MILL HIAB TRUCK	1	
MOBSEAL 00041	69019943 SEAL, OIL U/W JS600 SCOOPTRAM	2	
MOBGASKE00045	69007547 GASKET U/W DEUTZ F10L413	1	
MOBORING00015	64401615 O-RING U/W JS600 SCOOPTRAM &	1	
MOBSSHIM 00020	694142 SHIM U/W GETMAN SCISSOR LIFT	3	
MOBBOLT 00041	73GC08024 BOLT U/W GETMAN SCISSOR LIFT	4	
MOBSEAL 00092	EP6678 SEAL, VALVE COVER U/W 3406 ENGINE	1	
MOBWASHE00027	14A-12 WASHER	31	
MOBFILTE00057	6S-485 FILTER	2	
MOBBOLT 00021	69006272 BOLT, BANJO U/W DEUTZ F6L912W	2	
MOBGR0MM00001	2626 GROMMET	2	
MOBSPRIN00020	80074399 SPRING, CLUTCH RETURN U/W JUT41	3	
MOBPACK00003	G-33193 PACKING	1	
MOBSPACE00011	E66193 SPACER U/W SCOOPTRAM	1	
MOBCABLE00003	64805520 CABLE, TACHOMETER RPM	1	
MOBPLUG 00020	69019930 PLUG, HUB U/W JUT41 SCISSOR	4	
MOBFILTE00200	FF5026 FILTER, FUEL U/W RED TRUCK (BILL)	1	
MOBNUT 00065	39607 NUT, CARRIAGE 5/8" NG U/W M5400	10	
MOBSEAL 00095	04693513 SEAL, OIL	2	
MOBSEAL 00093	469694 SEAL, REA AXLE U/W ARMY TRUCKS	1	
MOBFILTE00169	FS1251 FILTER, FUEL BYPASS	1	
MOBFILTE00186	FF109 FILTER, FUEL	2	
MOBLIGHT00010	4415 SEAL BEAM	1	
MOBADAPT00005	64109372 ADAPTER U/W JS600 SCOOPTRAM	1	
MOBORING00077	64112579 O-RING U/W EJC430 TAMROCK TRUCK	6	
MOBBEAR00041	04700546 BEARING, CUP	1	
MOBSWTC00014	64116841 SWITCH, TOGGLE	1	
MOBNUT 00016	04700758 NUT	1	
MOBWASHE00072	64402890 WASHER, FLAT U/W EJC210	2	
MOBINDIC00005	28751 INDICATOR, TRANSMISSION LEVEL U/W	1	
MOBBEAR00055	64109066 BEARING, PILOT U/W JUT41	1	
MOBWASHE00070	04700509 WASHER, FLANGE U/W EJC430	2	
MOBSEAL 00068	69006357 SEAL, VALVE COVER BOLT U/W DEUT	8	
MOBWASHE00003	330293 WASHER U/W ST6C SCOOPTRAM	2	
MOBBOLT 00020	69007069 BOLT, BANJO U/W DEUTZ F6L912W	2	
MOBBOOT 00007	80215229 BOOT, GEAR SHIFT LEVER U/W	2	
MOBFILTE00194	LF692 FILTER, OIL U/W MILL HIAB TRUCK	1	
MOBWASHE00006	04700355 WASHER U/W ST6C SCOOPTRAM	10	
MOBWASHE00009	69012361 WASHER	6	
MOBBEAR00038	64109943 BEARING	1	
MOBFILTE00198	FF5097 FILTER, FUEL U/W F150 FORD TRUCK	1	
MOBVALVE00071	2634 VALVE, EXHAUST U/W SPEDLE PUMP	1	
MOBBULB 00008	64117205 BULB U/W EJC430 TAMROCK TRUCK	2	
MOBORING00086	69004920 O-RING U/W EJC-210 SCOOPTRAM	1	
MOBLIGHT00011	4416 SEAL BEAM	1	

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MOBBULB 00007	64403032 BULB U/W EJC430 TAMROCK TRUCK	2	
MOBFILTE00196	AF4624 FILTER, AIR U/W F150 FORD TRUCK	1	
MOBCAP 00014	RC-1 CAP, RADIATOR	1	
MOBCAP 00015	RC-6 CAP, RADIATOR	1	
MOBCAP 00017	RC-12 CAP, RADIATOR	1	
MOBWASHE00058	4210973 WASHER U/W LAPLETSCHE MAN CARRIER	2	
MOBELEME00016	64800267 ELEMENT, GLO PLUG INDICATOR U/W	2	
MOBNUT 00056	41132080 NUT U/W SCOOPTRAM	3	
MOBBULB 00005	1818 BULB, GAUGE 12V	10	
MOBRING 00024	333840 RING, SNAP U/W ST6C SCOOPTRAM	2	
MOBGASKED00023	G10407 GASKET	1	
MOBPLUG 00025	69004413 PLUG, PAN FOR DEUTZ ENGINE	1	
MOBELEME00008	FF234 ELEMENT ASSEMBLY	2	
MOBORING00031	A42843 O-RING	1	
MOBRING 00016	04699326 RING, SNAP U/W JS600 SCOOPTRAM	4	
MOBBULB 00002	1156 BULB 12V	13	
MOBGASKE00032	64804381 GASKET, PUMP U/W JS600	2	
MOBSSHM 00021	594143 SHIM U/W GETMAN SCISSOR LIFT	1	
MOBBOOT 00010	02C-0007 BOOT, SWITCH	1	
MOBWIRE 00007	16GA WIRE, REBAR 3 1/2 LB RL	2	
MOBRING 00021	04699918 RING, SNAP SUN GEAR U/W JS600	2	
MOBGASKE00008	04700522 GASKET U/W JS600 SCOOPTRAM	4	
MOBGASKED00046	04182668 GASKET U/W DEUTZ F10L413	1	
MOBRING 00020	32342 RING, PULL U/W FSS	2	
MOBFILTE00166	FS1280 FILTER, FUEL	1	
MOBGASKE00018	64804661 GASKET U/W JS500 SCOOPTRAM	2	
MOBBOLT 00016	80369469 V-BOLT SCISSOR LIFT U/W JUT41	2	
MOBORING00071	64117373 O-RING U/W EJC430 TAMROCK	6	
MOBSEAL 00097	401577 SEAL U/W FINAL DRIVES ON 624	1	
MOBRACK00013	BR020L-001 BRACKET U/W LAPLETSCHE MAN	1	
MOBORING00051	69004991 O-RING, IDLER PULLEY U/W DEUTZ	1	
MOBSSHM 00015	G100330 SHIM	1	
MOBFILTE00209	P555916 FILTER, FUEL U/W SNOW PLOW TRUCK	1	
MOBGASKE00022	G10876 GASKET	1	
MOBORING00063	16047 O-RING U/W FSS	4	
MOBTERM00001	BP97U TERMINAL, BATTERY	2	
MOBWASHE00033	2640 WASHER, RUBBER U/W SPEDLE PUMP	2	
MOBYOKE 00004	5K0292 YOKE U/W CATERPILLAR 990 LOADER	1	
MOBORING00078	64110615 O-RING U/W EJC430 TAMROCK TRUCK	2	
MOBSPRING00019	80176169 SPRING, CLUTCH BEARING U/W	4	
MOBRACK00011	16597 BRACKET, NOZZLE U/W FSS	2	
MOBBOLT 00034	9/16" X 4 1/2" BOLT, CENTER U/W GMC	2	
MOBWASHE00067	39731 WASHER, LOCK 5/8" U/W M5400 KUBOTA	8	
MOBBREAT00003	80357709 BREATHER, DIFFERENTIAL U/W	2	
MOBORING00062	21964 O-RING U/W FSS	3	
MOBGASKE00042	7W6084 GASKET	2	
MOBORING00080	04698158 O-RING U/W EJC210 SCOOPTRAM	2	
MOBFILTE00202	26171377 FILTER, OIL U/W RED TRUCK (BILL)	1	
MOBINSER00009	80158129 INSERT, SHIFTING FORK U/W JUT41	4	
MOBFILTE00201	AF380 FILTER, AIR U/W RED TRUCK (BILL)	1	
MOBSEAL 00056	69012508 SEAL U/W JS600 SCOOPTRAM	8	
MOBSCREW00029	03C-0114 SCREW, FOOT	8	

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MOBBOLT 00040	04698770 BOLT U/W EJC430 TAMROCK TRUCK	4	
MOBNUT 00045	38336875 NUT, WING 3/8" NC U/W AIR	2	
MOBNUT 00046	38336845 NUT, WING 7/16" NC U/W AIR	2	
MOBLINK 00009	69-35 LINK, OFF SET U/W SWENSON SANDER	3	
MOBSPRING00028	69023386 SPRING U/W EJC210 SCOOPTRAM	2	
MOBVENT 00003	64800163 VENT, BREATHER U/W EJC210	2	
MOBBULB 00003	1157 BULB 12V	8	
MOBORING00046	31716 O-RING, ACTUATOR U/W FSS	4	
MOBORING00040	64401619 O-RING U/W JS600 SCOOPTRAM &	3	
MOBORING00046	5151 O-RING, ACTUATOR U/W FSS	4	
MOBRING 00013	04899288 RING, SNAP	1	
MOBSEAL 00017	28935660 SEAL, RING COPPER	6	
MOBNUT 00012	69012304 NUT	2	
MOBORING00082	04698077 O-RING U/W EJC210 SCOOPTRAM	4	
MOBGASKE00044	04182569 GASKET U/W DEUTZ F10L413	1	
MOBESHIM 00019	594141 SHIM U/W GETMAN SCISSOR LIFT	1	
MOBRING 00038	64101391 RING, SNAP U/W EJC210	2	
MOBORING00061	52217300 O-RING	6	
MOBCLAMP00022	3" CLAMP, GEAR	9	
MOBFILTE00199	AF4765 FILTER, CRANKCASE U/W F150 FORD	1	
MOBCLIP 00001	69005226 CLIP, FILTER U/W F10L413 DEUTZ	2	
MOBORING00019	52205760 O-RING	5	
MOBCLAMP00014	5/16" CLAMP, GEAR 25/BOX	11	
MOBORING00058	01164493 O-RING U/W DEUTZ F10L413	1	
MOBBOLT 00027	01119237 BOLT, BANJO U/W DEUTZ F10L413	2	
MOBORING00037	04811-50700 O-RING U/W M5400 KUBOTA	1	
MOBORING00023	64103967 O-RING FOR CAP ON HYD TANK	3	
MOBSTUD 00016	04700341 STUD, DIFFERENTIAL LONG U/W	1	
MOBKIT 00032	81284779 KIT, DISC BRAKE	1	
MOBWASHE00077	64117381 WASHER, COPPER FOR DEUTZ SCREW	3	
MOBFUSE 00011	ATO25 FUSE, 25A PUSH TYPE	6	
MOBBOLT 00039	14018700 BOLT U/W LAPLETSCH MAN CARRIER	2	
MOBGASKE00047	3371139 GASKET U/W DEUTZ F10L413	2	
MOBORING00076	64401584 O-RING U/W EJC430 TAMROCK TRUCK	8	
MOBESHIM 00016	32580-43560 SHIM U/W M5400 KUBOTA	2	
MOBVALVE00078	434033 VALVE, BODY U/W GETMAN SCISSOR	1	
MOBGASKE00028	1P0436 GASKET U/W CAT ENGINE	2	
MOBSPRING00004	69012373 SPRING	3	
MOBORING00073	64401567 O-RING U/W EJC430 TAMROCK TRUCK	2	
MOBGASKE00003	64802577 GASKET U/W ST6C SCOOPTRAM &	3	
MOBNUT 00051	15674442 NUT, WHEEL MOUNTING U/W ARMY	1	
MOBNUT 00070	176D12 NUT U/W GETMAN SCISSOR LIFT	2	
MOBFUSE 00009	ATO15 FUSE, 15A PUSH TYPE	5	
MOBFUSE 00012	ATO30 FUSE, 30A PUSH TYPE	5	
MOBORING00068	64103917 O-RING U/W EJC430 TAMROCK TRUCK	1	
MOBORING00063	64800322 O-RING U/W EJC210 SCOOPTRAM	1	
MOBPLUG 00019	04700274 PLUG, FILLER HOLE U/W JS600	2	
MOBFILTE00195	FF114 FILTER, GAS U/W MILL HIAB TRUCK	1	
MOBSCREW00011	5540041900 SCREW, CAP U/W ST6C SCOOPTRAM	3	
MOBWASHE00055	64100848 WASHER, FUEL LINE U/W DEUTZ	16	
MOBWASHE00045	64104468 WASHER, INJECTION LINE U/W DEUTZ	15	
MOBORING00009	64401563 O-RING U/W ST6C SCOOPTRAM	2	

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MOBLINK 00003	26A35 LINK, MASTER U/W SWENSON SANDER	3	
MOBORING00087	69013469 O-RING U/W SCOOPTRAM	1	
MOBORING00059	64101879 O-RING U/W EJC430 TAMROCK TRUCK	1	
MOBORING00054	3469 O-RING U/W FSS	3	
MOBLOCK 00006	3661 LOCKNUT U/W SPEDLE PUMP	2	
MOBLOCK 00007	2660 LOCKNUT U/W SPEDLE PUMP	2	
MOBSTRAP00002	3920486 STRAP U/W LAPLETSCH MAN CARRIER	1	
MOBGASKE00056	64101666 GASKET U/W EJC430 TAMROCK TRUCK	1	
MOBWIRE 00006	2832 WIRE LOCK	2	
MOBSEAL 00098	5F1678 SEAL U/W FINAL DRIVES ON 824	1	
MOBGASKE00025	211376 GASKET U/W 350 SCOOPTRAM	1	
MOBORING00079	64101710 O-RING U/W EJC-210 SCOOPTRAM	4	
MOBORING00081	64401602 O-RING U/W EJC210 SCOOPTRAM	2	
MOBCLAMP00012	39212-50 CLAMP, MUFFLER 2 1/2" U/W	1	
MOBORING00016	64401598 O-RING U/W JS600 SCOOPTRAM	1	
MOBORING00074	64401555 O-RING U/W EJC430 TAMROCK TRUCK	8	
MOBNUT 00013	69012310 NUT "JAM"	3	
MOBFUSE 00004	AGC15 FUSE 15A	4	
MOBGASKE00038	69320244 GASKET, DRAIN PLUG U/W DEUTZ	2	
MOBSCREW00024	110-5533 SCREW U/W DEUTZ F10L413	2	
MOBSPRING00005	69012390 SPRING	3	
MOBRING 00028	111-8564 RING, SEALING U/W DEUTZ F10L413	2	
MOBORING00030	04694225 O-RING	3	
MOBORING00070	64401550 O-RING U/W EJC430 TAMROCK	2	
MOBCAP 00040	02C-0030 CAP, RED	1	
MOBNUT 00057	69012306 NUT, JAW U/W EJC210 SCOOPTRAM	2	
MOBORING00072	64401564 O-RING U/W EJC430 TAMROCK	2	
MOBNUT 00039	80048509 NUT, HEX U/W JUT41 SCISSOR LIFT	2	
MOBNUT 00066	69012305 NUT U/W EJC210 SCOOPTRAM	2	
MOBORING00017	69012344 O-RING	3	
MOBORING00075	04700379 O-RING U/W EJC430 TAMROCK TRUCK	4	
MOBNUT 00068	69012309 NUT U/W EJC210 SCOOPTRAM	2	
MOBALL 00001	04700457 BALL U/W JS500 SCOOPTRAM	2	

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Each F021 TAB Value Actual

30.60	NZF	521.49	521.49
	SHOP		
1.602	33 OZF	8.011	8.011
3.507	98 NZG	7.175	7.175
2.591	84 SHOP	5.183	5.183
1.725	48 SHOP	5.176	5.176
4.896	59 SHOP	4.096	4.096
4.240	74 DOMESH	4.240	4.240
2.010	54 NZF	4.021	4.021
3.650	76 OZF	3.650	3.650
3.636	19 SHOP	3.636	3.636
3.188	17 ZZH	3.188	3.188
1.036	78 SHOP	3.110	3.110
2.915	02 ZZH	2.915	2.915
1.401	67 SHOP	2.803	2.803
2.739	20 NEW		
2.654	88 SHOP	2.654	2.654
2.600	00 NZG	2.600	2.600
419.64	NTB	2.517	2.517
1.184	64 P1C	2.369	2.369
2.226	49 ZZB	2.226	2.226
2.203	50 P2D	2.203	2.203
2.098	70 SHOP	2.098	2.098
1.964	80 NZG	1.964	1.964
1.964	80 NZG	1.964	1.964
1.954	20 C1F5	1.954	1.954
485	21 O2E	1.940	1.940
1.908	25 A1C	1.908	1.908
1.904	57 M2G	1.904	1.904
1.899	96 C1G	1.899	1.899
1.890	96 K2B	1.890	1.890
1.852	84 P1F	1.852	1.852
1.789	92 G2A	1.789	1.789
428	38 C1B	1.713	1.713
855	08 P2F	1.710	1.710

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518.36	Q2C	1,555.08	1,555.08
738.33	K1F	1,476.65	1,476.65
1,428.00	M2G	1,428.00	1,428.00
1,426.82	C2G5	1,426.82	1,426.82
702.50	P1E	1,405.00	1,405.00
99.77	G1B	1,396.76	1,396.76
1,302.59	Q1F	1,302.59	1,302.59
637.12	Q2C	1,274.25	1,274.25
1,219.83	N2G	1,219.83	1,219.83
699.00	Q2F	1,198.00	1,198.00
385.31	N2G	1,185.93	1,185.93
1,141.44	P2E	1,141.44	1,141.44
569.42	R2B	1,138.84	1,138.84
559.66	O1F	1,119.72	1,119.72
1,108.84	K1C	1,108.84	1,108.84
1,099.00	M1G	1,099.00	1,099.00
1,096.64	K1C	1,096.64	1,096.64
544.47	O1F	1,088.94	1,088.94
1,088.15	N2E	1,088.16	1,088.15
1,083.47	O1G	1,083.47	1,083.47
1,081.35	Q2E	1,081.35	1,081.35
133.76	N2E	1,070.08	1,070.08
632.27	C1F4	1,064.54	1,064.54
525.70	P1C	1,051.40	1,051.40
519.68	P1F	1,039.36	1,039.36
1,034.00	O1D	1,034.00	1,034.00
508.63	Q1C	1,017.26	1,017.26
1,014.61	N2E	1,014.61	1,014.61
996.84	P2F	996.84	996.84
498.00	Z2D	996.00	996.00
162.01	O1G	972.06	972.06
318.78	P1C	956.33	956.33
945.35	Q1F	945.35	945.35
472.49	Q2E	944.98	944.98
307.30	M1D	921.90	921.90
905.49	Q1D	905.49	905.49
894.76	SHOP	894.76	894.76
889.00	M1G	889.00	889.00
881.35	K1D	881.35	881.35
219.63	M2E	878.52	878.52
217.39	N1F	869.54	-
433.12	Q2C	866.24	866.24
431.67	M2F	863.35	863.35
862.66	Z1F	862.66	862.66
850.00	Z1G	850.00	-
848.53	M1D	848.53	848.53
210.15	O1C	840.60	840.60
419.64	P2F	839.28	839.28
419.49	M2E	838.98	-
832.15	N2B	832.15	-
413.39	O1G	826.78	826.78
812.36	M1G	812.36	812.36

CMFinalInventory

399.00	M1F	798.00	399.00
793.10	O2C	793.10	793.10
392.86	O1F	785.72	785.72
776.71	Z1G	776.71	776.71
379.36	Q1C	758.72	758.72
252.49	M2F	757.46	757.46
252.45	M2D	757.34	757.34
749.00	Z1F	749.00	749.00
743.94	Z1E	743.94	743.94
365.44	P2C	730.88	730.88
47.53	N1E	712.95	712.95
711.12	K1C	711.12	711.12
703.32	P2F	703.32	703.32
701.83	R2B	701.83	701.83
349.00	K1F	598.00	598.00
173.07	P1D	592.28	592.28
654.80	R1C	654.80	654.80
318.77	M1G	637.54	637.54
316.66	ZB4F	633.12	633.12
209.65	M2C	628.95	628.95
313.05	P2G	626.10	626.10
624.83	O1D	624.83	624.83
308.55	P2D	617.10	617.10
152.65	P1C	610.20	610.20
303.72	Q1C	607.44	607.44
303.13	Z2F	606.26	606.26
199.00	M2A	597.00	597.00
66.05	C2J1	594.45	-
296.90	M1F	593.80	593.80
197.22	N1E	591.66	591.66
574.78	SHOP	574.78	574.78
191.35	G1A	574.05	-
142.00	N1F	568.00	568.00
567.28	E2E7	567.28	567.28
280.60	M1F	561.20	561.20
560.00	M1A	560.00	560.00
24.75	YWALL	544.50	544.50
136.00	N1F	540.00	540.00
267.60	Q1F	535.00	535.00
534.61	Y2D	534.61	534.61
531.25	Q1B	531.25	531.25
175.80	M1F	527.40	527.40
262.77	K1F	525.54	262.77
130.87	N1E	523.48	523.48
258.46	Q2C	516.92	516.92
171.41	P1D	514.23	514.23
252.91	N1G	505.82	505.82
166.75	O1F	500.25	500.25
124.95	O1B	499.80	499.80
123.00	R1F	492.00	492.00
490.46	R1E	490.46	490.46
488.57	O1A	488.57	488.57

CMFinalInventory

483.42	Z1A	483.42	-	
79.98	Q2E3	479.58	479.58	
239.49	P2E	478.98	478.98	
476.80	WM	476.80	476.80	
67.70	N2E	473.90	473.90	
236.73	M1E	473.46	473.46	
118.00	VVA	472.01	472.01	
293.02	Z1D	466.04	466.04	
464.87	N2F	464.87	464.87	
115.47	Z1E	461.88	461.88	
114.60	N1E	458.40	458.40	
112.81	O1F	451.24	451.24	
224.60	N1E	449.20	449.20	
447.63	Q1E	447.63	447.63	
447.39	D1K	447.39	447.39	
147.71	P2C	443.13	443.13	
218.93	M2E	437.86	437.86	
218.49	Y2E	436.86	436.86	
435.50	P2G	435.50	435.50	
431.33	P2C	431.33	431.33	
214.20	P1E	428.40	428.40	
423.78	Z1G	423.78	423.78	
211.74	M1E	423.48	423.48	
417.27	N1D	417.27	417.27	
414.44	O1F	414.44	414.44	
409.00	Q2E	409.00	409.00	
80.61	M2A	404.07	404.07	
36.52	J2F	401.72	401.72	
189.55	N2F	399.10	399.10	
196.52	Q1B	393.04	393.04	
195.00	N1G	390.00	390.00	
195.00	K1F	390.00	390.00	
			189,234.25	
7.80	L1A	390.00	-	
129.39	ZC5F	388.17	-	
190.00	K1F	380.00	-	
126.63	N2C	379.89	-	
126.75	Z1D	377.25	-	
376.40	C1H	376.40	-	
374.19	M1C	374.19	-	
99.29	N2F	373.16	-	
186.55	B2D2	373.10	-	
371.75	K1F	371.75	-	
183.53	N2F	367.06	-	
365.40	O2C	365.40	-	
24.00	YWALL	360.00	-	
59.84	Y1C	359.03	-	
177.00	Q2E	354.00	-	
353.41	R1E	353.41	-	
117.66	O1D	352.98	-	

CMFinalInventory

176.40	M1F	352.80	-
7.94	R2C	349.36	-
172.90	R2C	345.80	-
171.40	Q2F	342.80	-
341.80	M1B	341.80	-
170.06	N2F	340.72	-
84.60	O1E	338.40	-
168.22	Q1C	335.44	-
89.07	Q2D	332.28	-
165.69	Q2D	331.26	-
165.00	N2F	330.00	-
64.98	P1E	324.90	-
40.31	R2C	322.48	-
322.42	ZC8D	322.42	-
160.74	N1E	321.48	-
20.99	M2B	314.85	-
157.31	K1D	314.63	-
157.24	M1E	314.48	-
104.78	M2B	314.34	-
156.97	E2D6	313.94	-
308.00	NEW	308.00	-
301.68	M1D	301.68	-
99.75	P1B	299.25	-
19.52	Q2D	297.44	-
147.14	Q2D	294.28	-
293.17	Z1C	293.17	-
291.71	Z1C	291.71	-
283.02	N2E	283.02	-
94.32	N1C	282.96	-
93.87	N2D	281.60	-
280.88	R1B	280.88	-
139.77	P1D	279.54	-
69.60	N2D	278.40	-
69.60	N2D	278.40	-
92.51	M2C	277.53	-
137.30	N2G	274.60	-
135.65	N2D	271.30	-
67.48	Q2D	269.92	-
269.50	P2D	269.50	-
134.73	ZC8D	269.46	-
267.20	B2F6	267.20	-
15.66	R1C	264.85	-
130.34	M2E	260.68	-
86.73	N2A	260.19	-
259.75	P2B	259.75	-
0.40	M2C	259.60	-
129.39	ZC9B	256.78	-
14.36	P2B	256.39	-
256.21	Q2F	256.21	-
128.50	N1G	257.00	-
85.05	R1B	255.15	-
63.72	Q2C	254.88	-

CMFinalInventory

249.62	D2D	249.62	-	-
249.34	D1D5	249.34	-	-
35.46	G1E	248.22	-	-
41.32	YWALL	247.92	-	-
246.47	N1G	246.47	-	-
245.20	B2F4	245.20	-	-
61.26	M1A	245.04	-	-
81.39	P2G	244.17	-	-
242.92	AFLQOR	242.92	-	-
118.56	N2D	237.12	-	-
117.54	D1G9	235.08	-	-
234.29	Q1B	234.29	-	-
234.11	Z1C	234.11	-	-
58.48	M2E	233.92	-	-
56.24	N1D	232.96	-	-
114.58	O1E	229.18	-	-
56.84	Q1C	227.36	-	-
75.55	N2F	226.65	-	-
226.60	Q2C	226.60	-	-
37.60	E2E5	225.00	-	-
224.74	H2A	224.74	-	-
68.00	N1F	224.00	-	-
55.49	N1F	221.96	-	-
220.74	Z1G	220.74	-	-
110.20	G2D	220.40	-	-
109.95	A1B	219.90	-	-
109.94	P2A	219.88	-	-
218.10	O1A	218.10	-	-
72.26	C1F1	216.78	-	-
54.00	Q2D	216.00	-	-
106.79	ZC8D	213.58	-	-
70.73	O1E	212.19	-	-
105.68	Q1C	211.36	-	-
70.42	P1B	211.25	-	-
52.71	E2C5	210.84	-	-
210.10	D1K0	210.10	-	-
210.00	K1D	210.00	-	-
104.29	O2D	208.58	-	-
68.39	Q2B	205.17	-	-
201.69	Q2E	201.69	-	-
66.85	N2D	200.57	-	-
200.00	D1E8	200.00	-	-
99.75	P1B	199.50	-	-
99.69	R2B	199.38	-	-
198.50	K1D	198.50	-	-
98.97	P2A	197.94	-	-
98.95	N2F	197.90	-	-
197.47	Q2C	197.47	-	-
65.43	Z1D	185.29	-	-
97.95	N2F	185.80	-	-
97.91	Q1C	185.82	-	-
97.66	Q2C	185.32	-	-

CMFinalInventory

95.71	C1G5	193.42	-	-
64.47	O2D	193.40	-	-
47.99	P1C	191.96	-	-
95.98	O2E	191.96	-	-
23.99	Q2A	191.92	-	-
95.40	N2B	190.80	-	-
190.35	ZC8D	190.35	-	-
62.66	M2E	187.98	-	-
187.69	O1A	187.69	-	-
186.43	M1B	186.43	-	-
184.40	M2B	184.40	-	-
18.40	O2D	184.00	-	-
91.99	M2D	183.98	-	-
183.95	Q2A	183.95	-	-
183.95	Q2A	183.95	-	-
26.20	N1B	183.40	-	-
91.47	N2G	182.94	-	-
91.47	N1C	182.94	-	-
91.20	Q2C	182.40	-	-
91.01	M2C	182.02	-	-
179.95	Q2C	179.95	-	-
25.38	O1D	177.66	-	-
177.13	G1C	177.13	-	-
44.21	E2C6	176.84	-	-
176.63	Q2E	176.63	-	-
58.72	M2E	176.16	-	-
175.00	O1HS	175.00	-	-
175.00	O1D	175.00	-	-
174.17	A2C	174.17	-	-
173.20	O2F	173.20	-	-
86.35	O1G4	172.70	-	-
86.23	Q2B	172.46	-	-
86.08	N1B	172.16	-	-
171.71	R2C	171.71	-	-
171.20	P2C	171.20	-	-
85.09	N2E	170.18	-	-
83.73	P2C	167.46	-	-
13.92	R1C	167.04	-	-
83.35	P2D	166.70	-	-
13.87	G1D	166.44	-	-
41.22	M2D	164.88	-	-
82.32	R2C	164.64	-	-
54.36	R1B	163.08	-	-
163.00	N1A	163.00	-	-
40.75	P1B	162.98	-	-
40.72	N1D	162.88	-	-
54.14	T5I	162.42	-	-
162.23	Q1C	162.23	-	-
161.61	O1E	161.61	-	-
40.00	Q2E	160.00	-	-
51.07	G2D	153.21	-	-
153.06	O1E	153.06	-	-

CMFinalInventory

76.48	VF	152.96	-	-
11.76	F2B	152.69	-	-
152.44	M1E	152.44	-	-
50.30	M1F	150.90	-	-
50.25	O1D	150.75	-	-
148.30	Q2C	148.30	-	-
73.95	P1C	147.90	-	-
73.75	P2B	147.50	-	-
13.34	R2C	146.74	-	-
72.39	N1B	144.78	-	-
71.37	M1D	142.74	-	-
142.70	O1D	142.70	-	-
71.29	Q2D	142.67	-	-
47.52	ZC8D	142.56	-	-
20.34	N1E	142.38	-	-
71.07	C1E5	142.14	-	-
70.90	M1D	141.80	-	-
28.25	M1B	141.24	-	-
139.36	R2B	139.36	-	-
34.71	Q1B	138.84	-	-
46.26	O2E	138.84	-	-
69.16	M1E	138.32	-	-
138.13	N1D	138.13	-	-
0.63	C2K	138.08	-	-
45.80	Q2D	137.40	-	-
68.40	N1G	136.80	-	-
68.29	N2B	136.58	-	-
135.85	Q2C	135.85	-	-
135.17	O1B	135.17	-	-
67.67	O1D	135.14	-	-
135.00	K1E	135.00	-	-
33.67	R1C	134.68	-	-
134.29	R1B	134.29	-	-
66.99	T5I	133.98	-	-
133.42	P1D	133.42	-	-
66.40	N1C	132.79	-	-
26.54	O2E	132.70	-	-
132.00	Q1C	132.00	-	-
43.98	R1C	131.94	-	-
130.64	P1D	130.64	-	-
129.52	N2B	129.52	-	-
64.75	R1A	129.50	-	-
64.12	R2B	128.24	-	-
128.00	K1D	128.00	-	-
63.75	O2E	127.50	-	-
16.82	M1D	126.56	-	-
31.50	Q2D	126.00	-	-
41.95	O1E	125.85	-	-
124.00	D1E4	124.00	-	-
123.58	P1C	123.58	-	-
61.09	N1E	122.18	-	-
121.43	K1D	121.43	-	-

CMFinalInventory

7.14	M2D	121.38	-	
60.48	Q1C	120.96	-	
120.71	E2C3	120.71	-	
9.14	M2B	118.82	-	
118.53	C1G3	118.53	-	
118.36	C1E1	118.36	-	
118.09	N2D	118.09	-	
58.92	M2B	117.84	-	
58.91	R2C	117.82	-	
39.28	O2E	117.78	-	
116.57	P1D	116.57	-	
116.10	C2H3	116.10	-	
28.91	C1F3	115.64	-	
57.81	R1B	115.62	-	
38.08	M1C	114.24	-	
112.86	N2G	112.86	-	
37.47	P2C	112.41	-	
56.16	Z1C	112.30	-	
55.93	M1D	111.86	-	
55.62	P2B	111.24	-	
110.75	P1B	110.76	-	
110.65	C1G1	110.65	-	
110.07	P1B	110.07	-	
109.95	R1B	109.95	-	
109.61	O2D	109.61	-	
109.15	Q1C	109.15	-	
54.41	N1C	108.83	-	
3.61	O1C	108.30	-	
21.64	N2D	108.20	-	
54.03	Q1C	108.06	-	
107.98	CAB A	107.98	-	
21.55	JB	107.80	-	
53.86	P2D	107.76	-	
53.44	O2D	106.88	-	
53.25	2C8D	106.60	-	
52.99	P1D	106.98	-	
104.09	M1E	104.69	-	
104.41	O2B	104.10	-	
103.52	Q1B	103.52	-	
102.66	Q1C	102.66	-	
102.26	Q2C	102.26	-	
17.00	N1D	102.00	-	
25.45	M1D	101.79	-	
50.46	2C8D	100.92	-	
16.68	P2E	100.08	-	
49.44	G1D	98.89	-	
32.95	O1B	98.85	-	
49.37	Z1F	98.74	-	
24.65	O1D	98.64	-	
9.80	D1A4	98.00	-	
48.79	M2E	97.58	-	
1.02	M2C	96.88	-	

GMFTnalInventory

31.88	P1G	95.64	-	
23.78	N2E	95.12	-	
23.76	M2B	95.02	--	
95.00	Y2E	95.00	-	
47.50	D1F1	95.00	-	
47.43	R1C	94.86	-	
18.84	P1C	94.20	-	
23.51	C1G5	94.04	-	
95.31	O2A	93.31	-	
46.25	M1E	92.50	-	
23.00	N2D	92.00	-	
45.47	O2D	90.94	-	
45.38	Q1C	90.76	-	
5.00	D1D3	90.00	-	
44.99	J1B	89.98	-	
44.56	Q2C	89.12	-	
29.65	G2D	88.95	-	
11.00	D1A2	88.00	-	
87.50	N2D	87.50	-	
43.63	M1E	87.06	-	
12.43	P2B	87.01	-	
5.39	Q2A	86.24	-	
42.80	O1E	85.60	-	
8.55	P2E	85.50	-	
21.05	Q1C	84.20	-	
42.03	O2A	84.06	-	
28.00	N2D	84.00	-	
16.73	N2E	83.65	-	
41.74	A2B	83.48	-	
27.80	P1D	83.40	-	
16.65	P1B	83.25	-	
20.81	M1B	83.23	-	
27.68	M2B	83.04	-	
27.66	P1B	82.98	-	
82.69	C2I3	82.69	-	
82.43	A2B	82.43	-	
82.31	M2C	82.31	-	
8.99	M2E	80.91	-	
40.43	Q1C	80.86	-	
80.80	E2C7	80.80	-	
5.04	P1D	80.64	-	
6.68	O2B	80.16	-	
39.80	P2B	79.60	--	
39.79	ZC8D	79.58	-	
79.50	N1B	79.50	-	
39.67	P1D	79.35	-	
39.66	Q2E	79.31	-	
19.76	Q2D	79.04	-	
78.48	C1G2	70.48	-	
7.84	D1A3	78.40	-	
78.34	O1A	78.34	-	
78.32	M2C	78.32	-	

CMFinalInventory

78.19	N2D	78.19	-
38.92	M2E	77.84	-
77.15	N1C	77.15	-
8.67	O2D	77.13	-
10.96	P1D	76.69	-
76.18	C1G2	76.18	-
14.76	N2D	73.80	-
6.14	N2G	73.62	-
35.78	P2A	73.56	-
14.69	G2D	73.45	-
35.68	P2E	73.36	-
4.31	D1A5	73.27	-
32.38	N2B	72.76	-
72.73	P1B	72.73	-
35.28	2C8D	72.66	-
18.14	C2I5	72.66	-
72.25	R1C	72.25	-
36.00	Z1E	72.00	-
35.98	P1B	71.99	-
71.78	C1F7	71.78	-
35.82	Z1D	71.64	-
71.60	Z1B	71.60	-
17.84	P2E	71.36	-
2.57	N1B	71.10	-
35.65	M2F	71.10	-
17.72	N2B	70.88	-
70.35	R2C	70.35	-
70.31	R2B	70.31	-
35.13	R1C	70.28	-
23.24	P2B	69.72	-
23.21	O1B	69.63	-
69.60	N2C	69.60	-
69.31	A2C	69.31	-
17.26	Q2D	69.00	-
34.43	O1D	68.86	-
34.32	O2C	68.64	-
17.08	Q2C	68.32	-
67.74	C1F6	67.74	-
22.67	P1D	67.71	-
22.41	G2D	67.23	-
22.40	P2D	67.20	-
67.03	R2C	67.03	-
66.79	P1D	66.79	-
11.11	P1B	66.67	-
4.12	N2C	65.95	-
65.77	A1D	65.77	-
21.89	O2D	65.67	-
65.65	M2B	65.65	-
65.61	O2C	65.61	-
2.05	D2G5	65.60	-
21.85	B2G1	65.58	-
65.41	D1H6	65.41	-

CMFinalInventory

16.33	C1E4	65.32	-	
16.30	N2E	65.20	-	
65.00	O1D	65.00	-	
64.35	P2B	64.35	-	
64.26	O1C	64.26	-	
16.00	O1D	64.00	-	
16.95	Q2D	63.60	-	
31.69	C2H2	63.38	-	
15.39	Q2D	61.56	-	
61.35	R1C	61.35	-	
3.22	M2C	61.18	-	
7.62	F2B	60.92	-	
20.25	G1D	60.79	-	
15.16	Z1C	60.64	-	
30.29	M2D	60.58	-	
30.20	M2B	60.40	-	
30.05	O2C	60.10	-	
3.75	P2E	60.00	-	
29.99	F1B	59.98	-	
29.99	F1B	59.98	-	
14.96	R1B	59.80	-	
59.50	Q2E	59.50	-	
59.43	S3A	59.43	-	
29.68	R1C	59.36	-	
29.67	F2C	59.14	-	
59.06	C1D5	59.06	-	
59.05	P2B	59.05	-	
29.50	O2E	59.00	-	
4.63	N1E	58.89	-	
29.44	Q1B	58.88	-	
58.50	C2J5	58.50	-	
28.59	D1J2	57.18	-	
57.00	D1E1	57.00	-	
8.10	D1D2	56.70	-	
28.25	N2E	56.50	-	
3.76	N1E	56.25	-	
28.07	P2B	56.14	-	
27.95	O1B	55.90	-	
4.30	M2E	55.90	-	
27.94	ZC5F	55.88	-	
13.96	N2D	55.84	-	
55.60	P2B	55.60	-	
4.59	P1D	55.08	-	
55.00	Q2D	55.00	-	
18.20	G1D	54.60	-	
9.06	M1B	54.36	-	
27.12	Y2B	54.24	-	
54.19	J2C	54.19	-	
54.18	M1D	54.18	-	
27.08	Q2E	54.16	-	
27.01	Q1C	54.02	-	
13.47	Q2C	53.66	-	

CMFinalInventory

5.34	N1E	53.40	-
17.73	P1C	53.18	-
13.25	F1A	53.00	-
3.30	D1A11	52.80	-
17.46	M1C	52.38	-
52.19	G1D	52.19	-
52.08	M1E	52.08	-
52.08	M1E	52.08	-
26.04	ZC5F	52.08	-
25.81	M1D	51.62	-
51.61	O2A	51.61	-
17.13	Q2D	51.39	-
12.80	G1C	51.20	-
12.77	G1B	51.08	-
50.97	Z1B	50.97	-
16.95	M1D	50.85	-
25.16	Z1C	50.36	-
25.00	Q2E	50.00	-
26.00	Q2E	50.00	-
24.99	Q1B	49.98	-
8.28	M2B	49.68	-
6.14	F2B	49.14	-
49.00	N2E	49.00	-
12.90	P2B	48.80	-
48.46	P1D	48.46	-
6.81	D1J4	47.67	-
23.78	O1D	47.56	-
47.26	N1C	47.26	-
23.56	B2F3	47.12	-
23.43	O2D	46.86	-
46.60	P2D	46.50	-
46.25	M1E	46.25	-
46.10	E2H	46.10	-
28.02	Q2C	46.04	-
22.98	G1C	45.96	-
22.82	ZC8D	45.64	-
22.81	O2D	45.62	-
45.56	R1C	45.56	-
45.24	B2G1	45.24	-
45.00	O1D	45.00	-
7.48	O1C	44.90	-
44.80	N1C	44.80	-
22.18	P2E	44.37	-
44.32	P1D	44.32	-
21.98	E2D7	43.96	-
5.39	NEW	43.12	-
42.75	N2F	42.75	-
42.45	D1E3	42.45	-
42.39	VVA	42.39	-
42.12	N2B	42.12	-
21.05	Z1D	42.10	-
4.20	D1A1	42.00	-

CMFinalInventory

41.89	M2B	41.89	-	
20.54	Q2D	41.08	-	
20.33	P2G	40.65	-	
40.41	D2G4	40.41	-	
13.27	M1D	39.81	-	
39.49	S3A	39.49	-	
19.74	R2C	39.48	-	
39.45	N1B	39.45	-	
6.57	F1A	39.42	-	
39.36	R1E	39.35	-	
19.61	YVALL	39.22	-	
39.22	Q2A	39.22	-	
39.11	P1B	39.11	-	
3.25	E1J2	39.00	-	
19.40	Q2B	38.80	-	
38.78	Q1B	38.78	-	
9.69	M2B	38.76	-	
19.31	R1A	38.62	-	
38.00	P2D	38.00	-	
2.85	E1J1	37.05	-	
18.50	ZC8D	37.00	-	
9.25	P1D	37.00	-	
18.42	Z1C	36.84	-	
18.32	Q2E	36.64	-	
18.20	N2C	36.40	-	
18.20	N2C	36.40	-	
7.26	P2E	36.30	-	
18.06	R1B	36.12	-	
35.95	A2B	35.95	-	
35.95	A2B	35.95	-	
17.94	P1E	35.88	-	
35.76	N1C	35.76	-	
1.49	P2E	35.76	-	
17.88	R1D	35.72	-	
11.90	F1C	35.70	-	
17.80	N2C	35.60	-	
17.72	B2F1	35.44	-	
35.15	B2A2	35.15	-	
17.50	J1C	35.00	-	
34.49	P1D	34.49	-	
17.21	D1G11	34.42	-	
34.40	Q2C	34.40	-	
6.88	Q2C	34.39	-	
2.64	F1B	34.32	-	
34.28	Z1B	34.28	-	
11.38	B2E2	34.14	-	
4.24	R1C	33.92	-	
8.48	M2D	33.92	-	
8.43	Z1D	33.72	-	
1.12	N2C	33.59	-	
8.42	O2E	33.58	-	
3.74	O2D	33.56	-	

CMFinalInventory

2.10	Q2D	33.50	-	-
16.80	F1B	33.50	-	-
16.56	R1C	33.32	-	-
3.68	N1C	33.12	-	-
16.55	O1D	33.09	-	-
33.04	O2B	33.04	-	-
32.95	Y1C	32.95	-	-
16.26	B2F1	32.56	-	-
16.25	G2D	32.50	-	-
1.12	E2F5	32.40	-	-
16.09	O2D	32.19	-	-
32.16	G1B	32.16	-	-
7.99	O2D	31.96	-	-
7.89	G2D	31.56	-	-
31.44	G1C	31.44	-	-
31.42	N1F	31.42	-	-
15.68	P1B	31.35	-	-
31.13	Z1C	31.13	-	-
16.66	Q1C	31.12	-	-
5.18	O2C	31.08	-	-
16.47	F2B	30.94	-	-
15.44	O2B	30.89	-	-
30.82	E2E6	30.82	-	-
10.26	O2D	30.76	-	-
30.51	G2D	30.51	-	-
15.26	O2B	30.51	-	-
10.11	Z1C	30.33	-	-
30.24	B2F2	30.24	-	-
30.21	E2A7	30.21	-	-
1.47	N1B	29.40	-	-
2.44	O1C	29.26	-	-
14.60	O1D6	29.20	-	-
28.84	G2D	28.84	-	-
14.41	G2B	28.82	-	-
28.44	O1D	28.44	-	-
28.41	R1A	28.41	-	-
4.03	N1E	28.21	-	-
7.03	Z1F	28.12	-	-
0.50	C1E2	28.00	-	-
5.58	ZC5F	27.90	-	-
1.16	D1H8	27.84	-	-
6.95	N2D	27.80	-	-
13.90	D1D7	27.80	-	-
13.88	O2D	27.76	-	-
27.45	B2A2	27.45	-	-
27.45	G2C	27.45	-	-
2.11	O2B	27.43	-	-
27.15	P1B	27.15	-	-
5.39	F1A	26.95	-	-
26.92	N1D	26.92	-	-
13.45	Q2C	26.90	-	-
13.41	O2D	26.82	-	-

CMFinalInventory

8.93	F2A	26.79	-	
26.75	P1D	26.75	-	
26.39	N2F	26.39	-	
26.00	YWALL	26.00	-	
12.94	M2D	25.88	-	
25.53	Z1D	25.53	-	
25.49	M2C	25.49	-	
25.37	P1B	25.37	-	
12.60	D1C1	25.20	-	
12.58	O2B	25.16	-	
25.13	F1A	25.13	-	
24.96	B2F2	24.96	-	
12.38	N1B	24.72	-	
12.32	ZG8D	24.64	-	
6.13	O1D	24.52	-	
12.23	G2D	24.46	-	
6.08	Q2C	24.32	-	
24.30	Q1C	24.30	-	
5.93	D1A6	23.72	-	
11.78	N1D	23.56	-	
11.73	P1E	23.46	-	
2.93	O1B	23.44	-	
23.23	R2A	23.23	-	
11.45	B2F1	22.90	-	
7.63	N1D	22.88	-	
5.53	O1B	22.12	-	
22.01	F1C	22.01	-	
10.99	G2B	21.98	-	
10.71	Z1D	21.42	-	
21.35	Q2D	21.35	-	
10.62	Z1D	21.24	-	
10.53	N2D	21.06	-	
21.03	F1A	21.03	-	
20.93	C1G4	20.93	-	
10.45	R2C	20.90	-	
2.61	E2F2	20.88	-	
5.22	O2D	20.88	-	
0.52	M2C	20.80	-	
10.36	Q2D	20.72	-	
20.67	O2D	20.67	-	
1.72	O1D	20.64	-	
5.16	P1D	20.64	-	
3.40	C2J2	20.40	-	
6.75	G2C	20.25	-	
10.08	XG	20.16	-	
10.02	R2C	20.04	-	
3.99	M2C	19.93	-	
9.95	M2E	19.90	-	
19.86	Z1C	19.86	-	
2.48	D1A7	19.84	-	
19.57	G2C	19.57	-	
9.78	Q2B	19.56	-	

CMFinalInventory

19.47	O2B	19.47	-	
6.44	S1F	19.32	-	
9.65	Z1D	19.30	-	
3.83	R1G	19.15	-	
9.56	E2C1	19.12	-	
18.94	Z1F	18.94	-	
18.91	Q1C	18.91	-	
9.15	M1B	18.29	-	
18.20	C2H	18.20	-	
9.01	Z1C	18.02	-	
4.50	N1D	18.00	-	
18.00	R2C	18.00	-	
3.00	P2D	18.00	-	
17.95	P2B	17.95	-	
8.93	F2A	17.86	-	
8.90	G2B	17.60	-	
8.84	G2B	17.68	-	
8.04	Z1D	17.68	-	
17.65	E2C4	17.65	-	
5.88	P1E	17.64	-	
17.56	Z1E	17.66	-	
17.55	H1B	17.55	-	
8.75	D1F6	17.50	-	
17.40	Z1D	17.40	-	
8.63	Q2C	17.26	-	
2.84	Q2B	17.04	-	
17.00	R2C	17.00	-	
8.49	Z1D	16.98	-	
16.82	Z1D	16.82	-	
2.08	N1D	16.64	-	
8.28	G1D	16.58	-	
16.50	J2C	16.50	-	
2.75	P2D	16.50	-	
8.19	F2A	16.38	-	
16.22	B2F3	16.22	-	
2.70	R1C	16.20	-	
2.59	O2D	16.14	-	
7.99	R1B	15.98	-	
1.05	N1B	15.76	-	
7.74	Q2B	15.48	-	
1.93	J1B	15.45	-	
15.27	O2B	15.27	-	
3.03	D1J1	15.18	-	
7.56	Z1D	15.12	-	
3.78	E2D2	15.11	-	
7.55	M2E	15.10	-	
15.09	O1D	15.09	-	
2.99	D1I2	14.95	-	
3.73	ZC5F	14.92	-	
14.81	N2B	14.81	-	
7.38	E2C1	14.78	-	
7.36	Z1D	14.72	-	

CMFinalInventory

7.32	D1J2	14.63	-	-
7.31	ZC8D	14.62	-	-
14.51	R2C	14.51	-	-
0.29	J1C	14.50	-	-
14.33	F2B	14.33	-	-
14.28	F1B	14.28	-	-
7.00	M1E	14.00	-	-
2.79	N1D	13.95	-	-
0.86	Q2D	13.76	-	-
3.44	Q2C	13.76	-	-
6.83	M1D	13.65	-	-
4.55	F1A	13.65	-	-
1.69	O2D	13.52	-	-
1.49	P2D	13.41	-	-
13.17	P1D	13.17	-	-
3.29	N1D	13.16	-	-
13.04	G2B	13.04	-	-
13.02	G2C	13.02	-	-
6.50	H2B	12.99	-	-
4.33	UG	12.99	-	-
6.46	G1C	12.92	-	-
0.75	ZC6B	12.90	-	-
4.29	P1D	12.86	-	-
2.13	P2C	12.78	-	-
1.06	G2I2	12.72	-	-
6.31	Q2C	12.62	-	-
1.26	O2B	12.50	-	-
6.07	E2C1	12.14	-	-
6.04	N2G	12.08	-	-
6.01	O2B	12.02	-	-
1.99	P2D	11.94	-	-
11.84	N1B	11.84	-	-
2.96	M2B	11.84	-	-
11.83	R2A	11.83	-	-
5.90	M2C	11.80	-	-
11.74	G1A	11.74	-	-
11.67	O2D	11.67	-	-
5.80	N1B	11.60	-	-
11.56	Q1C	11.55	-	-
5.78	N2D	11.56	-	-
11.39	N2C	11.39	-	-
11.36	O2B	11.36	-	-
11.30	R2A	11.30	-	-
5.55	O2D	11.12	-	-
3.69	P1D	11.07	-	-
11.07	O2D	11.07	-	-
5.49	O1C	10.98	-	-
10.95	O2B	10.95	-	-
5.40	Q1B	10.80	-	-
5.37	P1E	10.74	-	-
10.71	Q1C	10.71	-	-
10.68	E2E6	10.58	-	-

CMFinalInventory

10.65	D1D1	10.65	-	-
5.31	M2E	10.62	-	-
5.29	Q2A	10.58	-	-
10.53	Q1C	10.53	-	-
10.51	B2E4	10.51	-	-
4.99	Q2A	9.98	-	-
4.99	Q2A	9.98	-	-
9.92	S2A	9.92	-	-
4.93	N2E	9.86	-	-
9.85	M1D	9.85	-	-
9.84	M1B	9.84	-	-
3.28	Q1C	9.84	-	-
2.45	Q1C	9.80	-	-
9.67	D1H9	9.67	-	-
0.31	E2D4	9.61	-	-
4.79	G2B	9.58	-	-
4.78	R1C	9.55	-	-
4.75	D1D4	9.50	-	-
3.16	P1E	9.48	-	-
9.47	D1E5	9.47	-	-
9.38	Q1B	9.39	-	-
9.21	C2J4	9.21	-	-
2.28	Q2C	9.12	-	-
9.09	F1A	9.09	-	-
0.90	D1A10	9.00	-	-
4.47	O2B	8.94	-	-
8.80	B2E3	8.80	-	-
8.72	G1B	8.72	-	-
4.30	G2B	8.60	-	-
8.58	F2B	8.58	-	-
8.47	M2E	8.47	-	-
1.41	Z1D	8.45	-	-
8.32	P1C	8.32	-	-
8.25	P2E	8.25	-	-
7.98	Q1C	7.98	-	-
3.99	N1E	7.98	-	-
7.95	E2F4	7.95	-	-
7.77	Q2D	7.77	-	-
3.78	Z1C	7.58	-	-
0.93	R1C	7.44	-	-
3.67	M2E	7.34	-	-
3.66	M2E	7.32	-	-
3.61	Q2D	7.22	-	-
7.20	G2B	7.20	-	-
0.72	M2E	7.20	-	-
1.18	M1C	7.08	-	-
6.79	C1E3	6.79	-	-
6.75	F2A	6.75	-	-
6.75	D1F7	6.75	-	-
3.33	Z1F	6.65	-	-
6.62	M2D	6.62	-	-
6.57	F2B	6.57	-	-

CMFinalInventory

3.27	Z1D	5.51	-	
5.45	F1A	5.45	-	
5.45	J1B	5.45	-	
5.45	J1B	5.45	-	
5.45	J1B	5.45	-	
3.19	Q2A	5.38	-	
3.17	R1C	5.34	-	
2.11	N2F	5.33	-	
0.63	J2D	5.30	-	
3.15	M2E	5.30	-	
5.25	Q2B	5.25	-	
5.23	N1C	5.23	-	
3.09	G2B	5.18	-	
5.13	Q2B	5.13	-	
1.50	P2E	5.00	-	
0.46	J2D	5.98	-	
2.97	M2B	5.94	-	
5.85	Q1C	5.85	-	
5.80	O1D	5.80	-	
2.90	E2D3	5.80	-	
2.89	M2C	5.78	-	
1.44	N1D	5.76	-	
5.70	P2D	5.70	-	
2.85	ZC8D	5.70	-	
5.69	F1A	5.69	-	
2.81	N2D	5.62	-	
2.80	Q2D	5.60	-	
0.93	Z1D	5.58	-	
5.53	E2E6	5.53	-	
5.52	J1B	5.52	-	
5.50	Q2E	5.50	-	
5.50	D1H3	5.50	-	
5.48	G1A	5.48	-	
5.33	Q2B	5.33	-	
1.27	ZC8D	5.08	-	
2.50	S1F	5.00	-	
2.50	D1F8	5.00	-	
5.00	D1H5	5.00	-	
2.49	Z1C	4.98	-	
1.22	P1E	4.88	-	
2.32	ZC8D	4.64	-	
2.24	A2B	4.48	-	
0.55	D1A9	4.48	-	
2.23	Q2D	4.46	-	
1.48	ZC8D	4.44	-	
2.15	Q2D	4.30	-	
2.11	R2C	4.22	-	
4.15	B2G2	4.15	-	
1.04	Q2D	4.14	-	
4.08	F2A	4.08	-	
0.51	Q2D	4.08	-	
0.50	O1D	4.00	-	

CMFinalInventory

0.99	Z1D	3.96	-	
1.93	R1C	3.86	-	
1.93	R1C	3.86	-	
1.28	E2D2	3.84	-	
1.92	O2D	3.84	-	
1.86	R2B	3.72	-	
0.46	J2D	3.68	-	
0.92	2C8D	3.68	-	
1.19	O2D	3.57	-	
0.89	2C8D	3.55	-	
3.56	M2C	3.55	-	
0.57	M2B	3.42	-	
1.70	M1G	3.40	-	
0.84	R2C	3.36	-	
3.20	P2D	3.20	-	
3.20	Q1C	3.20	-	
1.56	R2G	3.12	-	
0.50	N1D	3.00	-	
0.33	CLAMPR	2.97	-	
2.93	F2A	2.93	-	
1.45	P1D	2.90	-	
0.57	M2B	2.85	-	
0.25	CLAMPR	2.75	-	
2.75	P2D	2.75	-	
1.37	P2D	2.74	-	
2.74	B2E7	2.74	-	
0.88	O2D	2.64	-	
2.62	O1E	2.62	-	
2.59	M1B	2.59	-	
0.85	R1C	2.55	-	
0.40	J2D	2.40	-	
1.20	B2E2	2.40	-	
1.20	P2D	2.40	-	
0.30	Z1D	2.40	-	
1.18	B2E7	2.36	-	
2.30	P2B	2.30	-	
1.14	O1G2	2.28	-	
0.75	M1C	2.25	-	
1.12	Z1D	2.24	-	
0.72	Z1D	2.16	-	
2.07	B2F1	2.07	-	
1.03	Q1C	2.06	-	
0.40	J2D	2.00	-	
0.40	J2D	2.00	-	
1.90	Z1D	1.90	-	
1.88	O2D	1.88	-	
0.93	N2D	1.86	-	
1.84	F1A	1.84	-	
0.59	M1E	1.77	-	
0.11	R1C	1.76	-	
0.11	R1C	1.65	-	
0.80	M2E	1.60	-	

CMFinalInventory

0.50	E2D2	1.50	-	
1.44	Q1B	1.44	-	
1.49	Z1D	1.49	-	
0.46	ZC8D	1.38	-	
0.65	D1F4	1.30	-	
0.65	D1F5	1.30	-	
1.28	B2E2	1.28	-	
1.21	Z1E	1.21	-	
0.60	D1E2	1.20	-	
1.19	E2E6	1.19	-	
1.18	C2H5	1.18	-	
0.29	R2C	1.16	-	
0.57	R2C	1.14	-	
1.02	J1B	1.02	-	
0.98	M1B	0.98	-	
0.12	Z1C	0.96	-	
0.28	M1C	0.84	-	
0.21	J2D	0.84	-	
0.42	M2E	0.84	-	
0.41	Q1B	0.82	-	
0.27	M1C	0.81	-	
0.40	Q1B	0.80	-	
0.25	N2D	0.75	-	
0.36	Z1D	0.72	-	
0.67	O1D	0.67	-	
0.33	O2D	0.66	-	
0.32	Z1D	0.64	-	
0.31	Q2C	0.62	-	
0.30	R2C	0.60	-	
0.16	M1C	0.48	-	
0.07	Z1D	0.28	-	
0.09	R2C	0.18	-	
0.07	O2C	0.14	-	

75,836.72





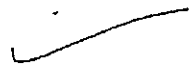






BOOKS

F-11	EJCHB	PROB
1	EJC 10	REMER
F-11	EJC 10	PROB
1	DUG DT 10	
1	NUMBER	PIC 150
F-11	EJC 10	STANCE
1	ISGOD	S EXHIB
F-11	INT 415L	SEVILLE
1	INT 415L	PIB 10



Quarset HLT (DOME)

1 EA	DUK DT 90 FRONT	<del>DIFF</del> AXLE	1000	3' X 6'
1 EA	✓	REAL R AXLE	1000	3' X 6'
1 EA	DUK	✓ DIFFERENTIAL	500	4' X 4'

HOLD DOWN PLYWOOD

1 EA	LSW D7C	ETC NO BUCKET	REINFT	8' X 5' X 5'
1 EA	LSW D8C	✓	✓	✓
1 EA	LSW C002	✓	✓	USED ✓
1 EA	NO #	SCOOP AUGER	✓	USED 5' X 5' X 5'

ALL OF ABOVE  
3/4 FLAT BED LOAD

5 REMOVED	ENTIRE	M. J. J. ENGINEER
		SHIP/MOUNT
		THE CRIB

**SCHEDULE 1.1(18)**

**CONSENTS AND APPROVALS**

- I. New Brunswick Government Approvals.

## SCHEDULE 1.1(19)

### CONTRACTS

1. Net smelter return and \$0.50 per tonne toll payable to the Government of New Brunswick pursuant to the Letter Agreement dated August 16, 1995, with the Province of New Brunswick and such other rights and obligations set out therein;
2. BioteQ Development Agreement;
3. Kalwea royalty amending agreement dated June 12, 2006 in favour of Kalwea Financial Corp.; and
4. Net profit royalty agreement with the trustee for Mineral Properties Liquidating Trust et al dated October 20, 1995.

**SCHEDULE 1.1(20)**  
**CONVERTIBLE DEBENTURE**  
**(See attached)**

WITHOUT PRIOR WRITTEN APPROVAL OF THE TSX VENTURE EXCHANGE AND COMPLIANCE WITH ALL APPLICABLE SECURITIES LEGISLATION, THE SECURITIES REPRESENTED BY THIS DEBENTURE AND ANY SHARES ACQUIRED UPON THE CONVERSION OF THE DEBENTURE MAY NOT BE SOLD, TRANSFERRED, HYPOTHECATED OR OTHERWISE TRADED ON OR THROUGH THE FACILITIES OF THE TSX VENTURE EXCHANGE OR OTHERWISE IN CANADA OR TO OR FOR THE BENEFIT OF A CANADIAN RESIDENT UNTIL [INSERT THE DATE THAT IS FOUR MONTHS AND DAY AFTER THE DATE OF ISSUE].

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE [INSERT THE DATE THAT IS FOUR MONTHS AND DAY AFTER THE DATE OF ISSUE].

BLUE NOTE METALS INC.  
2, Place Alexis-Nihon, 3500 de Maisonneuve West  
Suite 1110  
Montreal, Quebec  
H3Z 3C1

#### UNSECURED SUBORDINATED CONVERTIBLE DEBENTURE

Principal CDNS15,000,000

[•], 2006

FOR VALUE RECEIVED, Blue Note Metals Inc. (the "Corporation"), promises to pay to or to the order of Breakwater Resources Ltd. (the "Holder") at 95 Wellington Street West, Suite 950, Toronto, Ontario M5J 2N7, or such other place and/or person as the Holder may by notice in writing to the Corporation direct, the principal sum of FIFTEEN MILLION DOLLARS in lawful money of Canada (CDNS15,000,000) (the "Principal Amount"). Subject to the provisions of this debenture (this "Debenture"), the Principal Amount shall become due and payable on [•] (the "Maturity Date").

This Debenture is subject to the terms and conditions set out below.

#### ARTICLE 1

#### INTERPRETATION

##### 1.1 Definitions

As used herein, the following expressions shall have the following meanings:

- (a) "Affiliate" has the meaning attributed to it in the *Canada Business Corporations Act*, as amended.
- (b) "Amendment" has the meaning ascribed thereto in Subsection 8.2(c).
- (c) "Approvals" has the meaning ascribed thereto in Subsection 8.2(c).

- (d) "Assignee" has the meaning ascribed thereto in Section 10.2.
- (e) "Asset Purchase Agreement" means the asset purchase agreement dated July 26, 2006 among the Corporation, as purchaser and CanZinco Ltd., as vendor, pursuant to which the Corporation acquired a one hundred percent (100%) interest in the Properties.
- (f) "Business Day" means a day on which banks are generally open for the transaction of commercial business in Toronto, Ontario but does not in any event include a Saturday or a Sunday or a statutory holiday under applicable law.
- (g) "Business Plan" means The Business Plan For The Acquisition And Re-Opening Of The Caribou Mine And Restigouche Mine And Related Assets of CanZinco in New Brunswick dated March 2006 which outlines the re-opening of the Properties.
- (h) "Capital Reorganization" has the meaning ascribed thereto in Subsection 4.4(b).
- (i) "Cash Redemption Price" has the meaning ascribed thereto in Subsection 5.1(a).
- (j) "CDN \$" means Canadian Dollars.
- (k) "Circular" has the meaning ascribed thereto in Subsection 8.2(c).
- (l) "Commencement of Commercial Production" means the day determined by the Corporation as the first day of any three month period throughout which the Properties operate, during each month of the three-month period, at sixty percent (60%) or more of its planned capacity as set out in the Business Plan.
- (m) "Common Share Reorganization" has the meaning ascribed thereto in Subsection 4.4(a).
- (n) "Common Shares" means collectively, the Voting Common Shares and the Non-Voting Common Shares.
- (o) "Common Share Conversion Option" has the meaning ascribed thereto in Section 4.1.
- (p) "Consent Notice" has the meaning ascribed thereto in Subsection 5.1(c).
- (q) "Conversion Price" means the price per share at which the Common Shares may be issued from time to time upon conversion of this Debenture into Common Shares in accordance with the provisions of Article 4, being, subject to Section 4.4, CDN\$0.36.
- (r) "Corporation" means Blue Note Metals Inc., a corporation incorporated pursuant to the laws of Canada.
- (s) "Corporation Assignee" has the meaning ascribed thereto in Section 11.1.
- (t) "Corporation's Interest" has the meaning ascribed thereto in Section 11.1.
- (u) "Corporation Redemption Date" has the meaning ascribed thereto in Section 5.2.

- (v) **"Date of Common Share Conversion"** has the meaning ascribed thereto in Subsection 4.2(d).
- (w) **"Date of Property Interest Conversion"** has the meaning ascribed thereto in Subsection 3.2(c).
- (x) **"Environmental Law"** means all applicable federal, provincial, municipal and local laws, statutes, ordinances, by-laws, regulations, orders, directives and decisions, rendered by any ministry, department or administrative or regulatory agency relating to the protection of the environment, or pollutants, contaminants, chemicals, or industrial, toxic or hazardous wastes or substances.
- (y) **"Event of Default"** has the meaning ascribed thereto in Section 9.1.
- (z) **"Exploration Costs"** means all costs, outlays and expenses of whatever kind or nature spent or incurred directly or indirectly in connection with the exploration of the Properties including, without limiting the generality of the foregoing, moneys expended related to exploration in maintaining the Properties in good standing and costs incurred in connection with complying with Environmental Laws, all insurance costs, moneys expended in doing and filing assessment work, expenses paid for or incurred in connection with any program of surface or underground prospecting, exploring, geophysical, geochemical and geological surveying, drilling, drifting, raising and other underground work, assaying, mineralogical, engineering and environmental studies, data preparation and analysis, submissions to government agencies, all associated sales taxes including the goods and services tax, paying the fees, wages, salaries, travelling expenses and fringe benefits of all persons engaged in work with respect to and for the benefit of the Properties and in paying for food, lodging and other reasonable needs of such persons.
- (aa) **"Exploration Cost Minimum"** means the minimum amount of Exploration Costs that the Corporation must incur in connection with the exploration of the Properties, which the parties hereto have determined to be at least CDN\$1,500,000, in the aggregate, to be divided as follows:
  - (I) a minimum of CDN\$750,000 on Exploration Costs incurred by the Corporation intended to upgrade previously delineated resources on the Properties; and
  - (II) a minimum of CDN\$750,000 on Exploration Costs incurred by the Corporation on areas that are not included in the reserves and resources published in the 2004 Breakwater Resources Inc. annual report for the Properties.
- (bb) **"Holder"** has the meaning ascribed thereto in the first paragraph of this Debenture or an Assignee thereof.
- (cc) **"Holder's Interest"** has the meaning ascribed thereto in Subsection 3.1(a)
- (dd) **"Indebtedness"** means, with respect to a Person, all and any indebtedness of the Person, whether absolute or contingent, including without limiting the generality of the foregoing (i) indebtedness for borrowed money of such Person, (ii) indebtedness of such Person for the deferred purchase price or property and services, other than trade payables incurred in the ordinary course of business and payable in accordance with customary practices, (iii)

other indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument, (iv) obligations of such Person under a capital lease, (v) obligations of such Person relating to any swap, hedging, option or forward agreement for interest rates, foreign exchange commodities or otherwise, (vi) every reimbursement obligation of such Person with respect to letters of credit, letters of guarantee, bankers' acceptances or similar facilities issued for the account of such Person, and (vii) contingent obligations of such Person with respect to the indebtedness of another Person (including any guarantee or indemnity of such Person in respect of Indebtedness of another Person).

- (ee) **"Joint Venture Agreement"** has the meaning ascribed thereto in Subsection 3.2(b)(1).
- (ff) **"Liens"** means any deed of trust, mortgage, charge, hypothec, assignment, pledge, lien, vendors' privilege, supplier's right of reclamation or other security interest or encumbrance of whatever kind or nature, regardless of form and whether consensual or arising by law (statutory or otherwise), that secures the payment of any indebtedness or liability or the observance or performance of any obligation.
- (gg) **"Mandatory Redemption"** has the meaning ascribed thereto in Subsection 5.1(c).
- (hh) **"Material Adverse Change"** means a material adverse change in the financial condition of the Corporation or the property, business operations or liabilities of the Corporation, which would have a material adverse effect on the Corporation's ability to perform its obligations under this Debenture.
- (ii) **"Maturity Date"** has the meaning ascribed thereto in the first paragraph of this Debenture.
- (jj) **"Non-Permitted Indebtedness"** has the meaning ascribed thereto in Subsection 5.1(c).
- (kk) **"Non-Voting Common Shares"** means non-voting common shares in the capital of the Corporation, as such shares may be constituted upon obtaining the Approvals, as the same may be reorganized or reclassified pursuant to any of the events set out in Section 4.4.
- (ll) **"Notice of Redemption"** has the meaning ascribed thereto in Section 5.2.
- (mm) **"NSR Royalty Agreement"** has the meaning ascribed thereto in Section 7.1.
- (nn) **"Permitted Indebtedness"** means:
  - (i) all Indebtedness of the Corporation to the Holder;
  - (ii) accounts payable and accrued liabilities incurred or assumed by the Corporation in the normal course of business;
  - (iii) Senior Indebtedness; and
  - (iv) all indebtedness incurred or assumed by the Corporation which is designated by the Holder in writing from time to time as Permitted Indebtedness for the purposes of this Debenture.

- (oo) **"Permitted Liens"** means any one or more of the following with respect to the property and assets of the Corporation:
- (I) Liens for taxes, assessments or governmental charges or levies not at the time due or delinquent or the validity of which are being contested in good faith by appropriate proceedings and as to which reserves are being maintained in accordance with generally accepted accounting principles so long as forfeiture of any part of such property or assets will not result from the failure to pay such taxes, assessments or governmental charges or levies during the period of such contest;
  - (II) the Lien of any judgment rendered or the Lien of any claim filed which is being contested in good faith by appropriate proceedings and as to which reserves are being maintained in accordance with generally accepted accounting principles so long as forfeiture of any part of such property or assets will not result from the failure to satisfy such judgment or claim during the period of such contest;
  - (III) restrictions, easements, rights-of-way, servitudes or other similar rights in land granted or served by other Persons which in the aggregate do not, in the opinion of the Holder, acting reasonably, materially impair the usefulness, in the operation of the business of the Corporation, of the property subject to such restrictions, easements, rights-of-way, servitudes or other similar rights in land granted to or reserved by any other Persons;
  - (IV) the right reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, licence, franchise, grant or permit acquired by the Corporation or by any statutory provision, to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
  - (V) the Lien resulting from the deposit of cash or securities (i) in connection with contracts, tenders or expropriation proceedings, (ii) to secure workers' compensation, surety or appeal bonds, costs of litigation when required by law and public and statutory obligations, or (iii) in connection with the discharge of Liens or claims incidental to construction and mechanics', warehouseman's carriers' and other similar liens;
  - (VI) security given to a public utility or any municipality or governmental or other public authority when required by such utility or other authority in connection with the operations of the Corporation, all in the ordinary course of business;
  - (VII) title defects or irregularities which, in the aggregate will not, in the opinion of the Holder, acting reasonably, materially impair the use of the property for the purpose for which it is held;
  - (VIII) applicable municipal and other governmental restrictions affecting the use of land or the nature of any structures which may be erected thereon, provided such restrictions have been complied with and will not, in the opinion of the Holder, acting reasonably, materially impair the use of the property for the purpose for which it is held;

- (IX) Liens to secure Permitted Indebtedness; and
- (X) the extension, renewal or refinancing of any Permitted Lien, provided that the amount so secured does not exceed the original amount secured immediately prior to such extension, renewal or refinancing and the Lien is not extended to any additional property.
- (pp) "Person" means an individual, partnership, corporation, trust or other business or legal entity.
- (qq) "Principal Amount" has the meaning ascribed thereto in the first paragraph of this Debenture.
- (rr) "Properties" means the mineral properties and mine facilities which comprise the Caribou and Restigouche mines in New Brunswick described in Schedule 1.1(6) of the Asset Purchase Agreement.
- (ss) "Property Interest Conversion Option" has the meaning ascribed thereto in Subsection 3.1(a).
- (tt) "Redemption Date" means the date that is twelve (12) months from the date of Commencement of Commercial Production on the Properties.
- (uu) "Right of First Refusal" has the meaning ascribed thereto in Subsection 10.2(b).
- (vv) "Sale Date" has the meaning ascribed thereto in Section 10.2.
- (ww) "Sale Notice" has the meaning ascribed thereto in Section 10.2.
- (xx) "Sale Price" has the meaning ascribed thereto in Section 10.2.
- (yy) "Senior Indebtedness" means the principal of and premium, if any, of and the interest on and other amounts in respect of all:
  - (i) Indebtedness of the Corporation (other than indebtedness evidenced by this Debenture) created, incurred, assumed or guaranteed by the Corporation prior the date of this Debenture;
  - (ii) Indebtedness of the Corporation created, incurred, assumed or guaranteed by the Corporation after the date of this Debenture that is secured or unsecured not to exceed CDN\$25,000,000, in the aggregate, without the prior written approval of the Holder, which approval shall not be unreasonably withheld; and
  - (iii) renewals, extensions or re-fundings of any Indebtedness referred to in Subsections 1.1(yy)(i) or 1.1(yy)(ii);

unless in any case it is provided by the terms of the instrument creating or evidencing such indebtedness or pursuant to which such indebtedness is outstanding that such indebtedness is not prior in right of payment of this Debenture but ranks *pari passu* with or is subordinated in right of payment to this Debenture.

- (zz) "Share Redemption Price" has the meaning ascribed thereto in Section 5.1(b).
- (aaa) "Shareholder Approval" means the approval of the holders of a majority of the outstanding Voting Common Shares present in person or by proxy at a Shareholders' Meeting of the Corporation and at which a quorum was present and acting throughout.
- (bbb) "Shareholders' Meeting" has the meaning ascribed thereto in Subsection 4.2(b).
- (ccc) "Voting Common Shares" means voting common shares in the capital of the Corporation, as such shares were constituted on the date hereof, as the same may be reorganized or reclassified pursuant to any of the events set out in Section 4.4.

## 1.2 Extended Meanings

The terms "hereto", "hereby", "hereunder", "herein" and similar expressions refer to the whole of this Debenture and not to any particular Article, Section, clause or part hereof. Words importing the singular number only include the plural and vice versa and words importing gender include all genders.

## 1.3 Currency

Unless otherwise specified herein, all dollar amounts referred to in this Debenture are in Canadian dollars.

## 1.4 Sections and Headings

The division of this Debenture into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction and interpretation of this Debenture.

## 1.5 Exhibits

The following are the Exhibits which form part of this Debenture:

- Exhibit A: Notice of Exercise of Property Interest Conversion Option
- Exhibit B: Form of Joint Venture Agreement
- Exhibit C: Notice of Exercise of Common Share Conversion Option
- Exhibit D: Form of NSR Royalty Agreement

## ARTICLE 2 THE DEBENTURE

### 2.1 Principal Payments

Subject to the right of repayment described in Section 2.3, the Principal Amount owing under this Debenture shall be repaid by the Corporation on the Maturity Date.

### 2.2 Interest

This Debenture shall be non-interest bearing.

### 2.3 Repayment Right

Subject to the terms and conditions of this Debenture, the Corporation shall have the privilege, at its option and without the consent of the Holder, at any time after the Redemption Date and prior to the Maturity Date, to repay all of the Principal Amount owing under this Debenture, without bonus or penalty.

### 2.4 Forgiveness

The Holder shall be entitled, at its option, at any time up to and including the Maturity Date, to forgive, in whole or in part, the Principal Amount owing under this Debenture, provided that any such forgiveness will not affect the status of the NSR Royalty Agreement.

## ARTICLE 3 RIGHT OF CONVERSION INTO PROPERTY INTEREST

### 3.1 Conversion Privilege into Property Interest

- (a) **Conversion Privilege into Property Interest.** Subject to and upon compliance with the provisions of this Article, the Holder may, at its option (the "**Property Interest Conversion Option**"), at any time up to the Redemption Date, convert this Debenture in exchange for a twenty percent (20%) interest in the Properties (the "**Holder's Interest**").
- (b) **Extension.** If, by the Redemption Date, the Corporation has not met the Exploration Cost Minimum in connection with the Properties, the Holder shall be granted an extension on its Property Interest Conversion Option until such time that the Corporation has met the Exploration Cost Minimum.

### 3.2 Exercise of Conversion Privilege into Property Interest

- (a) **Notice.** In order to exercise the Property Interest Conversion Option set out in this Article 3, the Holder shall surrender this Debenture to the Corporation at its office set out on the face page hereof, accompanied by written notice substantially in the form of Exhibit A attached hereto signed by the Holder stating that it elects to exercise its Property Interest Conversion Option.
- (b) **Contract between the Holder and the Corporation.** The surrender of this Debenture accompanied by notice given pursuant to Subsection 3.2(a) shall be deemed to constitute a contract between the Holder and the Corporation whereby: (I) the Holder and the Corporation shall enter into a joint venture agreement, substantially in the form of the joint venture agreement attached hereto at Exhibit B (the "**Joint Venture Agreement**"), which Joint Venture Agreement shall govern the parties' common interests in the Properties; and (II) the Holder releases the Corporation from all liability under this Debenture.
- (c) **Date of Conversion.** The date of receipt by the Corporation of this Debenture and the notice referred to in Subsection 3.2(a) is herein referred to as the "**Date of Property Interest Conversion**" of this Debenture. Such conversion shall be deemed to have been effected immediately prior to the close of business on the Date of Property Interest Conversion and at such time the rights of the Holder under this Debenture as a holder

shall cease and the Holder shall be deemed to have become on such date the holder of the Holder's Interest.

- (d) **Title.** As promptly as practicable after the Date of Property Interest Conversion, the Corporation shall cause title to the Properties to be recorded in the Holder's name in proportion to the Holder's Interest.

#### ARTICLE 4 RIGHT OF CONVERSION INTO COMMON SHARES

##### 4.1 Conversion Privilege into Common Shares

Subject to and upon compliance with the provisions of this Article, the Holder may, at its option at any time after the Redemption Date and prior to the Maturity Date, convert all, but not less than all, of the Principal Amount owing under this Debenture into either Voting Common Shares or, subject to Subsection 4.2(b) hereof, Non-Voting Common Shares at the Conversion Price (the "**Common Share Conversion Option**").

##### 4.2 Exercise of Conversion Privilege into Common Shares

- (a) **Notice.** In order to exercise the Common Share Conversion Option set out in this Article 4, the Holder shall surrender this Debenture to the Corporation at its office set out on the face page hereof, accompanied by written notice substantially in the form of Exhibit C attached hereto signed by the Holder stating that it elects to (i) exercise its Common Share Conversion Option and (ii) receive either Voting Common Shares or Non-Voting Common Shares in connection with such exercise.
- (b) **Non-Voting Common Shares.** If the Holder elects to receive Non-Voting Common Shares upon the exercise of its Common Share Conversion Option pursuant to Subsection 4.2(a) hereof and the Corporation has been unsuccessful in obtaining the Approvals, the Corporation shall redeem this Debenture, within thirty (30) days of receiving such written notice, at a price equal to the Cash Redemption Price (as defined in Subsection 5.1(a) below) to be satisfied by a cash payment by the Corporation to the Holder in the amount of the Cash Redemption Price.
- (c) **Contract between the Holder and the Corporation.** The surrender of this Debenture accompanied by notice given pursuant to Subsection 4.2(a) shall be deemed to constitute a contract between the Holder and the Corporation whereby: (I) the Holder subscribes for the number of Voting Common Shares or, subject to Subsection 4.2(b) hereof, Non-Voting Common Shares, as the case may be, which it shall be entitled to receive on such conversion; (II) the Holder releases the Corporation from all liability under this Debenture; and (III) the Corporation agrees that the surrender of this Debenture for conversion constitutes full payment of the subscription price for the Voting Common Shares or Non-Voting Common Shares issuable upon such conversion.
- (d) **Date of Conversion.** The date of receipt by the Corporation of this Debenture and the notice referred to in Subsection 4.2(a) is herein referred to as the "**Date of Common Share Conversion**" of this Debenture. Such conversion shall be deemed (a) in the case of an election to receive Voting Common Shares, to have been effected immediately prior to the close of business on the Date of Common Share Conversion or (b) in the case of an election to receive Non-Voting Common Shares, to have been effected (regardless of

whether the Holder is entitled to receive Voting Common Shares or Non-Voting Common Shares pursuant to Subsection 4.2(b) hereof) immediately prior to the close of business on the date of the Shareholders' Meeting, and at such time the rights of the Holder under this Debenture as a holder shall cease and the Holder shall be deemed to have become on such date the holder of record of the Voting Common Shares or the Non-Voting Common Shares, as the case may be, represented thereby.

- (e) **Certificates.** As promptly as practicable after the Date of Common Share Conversion or the date of the Shareholders' Meeting, as the case may be, the Corporation shall issue or cause to be issued and deliver or cause to be delivered to the Holder a certificate or certificates in the name of the Holder for the number of Voting Common Shares or Non-Voting Common Shares, as applicable, deliverable upon the conversion of this Debenture.

#### 4.3 No Fractional Common Shares

Notwithstanding anything herein contained, the Corporation shall in no case be required to issue fractional Voting Common Shares or Non-Voting Common Shares, as the case may be, upon the conversion of this Debenture. If any fractional interest would, except for the provisions of this Section 4.3, be deliverable upon the conversion of all or any part of this Debenture, the number of Voting Common Shares or Non-Voting Common Shares, as applicable, issuable to the Holder shall be rounded up or down to the nearest whole number.

#### 4.4 Conversion Adjustment

The Conversion Price in effect at any time is subject to adjustment from time to time in the events and in the manner provided as follows:

- (a) **Common Share Reorganization.** If and whenever at any time after the date hereof the Corporation:
  - (i) issues Common Shares or securities exchangeable for or convertible into Common Shares to the holders of the Common Shares as a stock dividend;
  - (ii) makes a distribution on its outstanding Common Shares payable in Common Shares or securities exchangeable for or convertible into Common Shares;
  - (iii) subdivides or re-divides its outstanding Common Shares into a greater number of shares; or
  - (iv) consolidates its outstanding Common Shares into a smaller number of shares,

(any of such events being called a "Common Share Reorganization"), then the Conversion Price will be adjusted effective immediately after the effective date or record date for the happening of a Common Share Reorganization, as the case may be, at which the holders of Common Shares are determined for the purpose of the Common Share Reorganization by multiplying the Conversion Price in effect immediately prior to such effective date or record date by a fraction, the numerator of which is the number of Common Shares outstanding on such effective date or record date before giving effect to such Common Share Reorganization and the denominator of which is the number of Common Shares outstanding immediately after giving effect to such Common Share

Reorganization (including, in the case where securities exchangeable for or convertible into Common Shares are distributed, the number of Common Shares that would have been outstanding had all such securities been exchanged for or converted into Common Shares on such effective date or record date).

- (b) **Capital Reorganization.** If and whenever at any time after the date hereof there is a reclassification of the Common Shares outstanding at any time or a change of the Common Shares into other shares or into other securities (other than a Common Share Reorganization), or a consolidation, amalgamation, arrangement or merger of the Corporation with or into any other corporation or other entity (other than a consolidation, amalgamation, arrangement or merger which does not result in any reclassification of the outstanding Common Shares or a change of the Common Shares into other shares), or a transfer of the undertaking or assets of the Corporation as an entirety or substantially as an entirety to another corporation or other entity (any of such events being called a "Capital Reorganization"), the Holder, upon exercising the Common Share Conversion Option after the effective date of such Capital Reorganization, will be entitled to receive in lieu of the number of Common Shares to which the Holder was theretofore entitled upon such conversion, the aggregate number of shares, other securities or other property which the Holder would have been entitled to receive as a result of such Capital Reorganization if, on the effective date thereof, the Holder had been the registered holder of the number of Common Shares to which the Holder was theretofore entitled upon exercising its Common Share Conversion Option. If determined appropriate by action of the directors of the Corporation, appropriate adjustments will be made as a result of any such Capital Reorganization in the application of the provisions set forth in this Section 4.4 with respect to the rights and interests thereafter of the Holder to the end that the provisions set forth in this Section 4.4 will thereafter correspondingly be made applicable as nearly as may reasonably be practicable in relation to any shares, other securities or other property thereafter deliverable upon the exercise of the Common Share Conversion Option. Any such adjustment must be made by and set forth in an amendment to this Debenture approved by action of the directors of the Corporation and will for all purposes be conclusively deemed to be an appropriate adjustment.

#### 4.5 Rules Regarding Calculation of Adjustment of Conversion Price

- (a) **Cumulative.** The adjustments provided for in Section 4.4 are cumulative and will, in the case of adjustments to the Conversion Price, be computed to the nearest one-tenth of one cent and will be made successively whenever an event referred to therein occurs, subject to the following provisions of this Section 4.5.
- (b) **Minimum 1% Change.** No adjustment in the Conversion Price is required to be made unless such adjustment would result in a change of at least 1% in the prevailing Conversion Price; provided, however, that any adjustments which, except for the provisions of this Section 4.5, would otherwise have been required to be made, will be carried forward and taken into account in any subsequent adjustments.
- (c) **Discretion of the Board.** In case the Corporation after the date of this Debenture takes any action affecting the Common Shares, other than actions described in Section 4.4, which in the opinion of the board of directors of the Corporation would materially affect the rights of the Holder hereunder, the Conversion Price will be adjusted in such manner, if any, and at such time, by action of the directors of the Corporation, but subject in all cases to any necessary regulatory approval. Failure to take any action by the directors of

the Corporation so as to provide for an adjustment on or prior to the effective date of any action by the Corporation affecting the Common Shares will be conclusive evidence that the board of directors of the Corporation has determined that it is equitable to make no adjustment in the circumstances.

- (d) **Disputes.** If at any time a dispute arises with respect to adjustments provided for in Section 4.4, such dispute will be conclusively determined by the auditors of the Corporation or if they are unable or unwilling to act, by such other firm of independent chartered accountants as may be selected by action of the directors of the Corporation and any such determination will be binding upon the Corporation, the Holder and shareholders of the Corporation. The Corporation will provide such auditors or accountants with access to all necessary records of the Corporation.
- (e) **Notice of Event Requiring Adjustment.** The Corporation will from time to time, as soon as is reasonably practicable after the occurrence of any event which requires an adjustment or readjustment as provided in Section 4.4, give written notice to the Holder specifying the event requiring such adjustment or readjustment and the results thereof, including the resulting Conversion Price.
- (f) **Notice of Intention to Fix Record Date.** The Corporation covenants to and in favour of the Holder that so long as any Principal Amount hereunder remains outstanding, it will give written notice to the Holder of its intention to fix a record date for any event referred to in Section 4.4 (other than a subdivision or consolidation of Common Shares) which may give rise to an adjustment in the Conversion Price and, in each case, such notice must specify the particulars of such event, the record date and the effective date for such event; provided that the Corporation is only required to specify in such notice such particulars of such event as have been fixed and determined on the date on which such notice is given. Such notice must be given not less than 5 days, in each case, prior to such applicable record date or effective date.

#### 4.6 Reservation of Sufficient Shares

The Corporation shall at all times when any part of this Debenture remains outstanding reserve and keep available out of its authorized but unissued Common Shares, for the purpose of effecting the exercise of the Holder's Common Share Conversion Option, such number of Voting Common Shares and, subject to Subsection 4.2(b) hereof, Non-Voting Common Shares as shall from time to time be sufficient to effect such conversion. The Corporation shall use its best efforts to ensure that any Voting Common Shares (a) issuable upon the exercise of the Holder's Common Share Conversion Option or (b) issuable in connection with Subsection 5.1(b) hereof will be listed upon their issue and will continue to be listed on the TSX Venture Exchange or other stock exchange on which the Voting Common Shares are listed or quoted, as the case may be, from time to time. As a condition precedent to the taking of any action which would require an adjustment to the Conversion Price, the Corporation shall take any corporate action which may be necessary in order that the Corporation shall have unissued and reserved in its authorized capital, and may validly and legally issue, the Voting Common Shares and, subject to Subsection 4.2(b) hereof, the Non-Voting Common Shares to which the Holder is entitled on the full exercise of its Common Share Conversion Option in accordance with the provisions hereof.

#### 4.7 Notice of Issuance and Securities Law Compliance

The Corporation shall give notice of the issuance of this Debenture to the securities regulatory authority in each province of Canada having legislation requiring notice in order that trades of Voting Common

Shares, if any, acquired on the conversion of this Debenture will not be subject to any prospectus requirements of such legislation. To the extent the Voting Common Shares reserved or to be reserved for the purpose of conversion of this Debenture hereunder require prospectus qualification with or without approval of any securities regulatory authority or stock exchange under any Canadian or provincial law before such shares may be validly issued, listed and posted for trading upon conversion, the Corporation will take such action as may be necessary to secure such qualification or approval, as the case may be.

**ARTICLE 5**  
**REDEMPTION AND PURCHASE FOR CANCELLATION OF DEBENTURE**

**5.1 Redemption of Debenture**

- (a) **Payment in Cash on Redemption of Debenture.** This Debenture shall be redeemable by the Corporation, in its sole discretion, at any time after the Redemption Date and up to and including the Maturity Date at a price equal to the Principal Amount (the "Cash Redemption Price"), to be satisfied by a cash payment by the Corporation to the Holder in the amount of the Cash Redemption Price.
- (b) **Payment in Common Shares on Redemption by Corporation upon Maturity Date.** Subject to applicable securities law, the Corporation may, at its option, satisfy its obligation hereunder to pay the Principal Amount on the Maturity Date by the issue to the Holder in exchange for this Debenture of that number of either Voting Common Shares or Non-Voting Common Shares (as elected by the Holder in its sole discretion) determined by dividing the Principal Amount to be repaid by the Conversion Price (the "Share Redemption Price").
- (c) **Redemption by Corporation upon Incurring Non-Permitted Indebtedness.** In the event that the Corporation wishes to incur Indebtedness in excess of \$25,000,000, in the aggregate (the "Non-Permitted Indebtedness"), the Corporation shall immediately provide notice to the Holder of its intention to incur such Non-Permitted Indebtedness, and request that the Holder provide its prior written approval thereof (the "Consent Notice"). Within thirty (30) days after receipt of the Consent Notice, the Holder shall have the option to (i) provide its written approval of the Non-Permitted Indebtedness or (ii) elect in writing to have the Corporation redeem this Debenture (the "Mandatory Redemption"), within thirty (30) days of receiving such written election, at a price equal to the Cash Redemption Price, to be satisfied by a cash payment by the Corporation to the Holder in the amount of the Cash Redemption Price.

**5.2 Notice of Redemption**

In order to exercise its redemption rights under Subsection 5.1(a) and 5.1(b) hereof or in the case of a Mandatory Redemption pursuant to Subsection 5.1(c) hereof, the Corporation shall notify the Holder in writing of its intention to redeem this Debenture (a "Notice of Redemption"), which Notice of Redemption shall be given by the Corporation to the Holder at its address for notice set out on the face page hereof, not less than 3 Business Days before the date fixed for redemption (the "Corporation Redemption Date") and shall state that the entire Principal Amount is to be redeemed. Further, such Notice of Redemption shall be in writing and specify the Corporation Redemption Date, the Cash Redemption Price or the Share Redemption Price, as applicable, and place of payment and shall state that the right to convert, in accordance with the provisions of Article 4, and the Principal Amount of this Debenture so to be redeemed will terminate and expire at the close of business on the Business Day next preceding the Corporation Redemption Date.

### 5.3 Debenture Due on Redemption Date

Upon the delivery of the Notice of Redemption, this Debenture so called for redemption shall thereupon be and become due and payable at the Cash Redemption Price or the Share Redemption Price, as applicable, on the Corporation Redemption Date specified in such Redemption Notice, in the same manner and with the same effect as if it were the Maturity Date specified in this Debenture, anything therein or herein to the contrary notwithstanding, and from and after such Redemption Date, once the monies necessary to redeem this Debenture shall have been deposited with the Holder, this Debenture so to be redeemed shall not be considered as outstanding and interest upon such portion of the Principal Amount of this Debenture shall cease.

### 5.4 Surrender of Debenture for Cancellation

If the Principal Amount due upon this Debenture shall become payable by redemption or otherwise before the date of maturity thereof, the Holder must surrender the same for cancellation. This Debenture so surrendered for cancellation shall forthwith be delivered to the Corporation and shall be cancelled by it.

## ARTICLE 6 SUBORDINATION OF DEBENTURE

### 6.1 Subordination to Senior Indebtedness

The Corporation covenants and agrees, and the Holder, by its acceptance hereof, likewise covenants and agrees, that the payment of the Principal Amount on this Debenture is hereby expressly subordinated and subrogated in right of payment to the prior payment in full of all Senior Indebtedness of the Corporation. Nothing contained in this Article 6 or elsewhere in this Debenture is intended to or shall impair, as between the Corporation and its creditors (other than the holders of Senior Indebtedness) and the Holder, the obligation of the Corporation, which is unconditional and absolute, to pay to the Holder the Principal Amount on this Debenture as and when the same shall become due and payable in accordance with the terms hereof, or to affect the relative rights of the Holder and creditors of the Corporation other than the holders of Senior Indebtedness, nor shall anything herein or therein prevent the Holder from exercising all remedies otherwise permitted by applicable law upon default under this Debenture.

### 6.2 Distribution on Dissolution, Winding-Up, Liquidation, etc.

- (a) Upon any distribution of assets of the Corporation on any dissolution, winding-up, total liquidation, reorganization, bankruptcy, insolvency or receivership of the Corporation or other marshalling of assets of the Corporation:
  - (i) the holder of Senior Indebtedness shall be entitled to receive any payment in full of the principal of and premium, if any, and interest on and other amounts (including fees, indemnity payments and lawyer's costs) in respect of all Senior Indebtedness before the Holder shall be entitled to receive payment upon the Principal due hereunder; and
  - (ii) any payment or distribution of assets of the Corporation of any kind or character, whether in cash, property or securities shall be paid by the liquidating trustee or agent or other person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders

of Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any Senior Indebtedness may have been issued prior to any payment or distribution to the Holder.

- (b) Upon any distribution of assets of the Corporation referred to in this Section 6.2, the Holder shall be entitled to rely upon a certificate of the liquidating trustee or agent or other person making any distribution to the Holder for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Corporation, the amount thereof or payable thereon, the amount paid or distributed thereon and all other facts pertinent thereto or to this Article 6.

**6.3 Payment to Holder if Senior Indebtedness Due or in Default**

- (a) Upon the maturity of any Senior Indebtedness by lapse of time, acceleration or otherwise, all principal and interest on or outstanding under the Senior Indebtedness shall first be paid in full, or shall first have been duly provided for, before any payment on account of the Principal Amount on this Debenture is made.
- (b) Upon the happening of an event of default with respect to any Senior Indebtedness, as defined therein or in the instrument under which the same is outstanding, permitting the Holder thereof to accelerate the maturity thereof, then unless and until such event of default shall have been cured or waived or shall have ceased to exist, no payment whatsoever shall be made by the Corporation with respect to the Principal Amount on this Debenture unless and until all principal and interest on or outstanding under the Senior Indebtedness shall first be paid in full, or shall first have been duly provided for.

**ARTICLE 7  
NSR ROYALTY AGREEMENT**

**7.1 NSR Royalty Agreement**

In connection with this Debenture, the Corporation and the Holder shall enter into a net smelter return royalty agreement, substantially in the form of the net smelter return royalty agreement attached at Exhibit D (the "NSR Royalty Agreement").

**ARTICLE 8  
REPRESENTATIONS, WARRANTIES AND COVENANTS**

**8.1 Representations and Warranties of the Corporation**

The Corporation hereby represents and warrants to the Holder as follows:

- (a) **Corporate Existence.** It is a corporation duly incorporated and validly subsisting under the laws of Canada.
- (b) **Share Capital.** As of the date hereof, the authorized capital of the Corporation consists of an unlimited number of Common Shares, 67,137,042 of which are outstanding as fully paid and non assessable shares in the capital of the Corporation and other than up to 1,612,820 stock options issued or issuable under the Corporation's stock option plan and 8,073,500 issued warrants, there are no options, warrants or other rights to subscribe for

or otherwise acquire (or any right capable of becoming an option, warrant or right) any unissued Common Shares or any security convertible into or exchangeable for, or any other commitment (whether contingent or absolute) to issue or sell any unissued Common Shares.

- (c) **Due Authorization.** It is duly authorized and empowered to execute, deliver, observe and perform its obligations under this Debenture and the entering into and the observance and performance by it of the provisions of this Debenture has been duly authorized by all necessary corporate action.
- (d) **No Defaults, Approvals.** The execution, delivery, performance and observance of the terms of this Debenture: (i) do not require any consent or approval of or registration or filing with any governmental authority, except as has been obtained; (ii) will not result in the violation of any laws, statutes or regulations applicable to or binding upon the Corporation; and (iii) will not result in a breach of or constitute a default under any provisions in the articles, by-laws or resolutions of the Corporation, or any contracts, agreements or arrangements to which the Corporation is a party or by which it is bound.
- (e) **Event of Default.** No event has occurred which, with the giving of notice or passage of time or both, would constitute an Event of Default.
- (f) **Shares Listed.** The Voting Common Shares are listed and posted for trading on the TSX Venture Exchange and the Corporation is not in breach of any material rules or regulations of the TSX Venture Exchange.
- (g) **Acceptance by the TSX Venture Exchange.** The TSX Venture Exchange has accepted notice of the issuance of this Debenture and the Common Shares issuable upon conversion of this Debenture and all transactions related to the issuance of this Debenture and the Voting Common Shares which may be issuable upon conversion of this Debenture have been accepted for listing on the TSX Venture Exchange.
- (h) **Securities Law Compliance.** The issue and sale of this Debenture by the Corporation to the Holder is exempt from the prospectus and registration requirements of Canadian securities regulations, and no prospectus, offering memorandum or other document is required to be filed, no proceeding is required to be taken and no approval, permit, consent or authorization is required to be obtained by the Corporation under such securities laws in connection with such issuance and sale except for the filing by the Corporation, within the prescribed time period, of (i) a report of such sale with the TSX Venture Exchange, together with the applicable fees, if required; and (ii) a report prepared on Form 45-106F1 pursuant to Canadian Securities Administrators' National Instrument 45-106 *Prospectus and Registration Exemptions* and filed with the applicable regulator or securities regulatory authority, together with the applicable fees.
- (i) **Underlying Securities.** The issue by the Corporation of the Voting Common Shares which may be issuable on conversion of this Debenture, when issued in accordance with the terms of this Debenture will be exempt from the prospectus and registration requirements of Canadian securities regulations and no prospectus, offering memorandum or other document is required to be filed, no proceeding is required to be taken and no approval, permit, consent or other authorization is required to be obtained by the Corporation under such securities laws in connection with such issue, provided that (i) no order, ruling or decision is in effect at the time of any such issue that has the

effect of restricting such issue; and (ii) the reports and fees described in Subsection 8.1(h) hereof have been properly filed and paid.

- (j) **Reporting Issuer.** The Corporation is a reporting issuer or equivalent under the securities laws of Alberta, British Columbia and Quebec and has been a reporting issuer in Alberta, British Columbia and Quebec for at least 12 months prior to the date hereof, has not breached any of the requirements of, and has made all material filings required by, such securities laws, including the regulations and policies adopted thereunder.
- (k) **Cease Trade Order.** To the best of the Corporation's knowledge, no order suspending the sale or ceasing the trading of the shares of the Corporation or the sale of this Debenture or the exercise of the conversion rights contained therein has been issued by any court, securities commission or regulatory authority in Canada, and no proceedings for such purpose are pending, or, to the knowledge of the Corporation, after reasonable inquiry, threatened.

## 8.2 Affirmative Covenants

The Corporation hereby declares, covenants and agrees as follows:

- (a) **Corporate Existence.** Subject to the express provisions hereof, the Corporation will carry on and conduct its business in the manner heretofore carried on and it will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and rights.
- (b) **Reporting Issuer Status.** The Corporation will use its best and diligent efforts to remain a reporting issuer under the securities laws of Alberta, British Columbia and Quebec for a period of 12 months from the date hereof.
- (c) **Shareholder Approval.** The Corporation will use its best and diligent efforts to obtain all necessary regulatory approvals, and Shareholder Approval (collectively, the "Approvals") at the next regularly scheduled shareholders' meeting of the Corporation (the "Shareholders' Meeting"), to amend the Corporation's articles of incorporation to provide for the creation of a class of Non-Voting Common Shares (the "Amendment"), which efforts shall include management of the Corporation recommending that the shareholders of the Corporation approve the Amendment. The Corporation shall provide the Holder with a timely opportunity to review and comment on those provisions of the draft management information circular (the "Circular") prepared by the Corporation in connection with the Shareholder's Meeting, which deal solely with the Amendment (the "Amendment Provisions"). The Corporation shall incorporate therein all reasonable comments made by the Holder and its counsel with respect to the Amendment Provisions, provided that the Holder will provide the Corporation with its comments and any proposed additions and deletions within five Business Days after receipt of the Circular from the Corporation.
- (d) **Event of Default.** It shall give the Holder prompt written notice of the occurrence of any Event of Default, or any event or circumstance that, with the giving of notice or lapse of time or both, would constitute an Event of Default.
- (e) **Monthly Operational Reports.** Up to the Redemption Date, the Corporation shall furnish the Holder with such monthly information and operational reports relating to the

Properties as may be reasonably requested by the Holder from time to time, provided that the Corporation shall not be required to incur significant additional expenses to provide such requested information or reports.

- (f) **Quarterly Operational Reports.** From the period commencing after the Redemption Date and until the Maturity Date, the Corporation shall furnish the Holder with such quarterly information and operational reports relating to the Properties as may be reasonably requested by the Holder from time to time, provided that the Corporation shall not be required to incur significant additional expenses to provide such requested information or reports.
- (g) **Access to Properties and Financial Records.** So long as any amount under this Debenture is outstanding, the Corporation shall, at the expense of the Holder, allow any authorized representatives, agents or designees of the Holder the right to access the Properties and inspect the financial records maintained by the Corporation in respect of the Properties upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Corporation. The Corporation shall have the right to have its representatives, agents or designees present during any such inspection.
- (h) **Notice of Litigation.** The Corporation shall notify the Holder of any litigation commenced by or against the Corporation.
- (i) **Notice of Material Adverse Change.** The Corporation shall notify the Holder of any Material Adverse Change affecting the Corporation.
- (j) **Environmental Laws and Bonding.** The Corporation shall use reasonable efforts to ensure that (I) the Properties are maintained and operated in accordance with sound industry practice and in accordance with all applicable Environmental Law; and (II) all performance bonds for mine reclamation are maintained by the Corporation in accordance with the standards required by the New Brunswick government.
- (k) **Additional Information.** While any amount of the Principal Amount is outstanding, the Corporation shall provide the Holder with any reasonably requested additional information regarding the Corporation and its affairs.
- (l) **Commencement of Commercial Production.** The Corporation shall notify the Holder within five Business Days of making the determination that the Commencement of Commercial Production has occurred.

### 8.3 Restrictive Covenants

The Corporation hereby covenants and agrees with the Holder that, until all obligations under this Debenture have been terminated and unless the Holder has otherwise consented thereto in writing:

- (a) **Encumbrances.** The Corporation shall not enter into or grant, create, assume or suffer to exist any Lien affecting any of its property, assets or undertaking, save and except only for the Permitted Liens.
- (b) **Indebtedness.** The Corporation shall not incur or permit or suffer to exist any Indebtedness other than the Permitted Indebtedness.

#### 8.4 Waiver

The Holder may waive in writing any breach by the Corporation of any of the provisions contained in this Debenture or any default by the Corporation in the observance or performance of any covenant or condition required to be observed or performed by the Corporation hereunder, provided that no such waiver or any other act, failure to act or omission by the Holder shall extend to or be taken in any manner to affect any subsequent breach or default or the rights of the Holder resulting therefrom.

### ARTICLE 9 EVENTS OF DEFAULT

#### 9.1 Events of Default

The whole of the Principal Amount remaining unpaid shall, at the option of the Holder, become immediately due and payable in each of the following events (each such event being herein called an "Event of Default"):

- (a) if the Corporation defaults in the payment when due of any amount payable hereunder;
- (b) if the Corporation defaults in the performance or observance of any other covenant or condition herein contained and such default shall continue for 30 days after written notice thereof is given to the Corporation by the Holder;
- (c) if there is any material misrepresentation or misstatement contained in this Debenture or any document or certificate delivered by the Corporation in connection with this Debenture;
- (d) if an order is made or an effective resolution passed for the winding-up, liquidation or dissolution of the Corporation;
- (e) if the Corporation consents to or makes a general assignment for the benefit of creditors or makes a proposal under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any other bankruptcy, insolvency or analogous laws;
- (f) if the Corporation becomes bankrupt or insolvent or commits an act of bankruptcy, or any proceeding is commenced against or affecting the Corporation:
  - (i) seeking to adjudicate it a bankrupt or insolvent;
  - (ii) seeking liquidation, dissolution, winding-up, restructuring, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or similar laws (including, without limitation, any reorganization, arrangement or compromise of debt under the laws of its jurisdiction of incorporation or organization); or
  - (iii) seeking appointment of a receiver, receiver and manager, liquidator, trustee, agent, custodian or other similar official for it or for any part of its properties and assets;

- (g) if any Permitted Indebtedness of the Corporation shall become due, or be declared pursuant to the terms thereof to be due prior to the expressed maturity thereof, and shall not be paid, after the expiry of any applicable cure period; or
- (h) a writ, execution, attachment or similar process is issued or levied against all or any portion of any property or asset of the Corporation in connection with any final judgment without appeal against the Corporation in an amount exceeding \$5,000,000 and such writ, execution, attachment or similar process is not released, bonded, satisfied, discharged, vacated or stayed within 180 days after its entry, commencement or levy

## **9.2 Rights on Default**

Upon the occurrence of any one or more Events of Default the outstanding Principal Amount owing hereunder shall, at the option of the Holder, immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by the Corporation.

## **9.3 Remedies Cumulative**

All powers and remedies given herein to the Holder shall, to the extent permitted by law, be deemed cumulative and not exclusive of, but in addition to, any other powers and remedies available to the Holder hereunder, by law, equity, statute, judicial proceedings or otherwise, to enforce the performance and observance of the covenants and agreements contained in this Debenture. No delay or omission by the Holder to exercise any right or power accruing hereunder shall impair any such right or power, or shall be construed to be a waiver of any such right or power or an acquiescence therein. Every power and remedy given herein or by law to the Holder may be exercised from time to time, and as often as shall be deemed expedient by the Holder.

## **9.4 Conflict with Applicable Law**

All rights, remedies and powers provided herein may be exercised only to the extent that the exercise thereof does not violate any mandatory provision of applicable law and all provisions of this Debenture are intended to be subject to all mandatory provisions of applicable law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Debenture invalid, unenforceable or not entitled to be recorded, registered or filed under the mandatory provisions of any applicable law. Any provision hereof contrary to mandatory provisions of applicable law shall be deemed to be ineffective and shall be severable from and not invalidate any other provision of this Debenture.

# **ARTICLE 10 TRANSFER OF DEBENTURE**

## **10.1 Transfer of Debenture**

The Corporation cannot assign or transfer all or any of its rights and obligations under this Debenture without the prior written consent of the Holder. Notwithstanding the foregoing, in the case of a Capital Reorganization, this Debenture may be assigned by the Corporation to the successor entity resulting from such Capital Reorganization; provided that, such successor entity shall (i) be listed on the TSX Venture Exchange or other stock exchange acceptable to the Holder, acting reasonably; and (ii) expressly assume the due and punctual performance and observance of each and every covenant and condition of this Debenture to be performed and observed by the Corporation. This Debenture is binding upon the parties hereto and their respective successors and permitted assigns.

## 10.2 Corporation's Right of First Refusal

The Holder may assign, sell or transfer its rights and obligations under this Debenture to a bona fide, arm's length third party (the "Assignee"), provided that the Holder gives notice (the "Sale Notice") to the Corporation of its intention to transfer this Debenture to the Assignee. Such Sale Notice shall set forth the cash price at which the Holder is prepared to sell this Debenture (the "Sale Price"), any other applicable terms and conditions, and the proposed date of the sale (the "Sale Date"). In such event, the following provisions shall govern such assignment, sale or transfer:

- (a) The Sale Notice shall be deemed to be an irrevocable offer by the Holder to assign, sell or transfer this Debenture to the Corporation on the terms set forth therein.
- (b) Within 15 days after receipt of the Sale Notice, the Corporation shall have the right (the "Right of First Refusal") to purchase this Debenture from the Holder on payment by the Corporation to the Holder of the same Sale Price that the Holder specified in its Sale Notice. Where the Corporation determines to exercise its Right of First Refusal, then, on the Sale Date, the Corporation shall deliver or cause to be delivered to the Holder payment of the total Sale Price for this Debenture.
- (c) If the Corporation determines not to exercise its Right of First Refusal herein, the Holder may sell this Debenture to the Assignee under the same terms and conditions and Sale Price as originally stated in the Sale Notice to the Corporation. If the terms and conditions and/or Sale Price changes with respect to the Assignee, then the Holder shall re-send a new Sale Notice to the Corporation and the provisions of this section 10.2 shall apply.

## ARTICLE 11 TRANSFER OF PROPERTY INTEREST

### 11.1 Transfer of Property Interest

Notwithstanding anything herein contained, the Corporation may sell, assign or otherwise dispose of all of its interest in the Properties, or part thereof (the "Corporation's Interest"), to an Affiliate of the Corporation (the "Corporation Affiliate") without the consent of the Holder provided that, in any such event, the Corporation Affiliate shall deliver to the Holder an agreement between the Corporation Affiliate and the Holder under which such Corporation Affiliate:

- (a) acknowledges the Holder's Property Interest Conversion Option rights under this Debenture;
- (b) covenants to provide the Holder with the Holder's Interest in the Properties in the event the Holder exercises its Property Interest Conversion Option pursuant to Subsection 3.1(a) hereof; and
- (c) agrees to retransfer the Corporation's Interest to the Corporation in the event that the Corporation Affiliate ceases to be an Affiliate of the Corporation.

**ARTICLE 12  
GENERAL**

**12.1 Corporate Changes**

In the event that the Corporation should file articles of amendment or amalgamation or undertake any corporate restructuring, arrangement, merger or reorganization, the result of which is to change the name of the Corporation, it shall, within 7 days of the effective date of such change, deliver written notice of the same together with particulars thereof (including a notarially certified copy of the instrument or instruments effecting such change) to the Holder.

**12.2 Notice**

Any demand, notice, document or communication required or permitted by this Debenture to be given by a party hereto shall be in writing and is sufficiently given if delivered personally, or if sent by prepaid registered mail posted in Canada, or if transmitted by any form of recorded telecommunication tested prior to transmission, to such party addressed to it at the address noted on the first page hereof. Notice so mailed shall be deemed to have been given on the third Business Day after deposit in a post office or public letter box. Neither party shall mail any notice, request or other communication hereunder during any period in which Canadian postal workers are on strike or if such strike is imminent and may reasonably be anticipated to affect the normal delivery of mail. Notice transmitted by a form of recorded telecommunication or delivered personally shall be deemed given on the day of transmission or personal delivery, provided such day is a Business Day (and on the next succeeding Business Day if such day is not a Business Day) as the case may be. Any party may from time to time notify the other in the manner provided herein of any change of address which thereafter, until change by like notice, shall be the address of such party for all purposes hereof. Payments required to be made hereunder shall be delivered to the Holder at the address noted on the first page hereof. Any payments not received by the Holder by 5:00 p.m. (Toronto time) on a Business Day shall be deemed to have been received on the next Business Day.

**12.3 Extensions and Amendments**

Any agreement for the extension of the time of payment of the moneys hereby secured or any part thereof made at, before or after maturity, and prior to the execution of a discharge or release of this Debenture, or any agreement for altering the term or any other covenant or condition hereof, need not be registered in any office of public record but shall be effectual and binding upon the Corporation and its successors and permitted assigns when executed by the Corporation and the Holder and delivered to the Holder. Any such amendments or extensions shall be subject to prior regulatory approval.

**12.4 Governing Law**

This Debenture shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**12.5 Time of Essence**

Time shall be of the essence of this Debenture in all respects.

IN WITNESS WHEREOF the Corporation has executed this Debenture as of the date first written above.

**BLUE NOTE METALS INC.**

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

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

The terms and conditions of this Debenture are acknowledged and agreed to by the Holder.

**BREAKWATER RESOURCES INC.**

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

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

**EXHIBIT A TO THE  
UNSECURED SUBORDINATED CONVERTIBLE DEBENTURE OF  
BLUE NOTE METALS INC.**

**NOTICE OF EXERCISE OF PROPERTY INTEREST  
CONVERSION OPTION**

TO: Blue Note Metals Inc.

The undersigned, the registered Holder of the Unsecured Subordinated Convertible Debenture issued by Blue Note Metals Inc. on [•], 2006 (the "Debenture") hereby irrevocably elects to convert the indebtedness outstanding under the Debenture into a 20% interest in the Properties (as defined in the Debenture) in accordance with the terms of the Debenture.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200 .

Breakwater Resources Inc.

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

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

EXHIBIT B TO THE  
UNSECURED SUBORDINATED CONVERTIBLE DEBENTURE OF  
BLUE NOTE METALS INC.

FORM OF JOINT VENTURE AGREEMENT

[See attached]

## JOINT VENTURE AGREEMENT

THIS AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_

BETWEEN: **BREAKWATER RESOURCES LTD.**, a corporation incorporated under the laws of Canada and having its executive offices at 95 Wellington Street West, Suite 950, Toronto, Ontario, M5J 2N7;  
  
(hereinafter called "Breakwater")

OF THE FIRST PART

AND: **BLUE NOTE METALS INC.**, a corporation incorporated under the laws of Canada and having its head office at 2 Place Alexis-Nihon, 3500 de Maisonneuve West, Suite 1110, Westmount, Québec, H3Z 3C1;  
  
(hereinafter referred to as "Blue Note")

OF THE SECOND PART

---

**WHEREAS** pursuant to a subordinated convertible debenture dated [•], 2006 (the "Blue Note Debenture"), Blue Note is indebted to Breakwater;

**WHEREAS** under Section 3.1 of the Blue Note Debenture, Breakwater has an option (the "Property Interest Conversion Option") to convert the Blue Note Debenture in exchange for a twenty percent (20%) Interest in and to the Property;

**WHEREAS** Breakwater has exercised its Property Interest Conversion Option and, as required under Section 3.2 of the Blue Note Debenture, the parties have agreed to form a joint venture to further explore and develop the Property, all upon and subject to the terms and conditions set out in this Agreement;

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

### 1. INTERPRETATION

1.1 In this Agreement the following words, phrases and expressions shall have the following meanings:

- (a) "Accounting Procedure" means the procedure attached to this Agreement as Appendix I.

- (b) **"Additional Environmental Protection Deposit"** means any additional environmental protection deposits required by the Department of Environment (New Brunswick) to be deposited by Blue Note to secure environmental protection obligations with respect to the Property.
- (c) **"Additional Reclamation Deposit"** means any additional reclamation deposits required by the Department of Natural Resources (New Brunswick) to be deposited by Blue Note to secure reclamation and remediation obligations with respect to the Property.
- (d) **"Affiliate"** shall have the meaning attributed to it in the *Canada Business Corporations Act*, as amended.
- (e) **"Agreement"** means this Agreement and the Appendices attached hereto, as amended from time to time, and the expressions "herein", "hereof", "hereby", "hereunder" and similar expressions refer to this Agreement as a whole.
- (f) **"Assets"** means all tangible and intangible goods, chattels, improvements or other items including, without limiting the generality of the foregoing, land, buildings, and equipment, but excluding the Property, acquired for or made to the Property under this Agreement in connection with the Mining Operations.
- (g) **"Blue Note Debenture"** has the meaning ascribed thereto in the recitals to this Agreement.
- (h) **"Business Plan"** means The Business Plan For The Acquisition And Re-Opening Of The Caribou Mine And Restigouche Mine And Related Assets of CanZinco in New Brunswick dated March 2006 which outlines the re-opening of the Property.
- (i) **"Commercial Production"** means the day determined by the Operator as the first day of any three month period throughout which the Property operates, during each month of the three-month period, at sixty percent (60%) or more of its planned capacity as set out in the Business Plan.
- (j) **"Completion Date"** means the date on which Commercial Production is achieved.
- (k) **"Costs"** means, except as to Prior Production Costs, all items of outlay and expense whatsoever, direct or indirect, with respect to Mining Operations, recorded by the Operator in accordance with this Agreement. Without limiting the generality of the foregoing, the following categories of Costs shall have the following meanings:
  - (i) **"Production Program Costs"** means, for any period prior to the Completion Date, all Costs incurred directly or indirectly in

connection with a Production Program for purposes of bringing into Commercial Production any Mineral deposit on the Property, including, without limitation:

- (I) all monies expended to develop or construct the Mine, as contemplated in the Production Program, including all costs related to banking and financing charges;
  - (II) working capital required for the initial four (4) months of operation of the Property or part thereof as a Mine or for such longer period as may be reasonably justified in the circumstances.
- (ii) **“Operating Costs”** means, for any period after the Completion Date, all Costs incurred or chargeable, directly or indirectly, by the Operator in connection with the Operating Plan, which Costs include, without limiting the generality of the foregoing, the following:
- (I) all costs of or related to operating employee facilities, including housing;
  - (II) all duties, charges, levies, royalties, taxes (excluding taxes levied on the income of the parties) and other payments imposed by any government or municipality or department or agency thereof upon or in connection with operating the Property as a Mine;
  - (III) all costs of maintaining the Property in good standing, including any required vendor’s or royalty payments;
  - (IV) all reasonable costs of the Operator for providing technical, management and/or supervisory services;
  - (V) all reasonable costs of consulting, legal, accounting, insurance and other services;
  - (VI) all exploration expenditures incurred after the Completion Date;
  - (VII) all capital costs of operating the Property as a Mine including all costs of construction, equipment and mine development and including maintenance, repairs and replacements, and any capital expenditures relating to an improvement, expansion, modernization or replacement of the facilities located at the Mine;

- (VIII) a reasonable amount of funds set aside to cover reclamation costs and other costs associated with a permanent shut-down of the Mine;
- (IX) any costs or expenses incurred or to be incurred relating to a temporary or permanent shut-down of the Mine;
- (X) all reasonable costs of supplies and services purchased for the day-to-day operation of the Property as a Mine;
- (XI) all costs relating to banking and financing charges; and
- (XII) all costs relating to the shipping of Minerals to the point of sale,

and, except where specific provision is made otherwise, all Operating Costs shall be determined in accordance with generally accepted accounting principles applied consistently from year to year provided however that such costs shall not include any amount in respect of amortization of expenditures or Production Program Costs, depletion or depreciation. For greater certainty, Operating Costs shall not include any Costs or expenses incurred by the Operator which are solely related to general overhead and administrative expenses of the Operator including bonuses, salaries, auditor's fees, legal fees, consulting fees, insurance and rent; and

- (iii) **"Prior Production Costs"** means all exploration, production and operating Costs incurred by Blue Note prior to the Operative Date and as deemed by the parties under paragraph 3.4, and for greater certainty, shall not include the Reclamation Deposit, the Environmental Protection Deposit, any Additional Reclamation Deposits and any Additional Environmental Protection Deposits made by Blue Note prior to the Operative Date.
- (l) **"Distribution"** means a distribution of the Net Cash Flow Surplus Amount to each party *pro rata* to the party's Interest and paid in accordance with article 10.
- (m) **"Environmental Protection Deposit"** means the sum deposited by Blue Note and currently held by the Department of the Environment (New Brunswick) as security for the environmental protection of the Property together with all interest accrued or accruing due therein, as may be applicable.
- (n) **"Governmental Authority"** means any federal, provincial, municipal or local legislative, executive, judicial or administrative body or person having jurisdiction in the relevant circumstances.

- (o) **"Interest"** means an undivided beneficial percentage interest of a party in the Property, the Assets and any Mine, as determined pursuant to this Agreement.
- (p) **"Joint Operation"** shall have the meaning attributed to it in paragraph 2.1.
- (q) **"Management Committee"** means the committee established pursuant to article 4.
- (r) **"Mine"** means the workings established and Assets acquired that are directly related to the Property, including, without limiting the generality of the foregoing, development headings, plant and concentrator installations, infrastructure and other facilities in or in order to bring the Properties into Commercial Production in accordance with the Production Program.
- (s) **"Minerals"** means any and all minerals, precious and base, metallic and non-metallic (and concentrates derived therefrom) in, on or under the Property which may lawfully be explored for, mined and sold.
- (t) **"Mining Operations"** means every kind of work done by the Operator:
  - (i) on or in respect of the Property in accordance with a Production Program or Operating Plan; or
  - (ii) if not provided for in a Production Program or Operating Plan, unilaterally and in good faith to maintain the Property in good standing, to prevent waste or to otherwise discharge any obligation which is imposed upon it pursuant to this Agreement and in respect of which the Management Committee has not given its directions;

including, without limiting the generality of the foregoing, investigating, prospecting, exploring, developing, preparing, designing, equipping, improving, surveying, mining, milling, refining and other processing of Minerals, metals, tailings or concentrates derived from the Property and other ancillary activities and operations related thereto.
- (u) **"Net Cash Flow"** for any period means the sum of adding:
  - (i) cash at the beginning of such period; and
  - (ii) the difference resulting from subtracting:
    - (I) the sum of Operating Costs paid during such period plus the Operating Cost Reserve Amount plus any increase in working capital, from

- (II) all Revenue generated during such period.
- (v) **"Net Smelter Royalty"** shall mean two percent (2%) of the Net Smelter Return (as defined and as more particularly set out in Appendix III of this Agreement).
  - (w) **"Operating Cost Reserve Amount"** for any period means an amount equal to the estimated Operating Costs and any estimated decrease in working capital for the subsequent two (2) month period.
  - (x) **"Operating Plan"** means the annual plan of Mining Operations submitted pursuant to paragraph 9.2.
  - (y) **"Operative Date"** means the date upon which Breakwater exercises its Property Interest Conversion Option in accordance with the Blue Note Debenture.
  - (z) **"Operator"** means the party appointed as the Operator in accordance with article 5.
  - (aa) **"Participant"** means a party that is contributing to Production Program Costs or Operating Costs, as the case may be.
  - (bb) **"party"** or **"parties"** means the parties to this Agreement and their respective successors and permitted assigns which become parties pursuant to this Agreement.
  - (cc) **"Prime Rate"** means the rate of interest stated by the main branch in Toronto, Ontario of the Bank of Montreal as being charged by it on Canadian dollar demand loans to its most creditworthy domestic commercial customers.
  - (dd) **"Production Program"** means any program approved by the Management Committee for the purposes of bringing into Commercial Production any Mineral deposit on the Property.
  - (ee) **"Property"** means the mineral property, mine facilities, claims, interests and other rights more particularly described in Appendix II that become subject to this Agreement on the Operative Date, the Minerals thereon, all information obtained from Mining Operations and those rights and benefits appurtenant to the Property that are acquired for the purpose of conducting Mining Operations.
  - (ff) **"Property Interest Conversion Option"** has the meaning ascribed thereto in the recitals to this Agreement.
  - (gg) **"Proportionate Share"** means that share which is equal to a party's percentage Interest, as adjusted from time to time hereunder.

- (hh) "Reclamation Deposit" means the sum deposited by Blue Note and currently held in deposit by the Department of Natural Resources (New Brunswick) as security for the reclamation and remediation of environmental impact associated with the Property with all interest accrued or accruing due thereon, as may be applicable.
- (ii) "Revenues" means the total proceeds, calculated at the point of sale, to be derived from the sale of Minerals or other products extracted from the Property, plus any miscellaneous proceeds (including, without limitation, all net amounts received from the sale of plant, machinery, equipment or other Assets prior to the cessation of operations, any insurance proceeds not used for the replacement or repair of lost or damaged assets, compensation for expropriated properties, government grants and interest on Revenue earned from the date of receipt to the date of payment) from the Property.
- (jj) "Simple Majority" means a decision made by the Management Committee by more than 50 percent (50%) of the votes represented and entitled to be cast at a meeting thereof.
- (kk) "\$" means Canadian dollars.

1.2 The words "article", "paragraph", "subparagraph", "herein" and "hereunder" refer to this Agreement.

1.3 The captions and the emphases of the defined terms have been inserted for convenience and do not define the scope of any provision.

## 2. FORMATION OF THE JOINT VENTURE

2.1 Commencing on the Operative Date, the parties hereby agree to associate and participate in a joint operation (herein called the "Joint Operation") for the purpose of:

- (a) exploring claims on the Property;
- (b) bringing the Property or a portion thereof into Commercial Production;
- (c) operating Mines; and
- (d) to engage in such other activities as may be considered by the parties to be necessary or desirable in connection with the foregoing.

2.2 Subsequent to the Operative Date, except as otherwise provided herein, each party shall be liable for its Proportionate Share of all Costs, debts, liabilities or obligations under this Agreement and at the time incurred by the Operator.

2.3 Except as expressly provided in this Agreement, each party shall have the right independently to engage in and receive full benefits from business activities, whether or not competitive with the Joint Operation, without consulting any other party. The doctrines of "corporate opportunity" or "business opportunity" shall not be applied to any other activity, venture or operation of any party and no party shall have any obligation to another party with respect to any opportunity to acquire any assets outside of the Property at any time, or within the Property after the termination of this Agreement. Unless otherwise agreed in writing, no party shall have any obligation to mill, beneficiate or otherwise treat any Minerals or any other party's share of Minerals in any facility owned or controlled by such party.

### 3. INTERESTS

3.1 Commencing on the Operative Date, the Interests of each of the parties shall be as follows until varied as provided for in this Agreement:

Blue Note	80%
Breakwater	20%

3.2 Subsequent to the Operative Date, the Interest of each party shall be determined from time to time to be that percentage which is equivalent to:

(i) the sum of its Prior Production Costs, its contribution to Production Program Costs and its contribution to Operating Costs;

divided by

(ii) the sum of the total Prior Production Costs, total Production Program Costs and the total Operating Costs of all the parties;

multiplied by

(iii) 100.

3.3 The respective Interests of the parties shall be as set out in paragraph 3.1 so long as they contribute their respective Proportionate Share of Production Program Costs and Operating Costs, as applicable, as set out in this Agreement. At any time and from time to time if a party fails to contribute to such Costs, its respective Interest shall be reduced in accordance with the formula set out in paragraph 3.2. If, as a result of such calculation, the Interest of any party is reduced to or below 5%, its Interest shall be deemed to be converted (the "Deemed Conversion") to a 2% Net Smelter Royalty as more particularly described in Appendix III and thereafter such party shall have no further rights, interests, obligations or liabilities in respect of the Assets or under this Agreement, save and except (a) such Net Smelter Royalty and (b) any liabilities

or obligations incurred hereunder from the Operative Date to the date of the Deemed Conversion.

- 3.4 The following expenditures shall be deemed to be the “**Prior Production Costs**” of each party effective the Operative Date strictly for the purposes of determining a party’s Interest under this Agreement from time to time pursuant to paragraph 3.2:

	<u>Prior Production Costs</u>	<u>Interest</u>
Blue Note	[\$*]	80%
Breakwater	[\$*]	20%

- 3.5 During the subsistence of this Agreement, the parties agree that:

- (a) all Revenue generated by Blue Note in connection with the Property prior to the Operative Date;
- (b) all stockpiles of Minerals or other products extracted from the Property which are not sold by Blue Note prior to the Operative Date (the “**Blue Note Stockpiles**”); and
- (c) any rebate or credits granted by any Governmental Authority in respect of any deposits, guarantees, fees or other payments (including without limitation, the Reclamation Deposit, the Environmental Protection Deposit, any Additional Reclamation Deposits and any Additional Environmental Protection Deposits) made by Blue Note in connection with the Property prior to the Operative Date,

shall be entirely to the account and credit of Blue Note and shall not form part of (i) this Joint Operation or (ii) any calculation made to determine any of the following in connection with this Agreement: (I) Prior Production Costs; (II) Net Cash Flow; (III) Revenues; or (IV) Distributions.

- 3.6 For purposes of reconciling the Blue Note Stockpiles as of the Operative Date, the Operator shall:

- (a) immediately, on the Operative Date, segregate the Blue Note Stockpiles from all stockpiles of Minerals or other products extracted from the Property on and after the Operative Date; and
- (b) select, within thirty (30) days after the Operative Date, an independent organization (the “**Independent Evaluator**”) which is generally recognized and accepted within the industry, to evaluate the Blue Note

Stockpiles and provide the parties with an inventory reconciliation of same.

Blue Note shall be liable for all costs and charges for services rendered by the Independent Evaluator in connection with the inventory reconciliation of the Blue Note Stockpiles.

#### 4. MANAGEMENT COMMITTEE

- 4.1 A Management Committee shall be established on or forthwith after the Operative Date. Except as herein otherwise provided, the Management Committee shall make all decisions in respect of Mining Operations.
- 4.2 Each party shall nominate two (2) representatives, one (1) voting representative and one (1) alternate representative, to represent it on the Management Committee and shall be bound by the actions of its nominees. Such nomination shall be given in writing to the other Parties, and the representatives may be changed from time to time by written notice to the other Parties. Alternate representatives may attend meetings of the Management Committee and, in the absence of the voting representative, the alternate representative may vote and otherwise act in place and stead of the voting representative. Whenever any voting representative (or the alternate representative in the absence of the voting representative) votes or acts, his votes or actions shall for all purposes of this Agreement be considered the actions of the party whom such representative represents.
- 4.3 The Operator shall give notice, specifying the time and place of, and the agenda for, the meeting, to all representatives at least seven (7) days before the time appointed for the meeting.
- 4.4 Notice of a meeting shall not be required if representatives of all the parties are present and unanimously agree upon the agenda.
- 4.5 Except as provided below, at any meeting of the Management Committee, each party must have one representative present to constitute a quorum. If a quorum is present at the meeting, the Management Committee shall be competent to exercise all of the authorities, powers and discretions herein bestowed upon it hereunder. The Management Committee shall not transact any business at a meeting unless a quorum is present at the commencement of the meeting. In the event there shall be no quorum at any meeting of the Management Committee called by notice pursuant to paragraph 4.3, the meeting shall be adjourned for seven (7) days with notice thereof being given by the chairman on behalf of the attending parties to the absent parties. After such seven (7) days, the meeting shall resume and a quorum for that meeting shall be such representative or representatives of the Management Committee then in attendance.

- 4.6 The Management Committee shall decide every question submitted to it by a vote with each voting representative (or the alternate representative in the absence of the voting representative) being entitled to cast that number of votes which is equal to its party's Interest percentage. The Management Committee shall make all decisions by Simple Majority. In the event of a tied vote, the chairman shall have a casting vote in addition to the votes to which the chairman is entitled to cast as the representative of a party.
- 4.7 Notwithstanding the provisions of paragraph 4.6, a decision as to any of the following matters shall require the approval of 100% of the votes cast by the parties' representatives on the Management Committee:
- (a) the permanent closure of the Mine; and
  - (b) capital expenditure items requiring aggregate expenditures in excess of \$25,000,000 in any one calendar year.
- 4.8 The voting representative (or the alternative representative in the absence of the voting representative) of the Operator shall be chairman and secretary of the Management Committee meeting.
- 4.9 The secretary of the Management Committee meeting shall take minutes of that meeting and circulate copies thereof to each representative.
- 4.10 The Management Committee may make decisions by obtaining the consent in writing of the voting representative (or the alternative representative in the absence of the voting representative) of each party. Any decision so made shall be as valid as a decision made at a duly called and held meeting of the Management Committee.
- 4.11 Management Committee decisions made in accordance with this Agreement shall be binding upon all parties.
- 4.12 Each party shall bear the expenses incurred by its representatives in attending meetings of the Management Committee.
- 4.13 The Management Committee may establish such other rules of procedure, not inconsistent with this Agreement, as the Management Committee deems fit.

## 5. OPERATOR

- 5.1 Following the Operative Date, but subject to paragraph 5.2, Blue Note shall continue to act as the Operator under this Agreement and as such, subject to the discretion and control of the Management Committee, shall have full right, power and authority to do everything necessary or desirable to carry out the purposes of the parties in connection with this Agreement.

- 5.2 The party acting as Operator may resign as Operator on at least ninety (90) days' notice to all the parties and the parties shall, within ninety (90) days after receipt of such notice, convene a meeting of the Management Committee which shall appoint a party who consents to act as Operator, and determine its terms of engagement.
- 5.3 The new Operator shall assume all of the rights, duties, liabilities and status of the previous Operator as provided in this Agreement. The new Operator shall have no obligation to hire any other employees of the former Operator resulting from a change of Operator.
- 5.4 Upon ceasing to be Operator, the former Operator shall forthwith deliver to the person nominated for that purpose by the Management Committee, the custody of all Assets, Property, books, records, and other property both real and personal relating to this Agreement. If the Operator resigns and no other party consents to act as Operator, the Joint Operation shall terminate and the provisions of article 16 shall apply mutatis mutandis.
- 5.5 If the Operator fails to perform in a manner that is consistent with good engineering and mining practices or fails to perform in a manner consistent with its duties and responsibilities under this Agreement, then the Management Committee shall give to the Operator written notice setting forth particulars of the Operator's default. The Operator shall within ninety (90) days of receipt of such notice commence to remedy the default. Failure of the Operator to commence to remedy the default within such 90-day period (and thereafter to proceed continuously and diligently to complete all required remedial action) will be grounds for termination of the Operator's appointment; provided that no steps shall be taken to remove or replace the Operator in such circumstances while the Operator is contesting in good faith the alleged default. On any termination of the Operator's appointment hereunder, a meeting of the Management Committee shall forthwith be convened to appoint another party who consents to act as Operator, and determine its terms of engagement.
- 5.6 If the Operator resigns or is removed and no other party consents to act as Operator, the Joint Operation hereunder shall be terminated and the Assets shall be liquidated or sold and the Assets or proceeds from the sale thereof distributed to the parties, net of liabilities hereunder or related thereto, in accordance with their Interests. Each party shall be responsible for its Proportionate Share of all costs and expenses related to such termination and liquidation. The party which was the Operator may, if it consents to act, continue to act as Operator to effect such termination and liquidation and it shall have a lien on the parties' respective Interests in the Assets and any proceeds therefrom as security for their respective Proportionate Shares of all costs, expenses and other liabilities owing in respect of or as of the date of such termination.

## 6. RIGHTS, DUTIES AND STATUS OF OPERATOR

- 6.1 The Operator in performing its duties and carrying out its responsibilities hereunder shall be deemed to be an independent contractor. The Operator shall not act or hold itself out as agent for any of the parties nor make any commitments on their individual behalf unless specifically permitted by this Agreement or directed in writing by a party.
- 6.2 Subject to any specific provisions of this Agreement and subject to it having the right to reject any direction on reasonable grounds by virtue of its status as an independent contractor, the Operator shall perform its duties hereunder in accordance with the directions of the Management Committee and in accordance with this Agreement.
- 6.3 The Operator shall manage and carry out such Mining Operations as the Management Committee may direct and in connection therewith shall, in advance if reasonably possible, notify the Management Committee of any change in Mining Operations which the Operator considers material.
- 6.4 The Operator shall have the sole and exclusive right and authority to manage and carry out all Mining Operations and to incur the Costs required for that purpose, including but not limited to the cost of retaining such subcontractors as it deems fit. In so doing the Operator shall:
- (a) comply with the provisions of all agreements or instruments of title under which the Property or Assets are held;
  - (b) pay all Costs properly incurred promptly as and when due;
  - (c) keep the Property and Assets free of all liens and encumbrances (other than those, if any, in effect on the Operative Date, those the creation of which are permitted pursuant to this Agreement, or builder's or mechanic's liens) arising out of the Mining Operations and, in the event of any lien being filed as aforesaid, proceed with diligence to contest or discharge same;
  - (d) prosecute claims or, where a defence is available, defend litigation arising out of the Mining Operations, provided that any Participant may join in the prosecution or defence at its own expense;
  - (e) perform such assessment work or make payments in lieu thereof and pay such rentals, taxes or other payments and do all such other things as may be necessary to maintain the Property in good standing, including, without limiting the generality of the foregoing, staking and re-staking mining claims, and applying for licenses, leases, grants, concessions, permits, patents and other rights to and interests in the Minerals;

- (f) maintain accounts in accordance with the Accounting Procedure, provided that the judgement of the Operator as to matters related to accounting, for which provision is not made in the Accounting Procedure, shall govern if the Operator's accounting practices are in accordance with accounting principles generally accepted in the mining industry in Canada; and
- (g) perform its duties and obligations hereunder in a sound and workmanlike manner, in accordance with good mining and engineering practices and in substantial compliance with this Agreement and all applicable federal, provincial, territorial and municipal laws, by-laws, ordinances, rules and regulations.

## **7. OPERATOR'S FEE**

7.1 The Operator may charge the following fees in return for its head office overhead functions:

- (a) an amount equal to ten percent (10%) of any Production Program with Production Program Costs estimated at \$2,000,000 or less;
- (b) an amount equal to eight percent (8%) of any Production Program with Production Program Costs estimated between \$2,000,001 and \$5,000,000;
- (c) an amount equal to five percent (5%) of any Production Program with Production Program Costs estimated above \$5,000,000; and
- (d) an amount equal to ten percent (10%) of all Operating Costs to a maximum of 10% of budgeted Operating Costs, other than those referred to in subparagraph 1.1(k)(ii)(IV).

## **8. PRODUCTION PROGRAM**

8.1 Upon the approval of the Management Committee, but subject to paragraph 8.2, the Operator shall prepare and deliver to each party, within sixty (60) days of receipt of such approval, a Production Program for purposes of bringing into Commercial Production any Mineral deposit on the Property and establishing and operating a Mine.

8.2 If on the Operative Date, the Operator has already incurred Production Program Costs as part of ongoing work then in progress in connection with a Production Program, such work shall be deemed to have been approved by the Management Committee as a Production Program. Under such circumstances, the Operator shall, within sixty (60) days of the Operative Date, deliver to each party the Production Program so deemed approved pursuant to this paragraph 8.2 and the provisions of this article 8 shall apply.

- 8.3 Each party may, within thirty (30) days of receipt of a Production Program, give notice to the Operator committing to contribute its Proportionate Share of the Production Program Costs to be incurred in connection with the Production Program. A party which fails to give notice within the thirty (30) day period shall be deemed to have elected not to contribute.
- 8.4 If any party elects or is deemed to have elected not to contribute its Proportionate Share of Production Program Costs, the other party which has elected to contribute its Proportionate Share of Production Program Costs may give notice in writing to the Operator stating that it will contribute, in addition to its own Proportionate Share, the Proportionate Share of the non-contributing party. In such event, the Interests of the parties shall be adjusted in accordance with paragraph 3.2.
- 8.5 An election to contribute to a Production Program shall make a party liable to pay its Proportionate Share of Production Program Costs actually incurred under or pursuant to a Production Program, including Production Program Overruns (as hereinafter defined) up to but not exceeding twenty percent (20%). For greater certainty, a party electing to contribute to a Production Program deemed approved pursuant to paragraph 8.2 shall only be liable to pay its Proportionate Share of Production Program Costs incurred after the Operative Date.
- 8.6 After having elected to contribute to a Production Program, each Participant shall, within fifteen (15) days after being requested in writing to do so by the Operator, pay such portion of its Proportionate Share of the Production Program Costs as the Operator may require.
- 8.7 If it appears to the Operator that Production Program Costs will exceed those estimated under the Production Program, the Operator shall immediately give written notice to the Participants outlining the nature and extent of the additional costs and expenses (herein called the "Production Program Overruns") and the reasons therefore. If Production Program Overruns are estimated to exceed by more than twenty percent (20%) those estimated under the Production Program (herein called "Excess Production Program Overruns"), the notice of the Operator shall contain notice of a meeting of the Management Committee, to be held no sooner than five (5) business days after the date of delivery of the notice, called for the purpose of considering and, if deemed advisable, approving the Excess Production Program Overruns. If the Excess Production Program Costs are approved by the Management Committee, each Participant shall, within fifteen (15) days after the receipt of a written request from the Operator, pay to the Operator its Proportionate Share of such Excess Production Program Overruns.
- 8.8 If Excess Production Program Overruns are not approved by the Management Committee, as provided in paragraph 8.7, the Operator will have the right to curtail or abandon the Production Program.

- 8.9 If a Participant at any time fails to pay its Proportionate Share of Production Program Costs (including Production Program Overruns and approved Excess Production Program Overruns) in accordance with this article 8, the Operator may give written notice to such Participant demanding payment and, if such Participant has not paid such amount within fifteen (15) days after receipt of such notice, such Participant shall be deemed to be in default hereunder and the other party which has paid its Proportionate Share of Production Program Costs may give notice in writing to the Operator stating that it will contribute the Proportionate Share of the defaulting party. In such event, the Interests of the parties shall be adjusted in accordance with paragraph 3.2.
- 8.10 If a Participant elects (a) not to contribute the Proportionate Share of Production Program Costs of the non-contributing party pursuant to paragraph 8.4 or (b) not to contribute the Proportionate Share of Production Program Costs of the defaulting Participant pursuant to paragraph 8.9, the Operator shall have the right to curtail or abandon the Production Program.

## 9. OPERATING PLANS

- 9.1 Commencing on the Completion Date, all Mining Operations shall be planned and conducted and all estimates, reports and statements shall be prepared and made on the basis of a calendar year. Each Participant shall be liable to pay its Proportionate Share of all Operating Costs incurred under an Operating Plan, including Operating Cost Overruns (as hereinafter defined) up to but not exceeding twenty percent (20%).
- 9.2 With the exception of the year in which the Completion Date occurs, an Operating Plan for each calendar year shall be submitted by the Operator to the Participants not later than October 31 in the year immediately preceding the calendar year to which the Operating Plan relates. Each Operating Plan shall contain the following:
- (a) a plan for the proposed Mining Operations, including any plans for further exploration or expansion of the Mine;
  - (b) a detailed estimate of all Operating Costs (including, if applicable, all additional estimated capital expenditures for further exploration or expansion of the Mine), plus a reasonable allowance for contingencies;
  - (c) an estimate of the quantity and quality of the Minerals to be mined and the concentrates or metals or other products and by-products to be produced; and
  - (d) such other facts as may be necessary to reasonably illustrate the results intended to be achieved by the Operating Plan. Upon request of any Participant, the Operator shall meet with that Participant to discuss the Operating Plan and shall provide such additional or supplemental

information as that Participant may reasonably require with respect thereto.

- 9.3 The Management Committee shall adopt each Operating Plan, with such changes as it deems necessary, by November 30 in the year immediately preceding the calendar year to which the Operating Plan relates.
- 9.4 If on the Operative Date, the Completion Date has been achieved and the Operator has already incurred Operating Costs as part of ongoing work then in progress in connection with an Operating Plan, such Operating Plan shall be deemed to have been adopted by the Management Committee and each party shall be liable for its Proportionate Share of Operating Costs incurred after the Operative Date. Under such circumstances, the Operator shall, within sixty (60) days of the Operative Date, deliver to each party the Operating Plan so deemed adopted pursuant to this paragraph 9.4 and the provisions of this article 9 shall apply.
- 9.5 Except as herein provided, the Operator shall have the power and authority to deviate from or make modifications to Operating Plans from time to time, in accordance with good engineering and mining practice. If it appears to the Operator that Operating Costs will exceed those estimated under an Operating Plan, the Operator shall immediately give written notice to the Participants outlining the nature and extent of the additional costs and expenses (herein called "Operating Cost Overruns") and the reasons therefor. If Operating Cost Overruns are estimated to exceed by more than twenty percent (20%) those estimated under the Operating Plan (herein called "Excess Operating Cost Overruns"), the notice of the Operator shall contain notice of a meeting of the Management Committee, to be held no sooner than five (5) business days after the date of delivery of the notice, together with a proposed amendment to the Operating Plan. The meeting of the Management Committee shall be convened to review, amend (if deemed appropriate) and approve same.
- 9.6 In the event that a proposed Operating Plan or amendment thereto is not approved by the Management Committee as hereinbefore provided, the Operator may submit such matter to arbitration in accordance with Article 13. Pending the outcome of such arbitration, the Operator may continue to operate the Property as a Mine on behalf of the Participants, based as closely as practicable on the most recently approved Operating Plan, and notwithstanding that such operations may be carried over to a subsequent operating year.
- 9.7 The Operator shall be entitled to include in the estimate of Operating Costs referred to in subparagraph 9.2(b) hereof the reasonably estimated costs of satisfying continuing obligations that may remain after this Agreement terminates, in excess of amounts actually expended. Such continuing obligations are or will be incurred as a result of the Joint Operation and shall include such things as monitoring, stabilization, reclamation or restoration obligations, severance and other employee benefit costs, costs relating to

environmental protection, rehabilitation and de-commissioning and all other obligations incurred or imposed as a result of the Joint Operation which continue or arise after termination of this Agreement and settlement of all accounts. The amount accrued from time to time for the satisfaction of such continuing obligations shall be classified as Costs hereunder but shall be segregated into a separate account.

#### 10. NET CASH FLOW DEFICITS AND DISTRIBUTIONS

- 10.1 The Operator will submit to the parties on or before the 15th day of each month (the "**Submission Date**") a statement indicating the calculation of Net Cash Flow hereunder for the applicable period (the "**Net Cash Flow Statement**").
- 10.2 If the Net Cash Flow for the period is positive, the amount of such surplus (the "**Net Cash Flow Surplus Amount**") will be paid as a Distribution to the parties on the Submission Date, which Distribution shall be paid by direct bank account transfer or by any other method of payment agreed upon in writing by the parties.
- 10.3 If the Net Cash Flow for any period is negative, each party must contribute its Proportionate Share of such shortfall (the "**Net Cash Flow Deficit Amount**") in accordance with this article 10. Under such circumstances, the Net Cash Flow Statement delivered by the Operator to each party on the Submission Date pursuant to paragraph 10.1 hereof shall be accompanied by an invoice indicating such party's Proportionate Share of the Net Cash Flow Deficit Amount for the applicable period.
- 10.4 Each Participant shall pay its Proportionate Share of the Net Cash Flow Deficit Amount within fifteen (15) days of the Submission Date.
- 10.5 If a Participant at any time fails to pay its Proportionate Share of the Net Cash Flow Deficit Amount in accordance with paragraph 10.4, the Operator may give written notice to such Participant demanding payment and, if such Participant has not paid such amount within fifteen (15) days after receipt of such notice, such Participant shall be deemed to be in default hereunder and the other party which has paid its Proportionate Share of the Net Cash Flow Deficit Amount may give notice in writing to the Operator stating that it will contribute the Proportionate Share of the defaulting party. In such event, the Interests of the parties shall be adjusted in accordance with paragraph 3.2.
- 10.6 If a Participant elects not to contribute the Proportionate Share of the Net Cash Flow Amount of the defaulting Participant pursuant to paragraph 10.5, the Operator shall have the right to curtail the Operating Plan.
- 10.7 Notwithstanding anything herein contained to the contrary, the Operator shall be entitled to incur, and the Participants shall be responsible for their respective Proportionate Shares of, any expenditures which the Operator deems necessary to preserve or protect life, limb or property in respect of the Property and the

operations hereunder and the payment provision of paragraph 10.4 shall apply mutatis mutandis.

## 11. MINE FINANCING

11.1 The contributions of the Participants toward all Costs shall be individually and separately provided by them.

11.2 The parties hereto shall not pledge, mortgage, charge or otherwise encumber their Interest for any purposes whatsoever.

## 12. SURRENDER OF INTEREST

12.1 Any party may, at any time upon notice, surrender its entire Interest to the other parties by giving those parties notice of surrender.

The notice of surrender shall:

- (a) indicate a date for surrender not less than three (3) months after the date on which the notice is given; and
- (b) contain an undertaking that the surrendering party will:
  - (i) satisfy its Proportionate Share, based on its then Interest, of all obligations and liabilities which arose at any time prior to the date of surrender;
  - (ii) if the Operator has not included in Operating Costs the costs of continuing obligations as set out in paragraph 9.7 hereof, pay on the date of surrender its reasonably estimated Proportionate Share, based on the surrendering party's then Interest, of the Costs of rehabilitating the Mine site and of reclamation as at the date of surrender; and
  - (iii) will hold in confidence, for a period of two (2) years from the date of surrender, all information and data which it acquired pursuant to this Agreement.

12.2 Upon the surrender of its entire Interest as contemplated in paragraph 12.1 and upon delivery of a release in writing, in form acceptable to counsel for the other parties, releasing the other parties from all claims and demands hereunder, the surrendering party shall be relieved of all obligations or liabilities hereunder except for those which arose or accrued or were accruing due on or before the date of the surrender.

12.3 A party to whom a notice of surrender has been given as contemplated in paragraph 12.1 may elect, by notice within ninety (90) days to the party which first gave the notice to accept the surrender, in which case paragraphs 12.1 and

12.2 shall apply, or to join in the surrender. If all of the parties join in the surrender, the Joint Operation shall be terminated in accordance with article 16.

### 13. ARBITRATION

- 13.1 Any disagreement, dispute or controversy (hereinafter collectively called a "dispute") between the parties with respect to any matter arising under this Agreement or the construction hereof, will be determined by a single arbitrator to be appointed by the parties hereto.
- 13.2 Any party may refer any such matter to arbitration by written notice to the others and, within ten (10) days after receipt of such notice, the parties will agree on the appointment of an arbitrator. No person will be appointed as an arbitrator hereunder unless such person agrees in writing to act.
- 13.3 If the parties cannot agree on a single arbitrator as provided in paragraph 13.2, or if the person appointed is unwilling or unable to act, either party may apply to a judge of an Ontario court of competent jurisdiction to appoint an arbitrator.
- 13.4 Except as specifically provided in this article 13, an arbitration hereunder shall be conducted in accordance with the *Arbitrations Act* (Ontario) (the "Act"). The arbitrator shall fix a time and place in Toronto, Ontario for the purpose of hearing the evidence and representations of the parties and the arbitrator shall preside over the arbitration and determine all questions of procedure not provided for under such Act or this article 13. After hearing evidence and representations that the parties may submit, the arbitrator shall make an award and reduce the same in writing and deliver one copy thereof to each of the parties. The decision of the arbitrator will be made within forty-five (45) days after his appointment, subject to any reasonable delay due to unforeseen circumstances. The expense of the arbitration shall be paid as specified in the award. The parties agree that the award of the single arbitrator shall be final and binding upon each of them and shall not be subject to appeal.

### 14. ASSIGNMENT OF INTEREST – RIGHT OF FIRST REFUSAL

- 14.1 If a party (hereafter in this subparagraph 14.1 called the "Vendor") shall wish or seek to sell, assign, transfer, convey or otherwise dispose of all or part of its Interest at any time during the currency of this Agreement, the other parties then having an Interest (hereafter in this subparagraph 14.1 called the "Purchasers") shall be entitled to a right of first refusal in respect thereof as follows:
- (a) The Vendor shall give written notice (hereafter called the "Offering Notice") to the Purchasers of the Vendor's desire to sell. The Offering Notice shall describe the Interest or part thereof that is offered for sale, and shall also state the bona fide consideration and other terms on which the sale is desired to be made by the Vendor; excepting that if any element of the consideration for the Interest stipulated in the Offering Notice cannot be assumed or met in kind by the Purchaser or Purchasers,

the Vendor shall, upon notice from the Purchaser or Purchasers to such effect, set out in an amendment to the Offering Notice the bona fide cash value of the said element of the consideration. Included in the Offering Notice shall be written notice (hereinafter called the "list of names") containing the names and addresses of not more than four persons or corporations, who may be parties, to which the Vendor proposes to offer to sell for a price and on terms not less favourable to the Vendor than those contained in the Offering Notice and only persons who are, to the knowledge of the Vendor, reasonably capable of financing such purchase shall be placed on such list.

- (b) The offer in the Offering Notice shall be open for acceptance for a period of sixty (60) days (herein called the "Acceptance Period") after receipt by the Purchasers and shall be irrevocable by the Vendor during the Acceptance Period.
- (c) The Purchasers shall be entitled to acquire all but not part of the Interest offered for sale, and the Purchasers may purchase the amount offered in the ratios they agree upon, or failing agreement, in the ratio of the Interests of those Purchasers who wish to buy what is offered for sale.
- (d) The Purchasers wishing to buy shall give written notice thereof to the Vendor and to all other Purchasers before the expiration of the Acceptance Period. Such notice of acceptance shall state the limit, if any, on the amount of the Interest each of the Purchasers wishes to buy from the Vendor. The other Purchasers may acquire the amount not desired by a Purchaser and shall acquire it by purchase in such ratios as they agree upon prior to the expiration of the Acceptance Period, or in the ratio of their Interests prior to the offer being made.
- (e) During the Acceptance Period, no offer shall be made to anyone on the list of names unless the Vendor first obtains prior written approval from the Purchasers, which approval will not be unreasonably withheld.
- (f) If the Purchasers do not within the Acceptance Period give notice of acceptance for the price and on the terms offered in the Offering Notice, then the Purchasers shall give to the Vendor within thirty (30) days after the conclusion of the Acceptance Period written approval of those names on the list of names to which the Vendor may make the offer to sell for a price and on terms not less favourable to the Vendor than those contained in the Offering Notice, which approval will not be unreasonably withheld. It shall be reasonable to withhold consent if the person or corporation is guilty of committing a crime or is being sued in a civil or criminal court for improper business activity involving allegations of dishonesty or unconscionable practices, or if the purchase of the Interest by the person or corporation would reduce the equity of the objecting party by virtue of the foreign ownership policies or laws of

Canada. The Vendor shall be entitled to offer for sale and to sell the Interest referred to in the Offering Notice to any of the approved parties within a period of 120 days after the expiration of the Acceptance Period.

- (g) If the Vendor does not sell, assign, transfer, convey or otherwise dispose of its Interest or part thereof by one of the methods provided for in this subparagraph 14.1, then any subsequent sale of the same, or of any other Interest which the Vendor wishes to sell, shall again be subject to all of the provisions of this subparagraph 14.1.

14.2 The provisions of subparagraph 14.1 shall not prevent a party from entering into an amalgamation or corporate reorganization which will have the effect in law of the amalgamated or surviving company possessing all the property, rights and interests and being subject to all the debts, liabilities and obligations of each amalgamating or predecessor company or from selling or transferring all of its Interest to an Affiliate provided that in any such event the transferring party and such Affiliate shall be jointly and severally liable for all obligations of the transferring party under this Agreement following such sale or transfer.

14.3 Any and all sales, assignments, transfers and dispositions of Interests made by a party or its successors in interest whether under the provisions of subparagraph 14.1 or subparagraph 14.2 shall be subject to the terms, covenants and conditions of this Agreement and to all applicable laws. It is agreed that the terms of this Agreement shall be deemed to be covenants running with the Property and with all transfers and assignments thereof. The parties in implementation of this subparagraph 14.3 shall require any and all transferees of an Interest hereunder to execute a counterpart of this Agreement thereby agreeing to be bound by the terms and provisions hereof in the same manner and to the same extent as though they had been a party in the first instance.

## 15. SALE OF PROPERTY – RIGHT OF FIRST REFUSAL

15.1 At any time during the subsistence of this Agreement during which Blue Note holds a majority Interest in the Properties, Blue Note may sell or transfer the Property to a third party (the “Assignee”), provided that Blue Note gives notice (the “Sale Notice”) to Breakwater of its intention to sell or transfer the Property to the Assignee. Such Sale Notice shall set forth the cash price at which Blue Note is prepared to sell or transfer the Property (the “Sale Price”), any other applicable terms and conditions, and the proposed date of the sale (the “Sale Date”). In such event, the following provisions shall govern such sale or transfer:

- (a) The Sale Notice shall be deemed to be an irrevocable offer by Blue Note to sell or transfer the Property to Breakwater on the terms set forth therein.

- (b) Within 45 days after receipt of the Sale Notice, Breakwater shall have the right (the “**Right of First Refusal**”) to purchase the Property from Blue Note on payment by Breakwater to Blue Note of the same Sale Price that Blue Note specified in its Sale Notice. Where Breakwater determines to exercise its Right of First Refusal, then, on the Sale Date, Breakwater shall deliver or cause to be delivered to Blue Note payment of the total Sale Price for the Property.
- (c) If Breakwater determines not to exercise its Right of First Refusal herein within the 45 day period set out in subparagraph 16.1(b) above, Blue Note may sell the Property to the Assignee under substantially the same terms and conditions and Sale Price as originally stated in the Sale Notice to Breakwater. If the terms and conditions and/or Sale Price change materially when taken as a whole with respect to the Assignee, then Blue Note shall re-send a new Sale Notice to Breakwater and the provisions of this paragraph 16.1 shall apply.

## 16. TERMINATION OF MINING OPERATIONS

- 16.1 The Operator may, at any time subsequent to the Completion Date, on at least thirty (30) days notice to all Participants, recommend that the Management Committee approve that the Mining Operations be suspended. The Operator’s recommendation shall include a plan and budget (in this article 16 called the “**Mine Maintenance Plan**”), in reasonable detail, of the activities to be performed to maintain the Assets and Property during the period of suspension and the Costs to be incurred. The Management Committee may, at any time subsequent to the Completion Date, cause the Operator to suspend Mining Operations in accordance with the Operator’s recommendation with such changes to the Mine Maintenance Plan as the Management Committee deems necessary. The Participants shall be committed to contribute their Proportionate Share of the Costs incurred in connection with the Mine Maintenance Plan. The Management Committee may cause Mining Operations to be resumed at any time.
- 16.2 The Operator may, at any time following a period of at least ninety (90) days during which Mining Operations have been suspended, upon at least thirty (30) days notice to all Participants, or in the events described in paragraph 16.1, recommend that the Management Committee approve the permanent termination of Mining Operations. The Operator’s recommendation shall include a plan and budget (in this article 16 called the “**Mine Closure Plan**”), in reasonable detail, of the activities to be performed to close the Mine and reclaim the Property. The Management Committee may approve the Operator’s recommendation with such changes to the Mine Closure Plan as the Management Committee deems necessary.
- 16.3 If the Management Committee approves the Operator’s recommendation as aforesaid, it shall cause the Operator to:

- (a) implement the Mine Closure Plan, whereupon the Participants shall be committed to pay, in proportion to their respective Interests, such Costs as may be required to implement the Mine Closure Plan;
- (b) remove, sell and dispose of such Assets as may reasonably be removed and disposed of profitably and such other Assets as the Operator may be required to remove pursuant to applicable environmental and mining laws; and
- (c) sell, abandon or otherwise dispose of the Property.

The disposal price for the Assets and the Property shall be the best price obtainable and the net revenues, if any, from the removal and sale shall be credited to the Participants in proportion to their respective Interests.

- 16.4 If the Management Committee does not approve the Operator's recommendation contemplated in paragraph 16.2, the Operator shall maintain Mining Operations in accordance with the Mine Maintenance Plan.

#### 17. NO AREA OF COMMON INTEREST

- 17.1 During the subsistence of this Agreement, no acquisition, directly or indirectly, of any right to or interest in, or any right to receive proceeds of production from, any mining claim, license, lease, grant, concession, permit, patent, or other form of mineral tenure, regardless of its proximity to the Property, shall be included in or hereafter form part of the Property, nor shall it be subject to the terms of this Agreement.

#### 18. INFORMATION AND DATA

- 18.1 At all times during the subsistence of this Agreement, the duly authorized representatives of each Participant shall, at its and their sole risk and expense, during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the Operator, have access to the Property and to all technical records and other factual engineering data and information relating to the Property which is in the possession of the Operator.
- 18.2 All information and data concerning or derived from the Mining Operations shall be kept confidential and, except to the extent required by law or by regulation of any securities commission or stock exchange, shall not be disclosed to any person other than an Affiliate without the prior written consent of all the Participants, which consent shall not unreasonably be withheld.
- 18.3 Each party hereto shall consult with the other party prior to issuing any press release or other public statement with respect to the Property or the activities of the parties with respect thereto and the disclosing party shall use its best efforts to give to the other party not less than 24 hours prior notice of such press release including a draft of the content of such press release or public announcement.

## 19. LIABILITY OF THE OPERATOR

- 19.1 Subject to paragraph 19.2, each party shall indemnify and save the Operator harmless from and against any loss, liability, claim, demand, damage, expense, injury, or death (including, without limiting the generality of the foregoing, legal fees) resulting from any acts or omissions of the Operator or its officers, employees or agents.
- 19.2 Notwithstanding paragraph 19.1, the Operator shall not be indemnified nor held harmless by any of the parties for any loss, liability, claim, damage, expense, injury or death, (including, without limiting the generality of the foregoing, legal fees) resulting from the negligence or wilful misconduct of the Operator or its officers, employees or agents.
- 19.3 An act or omission of the Operator or its officers, employees or agents done or omitted to be done:
- (a) at the direction, or within the scope of the direction, of the Management Committee; or
  - (b) with the concurrence of the Management Committee; or
  - (c) unilaterally and in good faith by the Operator to protect life or property;
- shall be deemed not to be negligence or wilful misconduct.
- 19.4 The obligation of the other parties to indemnify and save the Operator harmless pursuant to paragraph 19.1 shall be in proportion to its Interest as at the date that the loss, liability, claim, demand, damage, expense, injury or death occurred or arose.
- 19.5 The Operator shall not be liable to any other party nor shall any party be liable to the Operator in contract, tort or otherwise for special or consequential damages, including without limiting the generality of the foregoing, loss of profits or revenues.

## 20. INSURANCE

- 20.1 If not already in place upon the Operative Date, the Management Committee shall cause the Operator to place and maintain with a reputable insurer or insurers such insurance, as the Management Committee in its discretion deems advisable in order to protect the parties, together with such other insurance, as any Participant may by notice reasonably request. The certificate of insurance shall show each Participant as a named insured and the Operator shall provide each Participant with a copy of such certificate.
- 20.2 Paragraph 20.1 shall not preclude any party from placing, for its own account, insurance for greater or other coverage than that placed by the Operator.

## 21. RELATIONSHIP OF PARTIES

- 21.1 The rights, duties, obligations and liabilities of the parties shall be several and not joint nor joint and several, it being the express purpose and intention of the parties that their respective Interests shall be held as tenants in common.
- 21.2 Nothing herein contained shall be construed as creating a partnership of any kind or as imposing upon any party any partnership duty, obligation or liability to any other party hereto.
- 21.3 No party shall use, suffer or permit to be used, directly or indirectly, the name of any other party for any purpose related to the Property, except when required by this Agreement or by any law, by-law, ordinance, rule, order or regulation.

## 22. PARTITION

- 22.1 Each of the parties hereto waives, during the term of this Agreement, any right to partition of the Property or Assets or any part thereof and no party shall seek to be entitled to partition of the Property or the Assets whether by way of physical partition, judicial sale or otherwise during the term of this Agreement.

## 23. TAXATION

- 23.1 All Costs incurred hereunder shall be for the account of the party or parties making or incurring same, if more than one then in proportion to their respective Interests, and each party on whose behalf any Costs have been incurred shall be entitled to claim all tax benefits, write-offs, and deductions with respect thereto.

## 24. FORCE MAJEURE

- 24.1 Notwithstanding anything herein contained to the contrary, if any Participant is prevented from or delayed in performing any obligation under this Agreement, and such failure is occasioned by any cause beyond its reasonable control, excluding only lack of finances, then, subject to paragraph 25.2, the time for the observance of the condition or performance of the obligation in question shall be extended for a period equivalent to the total period the cause of the prevention or delay persists or remains in effect.
- 24.2 Any party hereto claiming suspension of its obligations as aforesaid shall promptly notify the other parties to that effect and shall take all reasonable steps to remove or remedy the cause and effect of the force majeure described in the said notice insofar as it is reasonably able to do and as soon as possible; provided that the terms of settlement of any labour disturbance or dispute, strike or lockout shall be wholly in the discretion of the party claiming suspension of its obligations by reason thereof; and that party shall not be required to accede to the demands of its opponents in any such labour disturbance or dispute,

strike, or lockout solely to remedy or remove the force majeure thereby constituted.

- 24.3 The extension of time for the observance of conditions or performance of obligations as a result of force majeure shall not relieve the Operator from its obligations to keep the Property in good standing.

**25. NOTICE**

- 25.1 All invoices, notices, consents and demands under this Agreement shall be in writing and may be delivered personally or sent by fax or prepaid overnight courier to the address of each party set out herein. Any notice delivered or sent by fax or prepaid overnight courier shall be deemed to have been given and received on the business day next following the date of delivery.

**26. WAIVER**

- 26.1 No waiver, express or implied, by any party to, or any breach by any other party of any or all of its obligations under this Agreement shall be valid and binding unless evidenced in writing. Any waiver shall extend only to the particular breach so waived and shall not limit any rights with respect to any future breach.

**27. AMENDMENTS**

- 27.1 This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any amendment or variation of this Agreement shall be in writing dated subsequent to the Operative Date and duly executed by each of the parties.

**28. TERM**

- 28.1 Unless earlier terminated by agreement of all parties having an Interest or as a result of one party acquiring a one-hundred percent (100%) Interest, the Joint Operation and this Agreement shall remain in full force and effect for so long as any party has any right, title or Interest in the Property. Termination of this Agreement shall not, however, relieve any party from any obligations theretofore accrued but unsatisfied, nor from its obligations with respect to rehabilitation of the Mine site and reclamation.

**29. TIME OF ESSENCE**

- 29.1 Time is of the essence of this Agreement.

**30. SUCCESSORS AND ASSIGNS**

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

**31. GOVERNING LAW**

31.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

**IN WITNESS WHEREOF** the parties hereto have executed this agreement as of the day and year first above written.

**BREAKWATER  
RESOURCES LTD.**

\_\_\_\_\_  
Authorized Signing Officer

\_\_\_\_\_  
Authorized Signing Officer

**BLUE NOTE METALS INC.**

\_\_\_\_\_  
Authorized Signing Officer

## APPENDIX I

### ACCOUNTING PROCEDURE

#### 1. INTERPRETATION

1.1 In this Appendix the following words, phrases and expressions shall have the following meanings:

- (a) "Agreement" means the Agreement to which this Accounting Procedure is attached as Appendix I.
- (b) "Count" means a physical inventory count.
- (c) "Employee" means those employees of the Operator who are assigned to and directly engaged in the conduct of Mining Operations, whether on a full-time or part-time basis.
- (d) "Employee Benefits" means the Operator's cost of holiday, vacation, sickness, disability benefits, field bonuses, amounts paid to and the Operator's cost of established plans for employee's group life insurance, hospitalization, pension, retirement and other customary plans maintained for the benefit of Employees and Personnel, as the case may be, which costs may be charged as a percentage assessment on the salaries and wages of Employees or Personnel, as the case may be, on a basis consistent with the Operator's cost experience.
- (e) "Field Offices" means the necessary sub-office or sub-offices in each place where a Production Program is being conducted or a Mine is being operated.
- (f) "Joint Account" means the books of account maintained by the Operator to record all costs, expenses, credits and other transactions arising out of or in connection with the Mining Operations.
- (g) "Material" means the personal property, equipment and supplies acquired or held, at the direction or with the approval of the Management Committee, for use in the Mining Operations.
- (h) "Offices" means collectively, the Field Offices and the Supervisory Offices.
- (i) "Personnel" means those management, supervisory, administrative, clerical or other personnel of the Operator normally associated with the Supervision Offices whose salaries and wages are charged directly to the Supervision Office in question.
- (j) "Reasonable Expenses" means the reasonable expenses of Employees or Personnel, as the case may be, for which those Employees or Personnel may be reimbursed under the Operator's usual expense account practice.

(k) "Supervision Offices" means the Operator's offices or department within the Operator's offices from which the Mining Operations are generally supervised.

1.2 All capitalized terms used but not defined in this Appendix I shall, unless the context otherwise requires, have the meanings ascribed to them in the Agreement.

## 2. STATEMENTS AND BILLINGS

2.1 The Operator shall, by invoice, charge each Participant with its Proportionate Share of Production Program Costs and Net Cash Flow Deficit Amounts in the manner provided in articles 8 and 10 of the Agreement respectively. Any Net Cash Flow Surplus Amount shall be distributed as a Distribution in accordance with article 10 of the Agreement.

2.2 The Operator shall deliver, with each invoice rendered for Costs incurred a statement indicating:

- (a) a summary of all charges or credits to the Joint Account relating to Material;
- (b) a summary of all other charges and credits to the Joint Account summarized by appropriate classification indicative of the nature of the charges and credits; and
- (c) such additional information as may be reasonably necessary in order for the Participant to understand the nature of the charges and credits.

2.3 The Operator shall deliver with each invoice for an advance of Costs a statement indicating:

- (a) the estimated Production Program Costs or Net Cash Flow Deficit Amounts in accordance with articles 8 and 10 of the Agreement, respectively;
- (b) the addition thereto or subtraction therefrom, as the case may be, made in respect of Production Program Costs actually having been incurred in an amount greater or lesser than the advance which was made by each Participant for the penultimate month preceding the month of the invoice; and
- (c) the advances made by each Participant to date and the Production Program Costs incurred to the end of the penultimate month preceding the month of the invoice.

### 3. DIRECT CHARGES

3.1 The Operator shall charge the Joint Account with the following items:

(a) Contractor's Charges:

All proper Costs relative to the Mining Operations incurred under contracts entered into by the Operator with third parties.

(b) Labour Charges:

(i) The salaries and wages of Employees in an amount calculated by taking the full salary or wage of each Employee multiplied by that fraction which has as its numerator the total time for the month that the Employees were directly engaged in the conduct of Mining Operations and as its denominator the total normal working time for the month of the Employee;

(ii) the Reasonable Expenses of the Employees; and

(iii) Employee Benefits and government contributions in respect of the Employees in an amount proportionate to the charge made to the Joint Account in respect to their salaries and wages.

(c) Office Maintenance:

(i) The cost or a pro rata portion of the costs, as the case may be, of maintaining and operating the Offices. The basis for charging the Joint Account for Office maintenance costs shall be as follows:

(A) the expense of maintaining and operating Field Offices, less any revenue therefrom; and

(B) that position of maintaining and operating the Supervision Offices which is equal to

(1) the anticipated total operating expenses of the Supervision Offices;

(2) the anticipated total staff man days for the Employees whether in connection with the Mining Operations or not;

multiplied by

(3) the actual total time spent on the Mining Operations by the Employee expressed in man days.

(ii) Without limiting the generality of the foregoing, the anticipated total operating expenses of the Supervision Offices shall include:

- (A) the salaries and wages of the Operator's Personnel which have been directly charged to those Offices;
  - (B) the Reasonable Expenses of the Personnel; and
  - (C) Employee Benefits.
- (iii) The Operator shall make an adjustment in respect of the Office Maintenance costs forthwith after the end of each Operating Year upon having determined the actual operating expenses and actual total staff man days referred to in clause 3.1(c)(i)(B) of this Appendix I.
- (d) Material:
- Material purchased or furnished by the Operator for use on the Property as provided under section 7 of this Appendix I.
- (e) Transportation Charges:
- The cost of transporting Employees and Material necessary for the Mining Operations.
- (f) Service Charges:
- (i) The cost of services and utilities procured from outside sources other than services covered by paragraph 3.1(h); and
  - (ii) Use and service of equipment and facilities furnished by the Operator as provided in subsection 5.5 of this Appendix I.
- (g) Damage and Losses to Joint Property:
- All costs necessary for the repair or replacement of Assets made necessary because of damages or losses by fire, flood, storms, theft, accident or other cause. The Operator shall furnish each Participant with written particulars of the damages or losses incurred as soon as practicable after the damage or loss has been discovered. The proceeds, if any, received on claims against any policies of insurance in respect of those damages or losses shall be credited to the Joint Account.
- (h) Legal Expense:
- All costs of handling, investigating and settling litigation or recovering the Assets, including, without limiting the generality of the foregoing, attorney's fees, court costs, costs of investigation or procuring evidence and amounts paid in settlement or satisfaction of any litigation or claims; provided, however, that, unless otherwise approved in advance by the Management Committee, no charge shall

be made for the services of the Operator's legal staff or the fees and expenses of outside solicitors.

(i) Taxes:

All taxes, duties or assessments of every kind and nature (except income taxes) assessed or levied upon or in connection with the Property, the Mining Operations thereon, or the production therefrom, which have been paid by the Operator for the benefit of the parties.

(j) Insurance:

Net premiums paid for:

- (i) such policies of insurance on or in connection with Mining Operations as may be required to be carried in accordance with applicable laws; and
- (ii) such other policies of insurance as the Operator may carry for the protection of the parties in accordance with the Agreement; and

the applicable deductibles in event of an insured loss.

(k) Royalties:

Fees and other similar charges required to be paid for acquiring, recording and maintaining permits, mineral claims and mining leases and royalties which are paid as a consequence of the Mining Operations.

(l) Permits:

Permit costs, fees and other similar charges which are assessed by various governmental agencies.

(m) Shipping Fees:

All costs relating to the shipping of Minerals to the point of sale.

(n) Operator's Fees:

Operator's fees as set out in article 7 of the Agreement.

(o) Marketing and Representation Fees

All fees and charges related to marketing and sale of Minerals (or concentrates derived therefrom).

(p) Banking and Financing Charges

All costs related to banking and financing charges

(q) Other Expenditures:

Such other costs and expenses which are not covered or dealt with in the foregoing provisions of this subsection 3.1 of this Appendix I as are incurred with the approval of the Management Committee for Mining Operations or as may be contemplated in the Agreement.

**4. EXCLUDED CHARGES**

- 4.1 For greater certainty, the Operator shall not charge each Participant for any Costs or expenses incurred by the Operator which are solely related to general overhead and administrative expenses of the Operator (other than the Operator's fees as set out in article 7 of the Agreement) including bonuses, salaries, auditor's fees, legal fees, consulting fees, insurance and rent.

**5. PURCHASE OF MATERIAL**

- 5.1 Subject to subsection 5.4 of this Appendix I, the Operator shall purchase all Material and procure all services required in the Mining Operations.
- 5.2 Materials purchased and services procured by the Operator directly for the Mining Operations shall be charged to the Joint Account at the price paid by the Operator less all discounts actually received.
- 5.3 So far as it is reasonably practical and consistent with efficient and economical operations, the Operator shall purchase, furnish or otherwise acquire only such Material and Assets as may be required for immediate use. The Operator shall attempt to optimize the accumulation of surplus stocks of Material.
- 5.4 Any Participant may sell Material or services required in the Mining Operations to the Operator for such price and upon such terms and conditions as the Management Committee may approve.
- 5.5 Notwithstanding the foregoing provisions of this section 5, the Operator shall be entitled to supply for use in connection with the Mining Operations equipment and facilities which are owned by the Operator and to charge the Joint Account with such reasonable costs as are commensurate with the ownership and use thereof.

**6. DISPOSAL OF MATERIAL**

- 6.1 The Operator, with the approval of the Management Committee may, from time to time, sell any Material which has become surplus to the foreseeable needs of the Mining Operations for the best price and upon the most favourable terms and conditions available.
- 6.2 Any Participant may purchase from the Operator any Material which may from time to time become surplus to the foreseeable need of the Mining Operations for such price and upon such terms and conditions as the Management Committee may approve.

6.3 Upon termination of the Agreement, the Management Committee, acting reasonably, may approve the division of any Material held by the Operator at that date which may be taken by the Participant in lieu of a portion of its Proportionate Share of the net revenues received from the disposal of the Assets and Property. The division of any Material for such purposes shall be for such price and on such terms and conditions as the Management Committee, acting reasonably, may approve.

6.4 The net revenues received from the sale of any Material to third parties or to a Participant shall be credited to the Joint Account.

## 7. INVENTORIES

7.1 The Operator shall maintain records of Material in reasonable detail.

7.2 The Operator shall perform Counts from time to time at reasonable intervals and in connection therewith shall give notice of its intention to perform a Count to each Participant at least thirty (30) days in advance of the date set for performing the Count. Each Participant shall be entitled to be represented at the performance of a Count upon giving notice thereof to the Operator within twenty (20) days of the Operator's notice. A Participant who is not represented at the performance of a Count shall be deemed to have approved the Count as taken.

7.3 Forthwith after performing a Count, the Operator shall reconcile the inventory with the Joint Account and provide each Participant with a statement listing the overages and shortages. The Operator shall not be held accountable for any shortages of inventory except such shortages as may have arisen due to a lack of diligence on the part of the Operator.

## 8. ADJUSTMENTS

8.1 Payment of any invoice or receipt of any Distribution by a Participant shall not prejudice the right of that Participant to protest the correctness of the statement supporting the payment; provided, however, that all invoices and statements presented to each Participant by the Operator during any operating year shall conclusively be presumed to be true and correct upon the expiration of twelve (12) months following the end of the operating year to which the invoice or statements relates, unless within that twelve (12) month period, that Participant gives notice to the Operator protesting the correctness of the invoice or statement and requesting an adjustment of same.

8.2 The Operator shall not adjust any invoice or statement in favour of itself after the expiration of twelve (12) months following the end of the operating year to which the invoice or statement relates.

8.3 Notwithstanding subsections 8.1 and 8.2 of this Appendix I, the Operator may make adjustments to an invoice or statement which arises out of a physical inventory of Material or Assets.

- 8.4 A Participant shall be entitled upon notice to the Operator to request that the independent external auditor of the Operator provide that Participant with its opinion that any invoice or statement delivered pursuant to the Agreement in respect of the period referred to in subsection 8.1 of this Appendix I has been prepared in accordance with this Agreement.
- 8.5 The time for giving the audit opinion contemplated in subsection 8.4 of this Appendix I shall not extend the time for the taking of exception to and making claims on the Operator for adjustment as provided in subsection 8.1 of this Appendix I.
- 8.6 The cost of the auditor's opinion referred to in subsection 8.4 of this Appendix I shall be solely for the account of the Participant requesting the auditor's opinion, unless the audit disclosed a material error adverse to that Participant, in which case the cost shall be solely for the account of the Operator.

## APPENDIX II

### PROPERTY

#### Leases

ML246	Caribou Mining Lease – Exp. October 27, 2008
ML255	Restigouche Mining Lease – Exp. July 17, 2017
SIML2473	Restigouche Industrial Surface Mining Lease – Exp. June 30, 2017
SIML2271	Woodside Brook Industrial Surface Mining Lease (Tailings Area) – Exp. May 31, 2026

#### Mining Claims

##### Restigouche Property (Surrounding Mining Lease) – Exp. July 26, 2006

331904 – 331910  
331915 – 331921  
331942 – 331948  
331964 – 331966  
331969 – 331970  
331988 – 331990  
331993 – 331994  
335612 – 335614  
335617 – 335618  
335636 – 335642

##### Woodside Brook Property (Tailings Area) – Exp. June 15, 2007

334950 – 334969  
334972 – 334977  
334980 – 334986

##### Armstrong Property – Exp. July 29, 2007

335452 – 335469  
335471 – 335473  
335475 – 335497

##### Carroll Armstrong Property – Exp. July 29, 2007

362338 – 362339  
363049  
367917 – 367918  
367923 – 367927

McMaster Property – Exp. July 27, 2006

333600 – 333614  
335436 – 335444

Orvan Brook Property – Exp. July 27, 2006

329142 – 329151  
335445 – 335451

**Real Estate**

All that certain lot, piece and parcel of land and premises owned by the Vendor and situate, lying and being in the County of Restigouche, Province of New Brunswick identified as PID 50072032, being 509 hectares, more or less, together with all other real property owned or controlled by the Vendor and used in connection with the Mine.

## APPENDIX III

### NET SMELTER ROYALTY

#### 1. Interpretation

##### 1.1 **Definitions:** Where used herein:

“**Agreement**” means the Agreement to which this Net Smelter Royalty is attached as Appendix III.

“**Asset Purchase Agreement**” shall mean the asset purchase agreement dated [●], 2006 between CanZinco Ltd. and Blue Note.

“**Blue Note**” shall mean Blue Note Metals Inc.

“**Caribou Mine**” shall mean the Caribou mine site in New Brunswick as more particularly described in the Asset Purchase Agreement.

“**Debenture**” shall mean the subordinated convertible debenture dated [●], 2006 issued by Blue Note to Breakwater Resources Ltd.

“**Net Smelter Return**” shall mean the actual market value received, from time to time, for lead, zinc and copper concentrates or other Products recovered from the ore extracted from the Caribou Mine and the Restigouche Mine by the Operator from any independent smelter, or other purchaser or user, less:

- (a) all actual charges and costs, including insurance premiums, for transportation of Products from the processing facilities on or near the Caribou Mine and the Restigouche Mine to the place of sale, or other disposition, whether transported by the Operator or a third party;
- (b) all actual charges and costs for marketing the Products;
- (c) all actual charges, costs, deductions, and penalties for the treatment, tolling, or smelting of the Products and all costs and charges associated therewith, such as costs and charges with respect to handling, weighing, sampling, assaying and marketing, as well as presentation charges, referee’s fees and expenses, after said Products leave the processing facility on or near the Caribou Mine and the Restigouche Mine; and
- (d) severance, production, *ad valorem*, excise, sales, and any other similar taxes or fees (excluding income taxes) paid to any lawful taxing authority on Products mined from the Property.

If Products are transported, processed or smelted by the Operator or an affiliate thereof, all charges, costs, penalties, and deductions referred to above and used for calculating Net Smelter Return shall be equivalent to the prevailing competitive rates charged by a

person who is not an affiliate in an arm's length transaction for transportation or smelting of a like quantity and quality of such Products.

**"Net Smelter Return Royalty"** shall mean two percent (2%) of the Net Smelter Return.

**"Owner"** shall mean the owner of the Net Smelter Return Royalty.

**"Products"** shall mean all ores, minerals, metals and concentrates and any other mineral resources produced from the Caribou Mine and the Restigouche Mine.

**"Property"** shall mean the Caribou Mine and the Restigouche Mine.

**"Restigouche Mine"** shall mean the Restigouche mine site in New Brunswick as more particularly described in the asset purchase agreement dated [●], 2006 between CanZinco and Blue Note.

1.2 **Interpretation:** Where used herein:

- (a) all other defined terms used in this Appendix which are not defined herein have the meanings ascribed thereto in the Agreement;
- (b) unless something in the subject matter or context is inconsistent therewith, words and expressions importing the singular numbers shall include the plural and *vice versa*, and words and expressions importing the use or any gender shall include the masculine, feminine and neuter genders;
- (c) reference to "Articles" refer to articles herein; references to "Sections" and "subsections" refer to sections and subsections herein; references to "paragraphs" and "subparagraphs" refer to paragraphs and subparagraphs herein; and
- (d) the division of this Appendix into Articles, Sections, subsections, paragraphs, subparagraphs and other portions and the insertion of headings are for convenience only and shall not affect or be taken into account in construing or interpreting anything herein.

1.3 **Currency:** All dollar amounts referred to herein are in Canadian dollars unless specifically stated to be otherwise, for example, as US\$.

2. **Calculation of Net Smelter Return Royalty:** An estimate of quarterly Net Smelter Return Royalty shall be calculated by the Operator at the end of each calendar quarter, and the Net Smelter Return Royalty shall be calculated by the Operator at the end of each calendar year. The estimate of the quarterly Net Smelter Return Royalty and a statement containing the Operator's calculation of the annual Net Smelter Return Royalty shall be transmitted to the Owner, together with payments of Net Smelter Return Royalty, if any, within 60 days of the end of the first three quarters of each calendar year and within ninety (90) days of the end of each calendar year, respectively.

3. **Verification and Disputing of Net Smelter Return Royalty:** The Owner may verify and contest the Operator's calculation of Net Smelter Return Royalty during a period of sixty days (60) following receipt of the annual statement of Net Smelter Return Royalty. The Operator shall maintain adequate records, which shall be made available to the Owner during said six (6) month period to enable the Owner to verify the correctness of the Operator's calculation of the Net Smelter Return Royalty. If the Owner disputes, in writing, the correctness of the Operator's determination of Net Smelter Return Royalty, the determination of whether an entry has been properly categorized or calculated shall be finally made by an independent auditor to be appointed by the Operator. If the Owner does not dispute, in writing, the correctness of the Operator's determination of Net Smelter Return Royalty within six (6) months following the delivery of an annual statement, such annual statement shall be deemed to be correct and the Owner shall waive all of its right to challenge said annual statement.
  
4. **Assignment:** The Net Smelter Return Royalty is a right running with the Caribou Mine and the Restigouche Mine. The Owner shall have no right, title or interest in the Caribou Mine or the Restigouche Mine other than the rights granted herein. The Owner may file or register notice of this Net Smelter Royalty or notice thereof as it deems fit, including with the Mining Recorder in New Brunswick. The Net Smelter Royalty shall be binding on any successor to the Operator and on any assignee or purchaser of the Caribou Mine or the Restigouche Mine. The Owner may not assign its rights under this Net Smelter Royalty to any person without the prior written approval of Blue Note Metals Inc., which approval shall not be unreasonably withheld.

**EXHIBIT C TO THE  
UNSECURED SUBORDINATED CONVERTIBLE DEBENTURE OF  
BLUE NOTE METALS INC.**

**NOTICE OF EXERCISE OF COMMON SHARE  
CONVERSION OPTION**

TO: Blue Note Metals Inc.

The undersigned, the registered Holder of the Unsecured Subordinated Convertible Debenture issued by Blue Note Metals Inc. on [•], 2006 (the "Debenture") hereby irrevocably elects to convert \$\_\_\_\_\_ of the indebtedness outstanding under the Debenture into \_\_\_\_\_ [voting/non-voting] common shares of Blue Note Metals Inc. in accordance with the terms of the Debenture and directs that such common shares be issued and delivered to the Holder at the address indicated below.

A Debenture representing any unconverted indebtedness outstanding under the Debenture, if any, shall be registered in the name of and delivered to the Holder.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200 .

Breakwater Resources Inc.

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

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

**EXHIBIT D TO THE  
UNSECURED SUBORDINATED CONVERTIBLE DEBENTURE OF  
BLUE NOTE METALS INC.**

**FORM OF NSR ROYALTY AGREEMENT**

[See attached]

## NET SMELTER ROYALTY AGREEMENT

THIS AGREEMENT dated \_\_\_\_\_, 2006 is made:

BETWEEN:

BLUE NOTE METALS INC., a Canadian corporation  
("Blue Note")

- and -

BREAKWATER RESOURCES LTD., a Canadian  
corporation ("Breakwater")

### RECITALS

- A. Blue Note has today acquired from CanZinco Inc. ("CanZinco"), a wholly-owned subsidiary of Breakwater, all of CanZinco's right, title and interest in and to assets that make up the Caribou mine and the Restigouche mine sites in New Brunswick, respectively the "Caribou Mine" and the "Restigouche Mine" as more particularly described in the asset purchase agreement dated July 26, 2006 between CanZinco and Blue Note (the "Asset Purchase Agreement") attached as Schedule "A" hereto;
- B. Part of the consideration to be paid by Blue Note to CanZinco for the Caribou Mine and the Restigouche Mine consists of this Agreement, between Blue Note and Breakwater pursuant to a direction from CanZinco to Blue Note;

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

#### 1. Interpretation

- 1.1 **Definitions:** In this Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

"Caribou Mine" shall have the meaning ascribed thereto in the Recitals to this Agreement;

"Debenture" shall mean the subordinated convertible debenture dated \_\_\_\_\_, 2006 issued by Blue Note to Breakwater;

"Net Smelter Return" shall mean the actual market value received, from time to time, for lead, zinc and copper concentrates or other Products recovered from the ore extracted from the Caribou Mine and the Restigouche Mine by Blue Note from any independent smelter, or other purchaser or user, less:

- (a) all actual charges and costs, including insurance premiums, for transportation of Products from the processing facilities on or near the Caribou Mine and the

Restigouche Mine to the place of sale, or other disposition, whether transported by Blue Note or a third party;

- (b) all actual charges and costs for marketing the Products;
- (c) all actual charges, costs, deductions, and penalties for the treatment, tolling, or smelting of the Products and all costs and charges associated therewith, such as costs and charges with respect to handling, weighing, sampling, assaying and marketing, as well as presentation charges, referee's fees and expenses, after said Products leave the processing facility on or near the Caribou Mine and the Restigouche Mine; and
- (d) severance, production, *ad valorem*, excise, sales, and any other similar taxes or fees (excluding income taxes) paid to any lawful taxing authority on Products mined from the Property.

If Products are transported, processed or smelted by Blue Note or an affiliate thereof, all charges, costs, penalties, and deductions referred to above and used for calculating Net Smelter Return shall be equivalent to the prevailing competitive rates charged by a person who is not an affiliate in an arm's length transaction for transportation or smelting of a like quantity and quality of such Products.

"Net Smelter Return Royalty" means (i) one percent (1%) of the Net Smelter Return when the average price for zinc on the London Metal Exchange ("LME") for a quarter for which the calculation is made under section 3 is US \$0.65 to US \$0.70 inclusive per pound; and (ii) two percent (2%) of the Net Smelter Return when the average price for zinc on the LME is greater than US \$0.70 per pound for a quarter for which the calculation is made under section 3. No royalty shall be paid when the average price for zinc on the LME is less than US \$0.65 per pound for a quarter for which the calculation is made under section 3. If the LME ceases to publish a price for zinc, the price quoted by an equivalent market shall be used.

"Restigouche Mine" shall have the meaning ascribed thereto in the Recitals to this Agreement.

"Products" means all ores, minerals, metals and concentrates and any other mineral resources produced from the Caribou Mine and the Restigouche Mine during the term of this Agreement.

#### 1.2 Interpretation: In this Agreement:

- (a) unless something in the subject matter or context is inconsistent therewith, words and expressions importing the singular numbers shall include the plural and *vice versa*, and words and expressions importing the use or any gender shall include the masculine, feminine and neuter genders;
- (b) reference to "Articles" refer to articles of this Agreement; references to "Sections" and "subsections" refer to sections and subsections of this Agreement; references to "paragraphs" and "subparagraphs" refer to paragraphs and subparagraphs of this Agreement; and

- (c) the division of this Agreement into Articles, Sections, subsections, paragraphs, subparagraphs and other portions and the insertion of headings are for convenience only and shall not affect or be taken into account in construing or interpreting this Agreement.
- 1.3 **Currency:** All dollar amounts referred to herein are in Canadian dollars unless specifically stated to be otherwise, for example, as US\$.
- 1.4 **Recitals and Schedule:** The Recitals and Schedule A hereto are incorporated into this Agreement and form parts hereof.
2. **Net Smelter Return Royalty:** Breakwater, shall be entitled to, and is hereby granted by Blue Note, the Net Smelter Return Royalty.
3. **Calculation of Net Smelter Return Royalty:** An estimate of quarterly Net Smelter Return Royalty shall be calculated by Blue Note at the end of each calendar quarter, and the Net Smelter Return Royalty shall be calculated by Blue Note at the end of each calendar year. The estimate of the quarterly Net Smelter Return Royalty and a statement containing Blue Note's calculation of the annual Net Smelter Return Royalty shall be transmitted to Breakwater together with payments of Net Smelter Return Royalty, if any, within 60 days of the end of the first three quarters of each calendar year and within ninety (90) days of the end of each calendar year, respectively.
4. **Verification and Disputing of Net Smelter Return Royalty:** Breakwater may verify and contest Blue Note's calculation of Net Smelter Return Royalty during a period of sixty days (60) following receipt of the annual statement of Net Smelter Return Royalty. Blue Note shall maintain adequate records, which shall be made available to Breakwater during said six (6) month period to enable Breakwater to verify the correctness of Blue Note's calculation of the Net Smelter Return Royalty. If Breakwater disputes, in writing, the correctness of Blue Note's determination of Net Smelter Return Royalty, the determination of whether an entry has been properly categorized or calculated shall be finally made by an independent auditor to be appointed by Blue Note. If Breakwater does not dispute, in writing, the correctness of Blue Note's determination of Net Smelter Return Royalty within six (6) months following the delivery of an annual statement, such annual statement shall be deemed to be correct and Breakwater shall waive all of its right to challenge said annual statement.
5. **Assignment:** The Net Smelter Return Royalty is a right running with the Caribou Mine and the Restigouche Mine. Breakwater shall have no right, title or interest in the Caribou Mine or the Restigouche Mine other than the rights granted in this Agreement. Breakwater may file or register notice of this Agreement or notice thereof as it deems fit, including with the Mining Recorder in New Brunswick. This Agreement shall be binding on any successor to Blue Note and on any assignee or purchaser of the Caribou Mine or the Restigouche Mine. Breakwater may not assign its rights under this Agreement to any person without the prior written approval of Blue Note, which approval shall not be unreasonably withheld.
6. **Representations and Warranties:** Each Party represents and warrants to the other that:

- (a) it is a body corporate duly incorporated and in good standing in its jurisdiction of incorporation and that it is qualified to do business and is in good standing in those jurisdictions where necessary in order to carry out the purposes of this Agreement;
  - (b) it has the capacity and authority to enter into and perform this Agreement and all transactions contemplated herein and that all corporate and other actions required to authorize it to enter into and perform this Agreement have been properly taken;
  - (c) it will not breach any other agreement, or any undertaking, security or arrangement by entering into or performing this Agreement; and
  - (d) this Agreement has been duly executed and delivered by it and is valid and binding upon it in accordance with its terms and that the person executing this Agreement on its behalf is duly authorized to do so.
7. **Term:** The initial term of this Agreement shall be 10 years from the date hereof and shall be automatically renewed for subsequent 10-year terms thereafter until both of the Caribou Mine and the Restigouche Mine have been permanently closed; provided that this Agreement shall terminate on the transfer of a direct interest in the Caribou Mine and the Restigouche Mine to Breakwater pursuant to exercise by Breakwater of its option under section 3.1 of the Debenture.
8. **Governing Laws:** This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the parties hereby irrevocably attorn to the jurisdiction of the courts thereof.
9. **Entire Agreement; Successors and Assigns.** This Agreement contains the entire understanding of the Parties and supersedes all prior agreements and understandings between the Parties relating to the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties.
10. **Counterparts:** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument and any of the Parties hereto may execute this Agreement by signing any such counterpart.

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

**BLUE NOTE METALS INC.**

**BREAKWATER RESOURCES LTD.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**SCHEDULE 1.1(22)**  
**FORM OF ENVIRONMENTAL INDEMNITY**  
**(See attached)**

## ENVIRONMENTAL INDEMNITY

**TO:** CanZinco Ltd. (the "Indemnified Party")

**RE:** Asset Purchase Agreement dated July 26, 2006 between CanZinco Ltd. and Blue Note Metals Inc. (the "Indemnifier")

**DEFINED TERMS** used in this Environmental Indemnity and not specifically defined herein have the meaning ascribed to them in the Asset Purchase Agreement referenced above (the "Agreement"), and defined terms may be used interchangeably in singular or plural form.

**IN CONSIDERATION** of the Indemnified Party closing the transaction provided for in the Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby agrees at its sole cost to indemnify, defend, release and hold harmless the Indemnified Party, their officers, directors, employees, shareholders, nominees, successors or agents from and against any and all liabilities (including strict liabilities and common law liabilities), losses, claims, damages, penalties, fines, judgments, administrative and judicial proceedings and orders, remedial action requirements, enforcement actions, suits, awards, sanctions, fees, costs and expenses, whatsoever whether foreseeable or unforeseeable (including all amounts paid in settlement of, and the costs of defending or denying, such proceedings, claims and suits, legal and other consultant fees, environmental assessments, studies and reports and the costs of enforcing this Environmental Indemnity on a solicitor and client basis) (the "Liabilities") by reason of or resulting from, in connection with or arising in, any manner whatsoever out of the following (collectively, "Environmental Liability"):

the past, present or threatened breach of or non-compliance with any applicable Environmental Laws, regulation, statute, by-law, order, ordinance, assessment or the like related to or arising out of the Assets, including without limitation, the existence in the past, present or future of PCB's or other dangerous or noxious chemicals or materials, liquid wastes, industrial wastes, toxic substances, hazardous wastes or Hazardous Substances as defined in or pursuant to any law, regulation or order (all of which is hereafter referred to as "Contaminants") being or having been located or stored in, on or under, the Caribou and Restigouche mines in New Brunswick described in Schedule 1.1(6) to the Agreement (the "Property") or any other nearby property or the discharge of any Contaminants from or onto the Property or nearby property or into the environment and any remedial action or other liability for cleanup of any such Contaminants.

This Environmental Indemnity is absolute and unconditional, and the obligations of the Indemnifier shall arise upon any actual or alleged discovery of facts or circumstances giving rise to an Environmental Liability whether or not any governmental authority or any other person has taken or threatened any action in respect thereof and shall not be released, impaired or otherwise diminished by any act of the Indemnified Party including, without limitation, the granting of any

indulgence by or waiver of the Indemnified Party, or any failure by the Indemnified Party to enforce any terms, covenants or conditions contained in the Agreement.

This Environmental Indemnity shall survive the transfer, conveyance, assumption, or assignment of the Assets and Assumed Liabilities.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

BLUE NOTE METALS INC.

Per \_\_\_\_\_ c/s

Name:

Title:

Per \_\_\_\_\_ c/s

Name:

Title

I/We have authority to bind the Corporation

SCHEDULE 1.1(39)

NOTICES

Nil.

## SCHEDULE 1.1(44)

### PERMITTED LIENS

1. Existing restrictions, limitations, exceptions and conditions reserved in favour of the Crown.
2. Encumbrances arising under provisions of applicable legislation governing, among other things, the location, recording, transferring and maintenance of mineral claims.
3. Rights of way in favour of the utilities and public authorities, zoning and other municipal or government restrictions.
4. Claim of right, title or jurisdiction which may be made or established to or over any lands, water or products harvested therefrom by any aboriginal peoples by virtue of and relying solely upon their status as aboriginal people.
5. Net smelter return and \$0.50 per tonne toll payable to the Government of New Brunswick pursuant to the Letter Agreement dated August 16, 1995, with the Province of New Brunswick.
6. Royalty Interest claimed by The Fern Trust and Merlin Group Securities.
7. Royalty Interest granted to Kalwea Financial Corp.
8. Net Profit Royalty Interest granted to the trustee for Mineral Properties Liquidating Trust et al.

**SCHEDULE 3.2(1)**

**FORM OF GENERAL CONVEYANCE AND  
ASSUMPTION OF LIABILITIES AGREEMENT**

**(See attached)**

## GENERAL CONVEYANCE AND ASSUMPTION OF LIABILITIES AGREEMENT

This General Conveyance and Assumption of Liabilities Agreement dated \_\_\_\_\_, 2006 is made

BETWEEN

CANZINCO LTD. (the "Vendor")

- and -

BLUE NOTE METALS INC. (the "Purchaser")

### RECITALS

1. The Vendor and the Purchaser are parties to an agreement dated July 26, 2006 (the "Purchase Agreement") pursuant to which, the Vendor has agreed to sell to the Purchaser and the Purchaser has agreed to purchase from the Vendor certain assets, undertakings, properties, interests and rights, other than certain excluded assets, and the Purchaser has agreed to assume certain liabilities, all on the terms and conditions more particularly set out therein.
2. This General Conveyance and Assumption of Liabilities Agreement (the "Conveyance") is delivered pursuant to Sections 3.2(1) and 3.3(1) of the Purchase Agreement.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party, the Parties agree as follows:

1. **Definitions.** All capitalized terms used but not defined in this Conveyance have the meanings set out in the Purchase Agreement.
2. **Conveyance.** The Vendor hereby absolutely and irrevocably grants, bargains, sells, assigns, transfers, conveys and sets over the Assets, together with all the Vendor's right, title, interest, property, claim and demand in and to the Assets, to the Purchaser, its successors and assigns, to have and to hold the Assets and all such right, title, interest, property, claim and demand unto and to the use of the Purchaser, its successors and assigns.
3. **Further Assurances.** The Vendor shall from time to time and at all times hereafter, upon every reasonable request of the Purchaser, promptly execute and deliver or cause to be executed and delivered all such further documents, deeds, assurances and instruments and shall do or cause to be done all such further acts and things as may be reasonably required by the Purchaser to give effect to this Conveyance, whether for more effectually and completely vesting in the Purchaser the Assets or for the purpose of registration or otherwise.

4. **Power of Attorney.** In any instance where the Vendor has not complied with the provisions of Section 3 hereof, the Vendor on behalf of itself and its successors hereby irrevocably appoints the President for the time being of the Purchaser as the true and lawful attorney of the Vendor to do, sign and execute all acts, deeds, assurances and other instruments which in the discretion of the said attorney may be necessary, desirable or expedient for the purpose of vesting in the Purchaser the Assets. Such power of attorney, being coupled with an interest, shall not be revoked by the dissolution of the Vendor and may be exercised in the name and on behalf of the Purchaser.

5. **Non-Transferable and Non-Assignable Rights.** Nothing in this Conveyance shall be construed as an assignment or transfer to the Purchaser of, or an attempt to assign or transfer to the Purchaser, any claim, right or benefit arising under or resulting from such Assets (collectively, the "Non-Assignable Rights") that are not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of such Non-Assignable Right would constitute a breach of any obligation under, or a violation of, any Applicable Law unless the approval, consent or waiver of such third Person is obtained. The Vendor confirms and acknowledges that the provisions of Section 3.6 of the Purchase Agreement apply and shall continue to apply to all Non-Assignable Rights.

6. **Assumption of Liabilities.** The Purchaser hereby assumes and agrees to pay, be liable for, perform, observe, discharge and fully satisfy, when due, the Assumed Liabilities.

7. **Conveyance.** This Conveyance is delivered pursuant to, and is subject to all of the terms and conditions contained in, the Purchase Agreement. In the event of any inconsistency between the provisions of this Conveyance and the provisions of the Purchase Agreement, the provisions of the Purchase Agreement shall prevail.

8. **Governing Law.** This Conveyance shall be governed by and construed in accordance with the laws of the province of Ontario and the laws of Canada applicable in such Province and shall be treated in all respects as an Ontario contract.

9. **Severability.** Any provision of this Conveyance which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Conveyance, all without affecting the remaining provisions of this Conveyance or affecting the validity or enforceability of such provision in any other jurisdiction.

10. **Successors and Assigns.** This Conveyance shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

11. **Counterparts.** This Conveyance may be executed in of counterparts, each of which shall be deemed to be an original and both of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Conveyance, a Party may send a copy of its original signature on the execution page hereof to the other Party by facsimile transmission and such transmission shall constitute delivery of an executed copy of this Conveyance to the receiving Party.

IN WITNESS WHEREOF the Parties have executed this Conveyance.

**CANZINCO LTD.**

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

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

**BLUE NOTE METALS INC.**

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

**SCHEDULE 3.2(4)**

**VENDOR'S BRING DOWN CERTIFICATE**

**(See attached)**

BRING-DOWN OFFICER'S CERTIFICATE

OF

CANZINCO LTD. ("VENDOR")

TO: BLUE NOTE METALS INC. ("PURCHASER")

THIS OFFICER'S CERTIFICATE is executed and delivered pursuant to Section 3.2(4) of the purchase agreement (the "Purchase Agreement") dated as of July 26, 2006 by and between the Purchaser and Vendor. Terms used in this certificate and not otherwise defined herein shall have the meanings set forth in the Purchase Agreement.

I, Bill Heath, do hereby certify, intending same to be relied upon by you without further enquiry, that I am the President of the Vendor and that, as such, I am authorized to execute this certificate on behalf of the Vendor and do further certify, on behalf of the Vendor and not in my personal capacity, that:

- (i) the representations and warranties set forth in Section 5.1 of the Purchase Agreement are true and correct, with the same force and effect as if such representations and warranties were made at and as of the date hereof; and
- (ii) all terms, covenants, undertakings and agreements set forth in the Purchase Agreement to be complied with or performed by the Vendor at or prior to Closing have been complied with or performed by the Vendor prior to Closing.

IN WITNESS WHEREOF, I have executed this certificate on behalf of the Vendor this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Bill Heath  
President

**SCHEDULE 3.2(5)**

**VENDOR'S ACCREDITED INVESTOR CERTIFICATE**

**(See attached)**

ACCREDITED INVESTOR CERTIFICATE

TO: Blue Note Metals Inc.

AND TO: Blake, Cassels & Graydon LLP

The undersigned represents, warrants and covenants and certifies to Blue Note Metals Inc. and acknowledges that Blue Note Metals Inc. is relying thereon that the undersigned is an "accredited investor", as such term is defined in National Instrument 45-106 – *Registration and Prospectus Exemptions*, and, as of the date below, the undersigned falls within one or more of the following categories checked below:

Please check applicable category(ies):

- (a) a Canadian financial institution, or an authorized foreign bank named in Schedule III of the *Bank Act* (Canada),
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),
- (c) a subsidiary of any person referred to in paragraphs (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,
- (d) a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, other than a person registered solely as a limited market dealer under one or both of the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador),
- (e) an individual registered or formerly registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d),
- (f) the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada,
- (g) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec,
- (h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,
- (i) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a pension commission or similar regulatory authority of a jurisdiction of Canada,
- (j) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds CAD\$1,000,000,<sup>1</sup>

<sup>1</sup> For purposes of this certificate, the term "financial assets" means cash, securities, or any contract of insurance or deposit or evidence thereof that is not a security for the purposes of securities legislation, (ii) "related liabilities" means liabilities incurred

- (k) an individual whose net income before taxes exceeded CAD\$200,000 in each of the two most recent calendar years or whose net income before taxes combined with that of a spouse exceeded CAD\$300,000 in each of the two most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,
- (l) an individual who, either alone or with a spouse<sup>2</sup>, has net assets of at least CAD\$5,000,000,
- (m) a person, other than an individual or investment fund, that has net assets of at least CAD\$5,000,000 as shown on its most recently prepared financial statements,
- (n) an investment fund that distributes or has distributed its securities only to (i) a person that is or was an accredited investor at the time of the distribution, (ii) a person that acquires or acquired securities in the circumstances referred to in sections 2.10 of NI 45-106 [Minimum amount investment] and 2.19 of NI 45-106 [Additional investment in investment funds], or (iii) a person described in paragraph (i) or (ii) that acquires or acquired securities under section 2.18 of NI 45-106 [Investment fund reinvestment],
- (o) an investment fund that distributes or has distributed securities under a prospectus in a jurisdiction of Canada for which the regulator or, in Québec, the securities regulatory authority, has issued a receipt,
- (p) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be,
- (q) a person acting on behalf of a fully managed account<sup>3</sup> managed by that person, if that person (i) is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction, and (ii) in Ontario, is purchasing a security that is not a security of an investment fund,
- (r) a registered charity under the *Income Tax Act* (Canada) that, in regard to the trade, has obtained advice from an eligibility adviser or an adviser registered under the securities legislation of the jurisdiction of the registered charity to give advice on the securities being traded,
- (s) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (d) or paragraph (i) in form and function,

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or assumed for the purpose of financing the acquisition or ownership of financial assets and liabilities that are secured by financial assets.

<sup>2</sup> For purposes of this certificate, the term "spouse" means an individual who (i) is married to another individual and is not living separate and apart within the meaning of the *Divorce Act* (Canada) from the other individual, (ii) is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender, or (iii) in Alberta, is an individual referred to in paragraph (i) or (ii) above, or is an adult interdependent partner within the meaning of the *Adult Interdependent Relationships Act* (Alberta).

<sup>3</sup> For purposes of this certificate, a "fully managed account" means an account of a client for which a person makes the investment decisions if that person has full discretion to trade in securities for the account without requiring the client's express consent to a transaction.

- (t) a person in respect of which all of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are persons that are accredited investors,
- (u) an investment fund that is advised by a person registered as an adviser or a person that is exempt from registration as an adviser, or
- (v) a person that is recognized or designated by the securities regulatory authority or, except in Ontario and Québec, the regulator as (i) an accredited investor, or (ii) an exempt purchaser in Alberta or British Columbia.

This certificate is dated as of \_\_\_\_\_, 2006.

Name of Subscriber:

**Breakwater Resources Ltd.**

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

**SCHEDULE 3.2(10)**  
**PARENT'S ACKNOWLEDGMENT**

**(See attached)**

**ACKNOWLEDGEMENT**

**TO: BLUE NOTE METALS INC. (the "Purchaser")**  
**RE: ASSET PURCHASE AGREEMENT DATED JULY 26, 2006 BETWEEN THE**  
**PURCHASER AND CANZINCO LTD. (the "Vendor"), (the "Asset Purchase**  
**Agreement")**

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The undersigned acknowledges that the Vendor is presently indebted to the undersigned and that security over certain property of the Vendor has been granted by the Vendor to the undersigned with respect to such indebtedness.

In connection with the Asset Purchase Agreement, the Vendor proposes to sell to the Purchaser all of its right, title and interest in and to all the Assets, as defined in the Asset Purchase Agreement. The undersigned hereby confirms that it has agreed to discharge and release all security interests it holds in the Assets and that as of the date hereof it has no right, title or interest in any of the Assets (other than any rights arising pursuant to the Asset Purchase Agreement or any agreement related thereto).

This acknowledgment will enure and continue in effect for the benefit of the addressee listed above and its successors and assigns.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

**BREAKWATER RESOURCES INC.**

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

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

**SCHEDULE 3.2(11)**  
**MARKETING AGREEMENT**

**(See attached)**

## MARKETING AGENCY AGREEMENT

This Agreement made as of \_\_\_\_\_ day of July, 2006.

**BETWEEN**

**BREAKWATER RESOURCES LTD.**

(hereinafter called "Breakwater")

- and -

**BLUE NOTE METALS INC.**

(hereinafter called "Blue Note")

WHEREAS Blue Note mines and produces lead, copper and zinc concentrate (the "Concentrates") at its Caribou and Restigouche Mines in New Brunswick (as further described on Schedule A hereto, the "Mines"); and

WHEREAS Blue Note desires to appoint Breakwater as marketing agent for the sale of the Concentrates produced from the mine and Breakwater has agreed to accept such appointment.

NOW THEREFORE this Agreement witnesses that in consideration of the covenants and agreements contained herein, it is agreed by and between the parties hereto as follows:

1. APPOINTMENT

1.1 Blue Note appoints Breakwater and Breakwater agrees to act as exclusive agent for the marketing of all the Concentrates produced by Blue Note provided that if Breakwater is unable to market the Concentrates, Blue Note may otherwise market the Concentrates.

2. MARKETING PROGRAM

2.1 Breakwater shall discuss with Blue Note and agree to a comprehensive marketing program for the Concentrates. This program will include strategy related to targeted sales profiles, commercial term objectives and risks management strategies related to concentrate and freight markets. (the "Marketing Program")

2.2 The Marketing Program will also set out the merits of combinations and swaps of the Concentrates by time, geography and quality that may bring extra returns to the Mine.

The Marketing Program shall be regularly reviewed to take account of changing market conditions and Blue Note's changing needs.

- 2.3 It is understood and agreed that the Marketing Program in relation to the sale of the Concentrates shall at all times be subject to the approval of Blue Note.

3. **BREAKWATER'S DUTIES**

- 3.1 Breakwater agrees to provide Blue Note with Breakwater's understanding of the metal, concentrate and freight markets, and to render the following services to and on behalf of Blue Note at Breakwater's cost:

- (a) solicit terms and negotiate sales contracts with buyers (the "Contracts"), copies of all such Contracts are to be promptly forwarded to Blue Note by Breakwater; provided however that any commercial terms contained therein beyond the pre-agreed parameters agreed to by the parties from time to time, are to be subject to the written approval of Blue Note. It is further understood that Blue Note will be fully informed and involved during the negotiation process;
- (b) administer the Contracts, including but not limited to umpire assaying, settlements and issuing invoices;
- (c) assist in the collection of sales proceeds and provide credit management recommendations;
- (d) provide logistics management services;
- (e) provide cash flow and marketing forecasting;
- (f) provide market intelligence and strategic analysis as requested by Blue Note from time to time;
- (g) comply with the Marketing Program; and
- (h) provide a contact person to act as the liaison person for all issues arising out of this Agreement

4. **BLUE NOTE'S DUTIES**

- 4.1 Blue Note shall:

- (a) regularly advise Breakwater of the qualities and quantities of Concentrates available for shipment;
- (b) promptly notify Breakwater of any circumstances affecting the production and/or shipment of the Concentrates;

- (c) refer to Breakwater all inquiries received from prospective or actual buyers for concentrates from the mine;
- (d) promptly pay (i) all fees due to Breakwater and (ii) other fees negotiated by Breakwater on Blue Note's behalf, such as freight invoices, umpire invoices, etc.
- (e) make available a contact at the mine to act as a liaison and facilitate the day to day execution of this agreement.

## 5. FEES

- 5.1 Blue Note shall pay to Breakwater CDN. \$1.00 (one dollar) per wet metric tonne of all sales of Concentrate produced at the Mine (the "Rate"), up to a maximum aggregate annual (based on 365 day periods commencing on the date of this Agreement) amount of CDN. \$150,000 (one hundred and fifty thousand dollars) (the "Maximum Fee").
- 5.2 Notwithstanding the foregoing, once during the second and once during the third years (based on 365 day periods commencing on the date of initial shipment of the Concentrate) following the date of initial shipment of the Concentrate, Breakwater shall have the right on 15 days notice by Breakwater to Blue Note to increase each of the Rate and the Maximum Fee by up to a maximum of 15% (fifteen per cent) (an "Increase") in aggregate over the term of the contract.
- 5.3 An Increase shall only be permitted in the event that the costs incurred by Breakwater in its performance of its obligations under this Agreement justify such Increase, which shall be determined by Breakwater. Breakwater will fully disclose and justify to Blue Note the reasons for the Increase provided however that Blue Note will not be permitted to refuse the Increase.
- 5.4 Subject to section 5.5, the fees based on the Rate payable pursuant to Section 5.1, shall be fully earned and due and payable by Blue Note to Breakwater upon Blue Note's receipt of first provisional payment basis loaded weights.
- 5.5 Upon the execution of this Agreement by the parties, Blue Note shall pay Breakwater \$7,500 per month (the "Monthly Fee") payable on the 15th day of the month following the month in which the services were performed. The payment of this Monthly Fee shall terminate on the date of the initial shipment of the Concentrate.

## 6. DURATION

- 6.1 This Agreement shall commence on the date hereof and shall continue in force and effect for 3 years following the date of the initial shipment of Concentrate (the "Term").

6.2 Notwithstanding the foregoing, Blue Note may terminate this Agreement at any time by paying to Breakwater 33% of the Fees (including any Increase, if applicable) owing under this Agreement.

6.3 The Term may be extended by mutual and written consent of the parties.

6.4 Breakwater shall have the right to terminate this Agreement if Blue Note is in default of this Agreement and the default has not been cured within 90 days or upon providing six months notice.

## 7. QUALITY

7.1 Blue Note undertakes and agrees that its production of the concentrates for committed sales agreements will meet the specifications of the Concentrates agreed to be delivered under contracts (the "Specifications").

7.2 In the event Blue Note recognizes any deviation from the Specifications, Blue Note will promptly advise Breakwater of such deviation in order that Breakwater may so advise purchasers of the products.

## 8. RISK

8.1 Breakwater shall take every reasonable precaution on behalf of Blue Note to guard against bad debts and late payments for Concentrates, but the risk of non-payment or late payment by buyers shall be that of Blue Note. Blue Note hereby agrees to indemnify and defend and save harmless Breakwater from all liabilities, judgments, orders or claims which may be made or purported to be made against Breakwater as a result of the performance of its duties hereunder and the actions, inactions, negligence, omission or other conduct of Blue Note in respect of any contract, the performance thereof, or any production of Concentrate (including failure to meet Specifications) or business activity in connection with the Mine. However, Breakwater will make every reasonable effort to assist Blue Note in defending against any such actions or in resolving customer concerns and disputes.

## 9. EXPENSES OF THE PARTIES

9.1 Breakwater shall be responsible for paying on its own account all costs relating to the preparation of Contracts and transportation contracts and for communication and travel costs related to selling, shipping, market research and market intelligence. This will not include any travel or other costs which Blue Note elects to incur related to this contract.

9.2 All costs related to the production and shipment of concentrates shall be for Blue Note's account.

10. **MULTIPLE AGENCY**

10.1 It is recognized by Blue Note that Breakwater could be acting for itself, its affiliates or other third parties in connection with the sale of base metal concentrates. Blue Note expressly acknowledges and agrees that Breakwater shall be free to so act for itself, its affiliates and other third parties, and to continue to so act as agent for such companies and to continue to conduct its business in the ordinary course and notwithstanding this to act as marketing agent for Blue Note as contemplated by this Agreement. Notwithstanding the above, Breakwater will represent Blue Note in a fair and equitable manner.

11. **FORCE MAJEURE**

11.1 It is understood and agreed that the obligations of the parties herein are subject to force majeure.

11.2 Breakwater will include in all Contracts a force majeure clause.

12. **CONFIDENTIALITY**

Each of the parties covenant and agree to endeavour to restrict the distribution of commercial and marketing information to those employees of each such party who in the opinion of such party have a "need to know" such information. Except as required during commercial discussions and negotiations, all business process or production related matters disclosed by Blue Note to Breakwater as a result of this agreement will be treated as confidential information and will not be disclosed without Blue Note's prior written consent.

13. **NOTICES**

13.1 Any notice or other communication required to be given hereunder by either party shall be in writing and will be deemed to have been well and sufficiently given to the other party.

**BREAKWATER RESOURCES LTD.**

95 Wellington Street West, Suite 950  
Toronto, Ontario M5J 2N7  
Canada

Telephone: 416-363-4798  
Fax: 416-363-1290

**BLUE NOTE METALS INC.**

2 Place Alexis Nihon, Suite 1110  
3500 de Maisonneuve Blvd. West  
Westmont, Quebec H3Z 3C1

Telephone: 514-486-3095  
Fax: 514-486-1317

Or at such substitute address as such party may from time to time direct in writing, and any such notice or other communication will be deemed to have been received, if delivered or faxed, on the next business day after the time of delivering or faxing, and if mailed, on receipt thereof.

14. NATURE OF RELATIONSHIP

This Agreement shall not constitute the parties hereto as "partners" or as a "joint venture". Each party shall have the right independently to engage in and receive full benefits from business activities (and each party acknowledges that the other is or may be engaged in business activities which are directly competitive with the business activities of the other party) whether or not competitive with the production of Concentrate or the business of the other party. The doctrines of "corporate opportunity" or "business opportunity" shall not be applied to any other activity, venture or operation of any party and no party shall have any obligation to the other party with respect to any opportunity to engage in any business activity or transaction.

15. NON-SOLICITATION

15.1 Without Breakwater's prior written consent, for a period commencing on the date hereof and ending one year from the date upon which this agreement is terminated neither Blue Note nor any of its representatives will directly or indirectly knowingly solicit for employment or any other engagement, the services of any person who is now directly employed in a marketing function by Breakwater.

16. ASSIGNS

Neither party may assign this Agreement without the written consent of the other party, except to a successor corporation acquiring all or substantially all of the assignor's assets or to an affiliate which latter assignment shall not release the relevant party from its obligations herein. This Agreement will bind and enure to the benefit of the parties hereto and their permitted successors and assigns.

17. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the law of the Province of Ontario and the laws of Canada applicable therein.

18. COUNTERPARTS

In witness whereof the parties hereto have executed this Agreement.

**BREAKWATER RESOURCES LTD.**

Per \_\_\_\_\_

Name:

Title:

I have the authority to bind the Corporation.

Per \_\_\_\_\_

Name:

Title:

I have the authority to bind the Corporation.

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

**BLUE NOTE METALS INC.**

Per: \_\_\_\_\_

Name:

Title:

I have the authority to bind the Corporation.

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

**SCHEDULE 3.3(3)**

**PURCHASER'S BRING DOWN CERTIFICATE**

**(See attached)**

**BRING-DOWN OFFICER'S CERTIFICATE**  
**OF**  
**BLUE NOTE METALS INC. ("PURCHASER")**

**TO: CANZINCO LTD. ("VENDOR")**

**THIS OFFICER'S CERTIFICATE** is executed and delivered pursuant to Section 3.3(2) of the purchase agreement (the "**Purchase Agreement**") dated as of July 26, 2006 by and between the Purchaser and Vendor. Terms used in this certificate and not otherwise defined herein shall have the meanings set forth in the Purchase Agreement.

I, Michael Judson, do hereby certify, intending same to be relied upon by you without further enquiry, that I am the Chief Executive Officer of the Purchaser and that, as such, I am authorized to execute this certificate on behalf of the Purchaser and do further certify, on behalf of the Purchaser and not in my personal capacity, that:

- (i) the representations and warranties set forth in Section 5.2 of the Purchase Agreement are true and correct, with the same force and effect as if such representations and warranties were made at and as of the date hereof; and
- (ii) all terms, covenants, undertakings and agreements set forth in the Purchase Agreement to be complied with or performed by the Purchaser at or prior to Closing have been complied with or performed by the Purchaser prior to Closing.

**IN WITNESS WHEREOF**, I have executed this certificate on behalf of the Purchaser this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Michael Judson  
Chairman & Chief Executive Officer

**SCHEDULE 4.1(12)**  
**PURCHASER'S LICENSES AND PERMITS**

- I. All permits required by the New Brunswick government.

SCHEDULE 4.1(13)

OUTSTANDING ENCUMBRANCES

1. Montreal Trust Company

SCHEDULE 5.1(4)  
SUFFICIENCY OF ASSETS

Nil.

WITHOUT PRIOR WRITTEN APPROVAL OF THE TSX VENTURE EXCHANGE AND COMPLIANCE WITH ALL APPLICABLE SECURITIES LEGISLATION, THE SECURITIES REPRESENTED BY THIS DEBENTURE AND ANY SHARES ACQUIRED UPON THE CONVERSION OF THE DEBENTURE MAY NOT BE SOLD, TRANSFERRED, HYPOTHECATED OR OTHERWISE TRADED ON OR THROUGH THE FACILITIES OF THE TSX VENTURE EXCHANGE OR OTHERWISE IN CANADA OR TO OR FOR THE BENEFIT OF A CANADIAN RESIDENT UNTIL DECEMBER 2, 2006.

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE DECEMBER 2, 2006.

BLUE NOTE METALS INC.  
2, Place Alexis-Nihon, 3500 de Maisonneuve West  
Suite 1110  
Montreal, Quebec  
H3Z 3C1

#### UNSECURED SUBORDINATED CONVERTIBLE DEBENTURE

Principal CDN\$15,000,000

August 1, 2006

FOR VALUE RECEIVED, Blue Note Metals Inc. (the "Corporation"), promises to pay to or to the order of Breakwater Resources Ltd. (the "Holder") at 95 Wellington Street West, Suite 950, Toronto, Ontario M5J 2N7, or such other place and/or person as the Holder may by notice in writing to the Corporation direct, the principal sum of FIFTEEN MILLION DOLLARS in lawful money of Canada (CDN\$15,000,000) (the "Principal Amount"). Subject to the provisions of this debenture (this "Debenture"), the Principal Amount shall become due and payable on August 1, 2011 (the "Maturity Date").

This Debenture is subject to the terms and conditions set out below.

#### ARTICLE 1

#### INTERPRETATION

##### 1.1 Definitions

As used herein, the following expressions shall have the following meanings:

- (a) "Affiliate" has the meaning attributed to it in the *Canada Business Corporations Act*, as amended.
- (b) "Amendment" has the meaning ascribed thereto in Subsection 8.2(c).
- (c) "Approvals" has the meaning ascribed thereto in Subsection 8.2(c).
- (d) "Assignee" has the meaning ascribed thereto in Section 10.2.

- (d) "Assignee" has the meaning ascribed thereto in Section 10.2.
- (e) "Asset Purchase Agreement" means the asset purchase agreement dated July 26, 2006 among the Corporation, as purchaser and CanZinco Ltd., as vendor, pursuant to which the Corporation acquired a one hundred percent (100%) interest in the Properties.
- (f) "Business Day" means a day on which banks are generally open for the transaction of commercial business in Toronto, Ontario but does not in any event include a Saturday or a Sunday or a statutory holiday under applicable law.
- (g) "Business Plan" means The Business Plan For The Acquisition And Re-Opening Of The Caribou Mine And Restigouche Mine And Related Assets of CanZinco in New Brunswick dated March 2006 which outlines the re-opening of the Properties.
- (h) "Capital Reorganization" has the meaning ascribed thereto in Subsection 4.4(b).
- (i) "Cash Redemption Price" has the meaning ascribed thereto in Subsection 5.1(a).
- (j) "CDN \$" means Canadian Dollars.
- (k) "Circular" has the meaning ascribed thereto in Subsection 8.2(c).
- (l) "Commencement of Commercial Production" means the day determined by the Corporation as the first day of any three month period throughout which the Properties operate, during each month of the three-month period, at sixty percent (60%) or more of its planned capacity as set out in the Business Plan.
- (m) "Common Share Reorganization" has the meaning ascribed thereto in Subsection 4.4(a).
- (n) "Common Shares" means collectively, the Voting Common Shares and the Non-Voting Common Shares.
- (o) "Common Share Conversion Option" has the meaning ascribed thereto in Section 4.1.
- (p) "Consent Notice" has the meaning ascribed thereto in Subsection 5.1(c).
- (q) "Conversion Price" means the price per share at which the Common Shares may be issued from time to time upon conversion of this Debenture into Common Shares in accordance with the provisions of Article 4, being, subject to Section 4.4, CDN\$0.36.
- (r) "Corporation" means Blue Note Metals Inc., a corporation incorporated pursuant to the laws of Canada.
- (s) "Corporation Assignee" has the meaning ascribed thereto in Section 11.1.
- (t) "Corporation's Interest" has the meaning ascribed thereto in Section 11.1.
- (u) "Corporation Redemption Date" has the meaning ascribed thereto in Section 5.2.

- (v) "Date of Common Share Conversion" has the meaning ascribed thereto in Subsection 4.2(d).
- (w) "Date of Property Interest Conversion" has the meaning ascribed thereto in Subsection 3.2(c).
- (x) "Environmental Law" means all applicable federal, provincial, municipal and local laws, statutes, ordinances, by-laws, regulations, orders, directives and decisions, rendered by any ministry, department or administrative or regulatory agency relating to the protection of the environment, or pollutants, contaminants, chemicals, or industrial, toxic or hazardous wastes or substances.
- (y) "Event of Default" has the meaning ascribed thereto in Section 9.1.
- (z) "Exploration Costs" means all costs, outlays and expenses of whatever kind or nature spent or incurred directly or indirectly in connection with the exploration of the Properties including, without limiting the generality of the foregoing, moneys expended related to exploration in maintaining the Properties in good standing and costs incurred in connection with complying with Environmental Laws, all insurance costs, moneys expended in doing and filing assessment work, expenses paid for or incurred in connection with any program of surface or underground prospecting, exploring, geophysical, geochemical and geological surveying, drilling, drifting, raising and other underground work, assaying, mineralogical, engineering and environmental studies, data preparation and analysis, submissions to government agencies, all associated sales taxes including the goods and services tax, paying the fees, wages, salaries, travelling expenses and fringe benefits of all persons engaged in work with respect to and for the benefit of the Properties and in paying for food, lodging and other reasonable needs of such persons.
- (aa) "Exploration Cost Minimum" means the minimum amount of Exploration Costs that the Corporation must incur in connection with the exploration of the Properties, which the parties hereto have determined to be at least CDN\$1,500,000, in the aggregate, to be divided as follows:
  - (I) a minimum of CDN\$750,000 on Exploration Costs incurred by the Corporation intended to upgrade previously delineated resources on the Properties; and
  - (II) a minimum of CDN\$750,000 on Exploration Costs incurred by the Corporation on areas that are not included in the reserves and resources published in the 2004 Breakwater Resources Inc. annual report for the Properties.
- (bb) "Holder" has the meaning ascribed thereto in the first paragraph of this Debenture or an Assignee thereof.
- (cc) "Holder's Interest" has the meaning ascribed thereto in Subsection 3.1(a)
- (dd) "Indebtedness" means, with respect to a Person, all and any indebtedness of the Person, whether absolute or contingent, including without limiting the generality of the foregoing (i) indebtedness for borrowed money of such Person, (ii) indebtedness of such Person for the deferred purchase price or property and services, other than trade payables incurred in the ordinary course of business and payable in accordance with customary practices, (iii)

other indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument, (iv) obligations of such Person under a capital lease, (v) obligations of such Person relating to any swap, hedging, option or forward agreement for interest rates, foreign exchange commodities or otherwise, (vi) every reimbursement obligation of such Person with respect to letters of credit, letters of guarantee, bankers' acceptances or similar facilities issued for the account of such Person, and (vii) contingent obligations of such Person with respect to the indebtedness of another Person (including any guarantee or indemnity of such Person in respect of Indebtedness of another Person).

- (ee) "Joint Venture Agreement" has the meaning ascribed thereto in Subsection 3.2(b)(I).
- (ff) "Liens" means any deed of trust, mortgage, charge, hypothec, assignment, pledge, lien, vendors' privilege, supplier's right of reclamation or other security interest or encumbrance of whatever kind or nature, regardless of form and whether consensual or arising by law (statutory or otherwise), that secures the payment of any indebtedness or liability or the observance or performance of any obligation.
- (gg) "Mandatory Redemption" has the meaning ascribed thereto in Subsection 5.1(c).
- (hh) "Material Adverse Change" means a material adverse change in the financial condition of the Corporation or the property, business operations or liabilities of the Corporation, which would have a material adverse effect on the Corporation's ability to perform its obligations under this Debenture.
- (ii) "Maturity Date" has the meaning ascribed thereto in the first paragraph of this Debenture.
- (jj) "Non-Permitted Indebtedness" has the meaning ascribed thereto in Subsection 5.1(c).
- (kk) "Non-Voting Common Shares" means non-voting common shares in the capital of the Corporation, as such shares may be constituted upon obtaining the Approvals, as the same may be reorganized or reclassified pursuant to any of the events set out in Section 4.4.
- (ll) "Notice of Redemption" has the meaning ascribed thereto in Section 5.2.
- (mm) "NSR Royalty Agreement" has the meaning ascribed thereto in Section 7.1.
- (nn) "Permitted Indebtedness" means:
  - (i) all Indebtedness of the Corporation to the Holder;
  - (ii) accounts payable and accrued liabilities incurred or assumed by the Corporation in the normal course of business;
  - (iii) Senior Indebtedness; and
  - (iv) all indebtedness incurred or assumed by the Corporation which is designated by the Holder in writing from time to time as Permitted Indebtedness for the purposes of this Debenture.

- (oo) "Permitted Liens" means any one or more of the following with respect to the property and assets of the Corporation:
- (I) Liens for taxes, assessments or governmental charges or levies not at the time due or delinquent or the validity of which are being contested in good faith by appropriate proceedings and as to which reserves are being maintained in accordance with generally accepted accounting principles so long as forfeiture of any part of such property or assets will not result from the failure to pay such taxes, assessments or governmental charges or levies during the period of such contest;
  - (II) the Lien of any judgment rendered or the Lien of any claim filed which is being contested in good faith by appropriate proceedings and as to which reserves are being maintained in accordance with generally accepted accounting principles so long as forfeiture of any part of such property or assets will not result from the failure to satisfy such judgment or claim during the period of such contest;
  - (III) restrictions, easements, rights-of-way, servitudes or other similar rights in land granted or served by other Persons which in the aggregate do not, in the opinion of the Holder, acting reasonably, materially impair the usefulness, in the operation of the business of the Corporation, of the property subject to such restrictions, easements, rights-of-way, servitudes or other similar rights in land granted to or reserved by any other Persons;
  - (IV) the right reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, licence, franchise, grant or permit acquired by the Corporation or by any statutory provision, to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
  - (V) the Lien resulting from the deposit of cash or securities (i) in connection with contracts, tenders or expropriation proceedings, (ii) to secure workers' compensation, surety or appeal bonds, costs of litigation when required by law and public and statutory obligations, or (iii) in connection with the discharge of Liens or claims incidental to construction and mechanics', warehouseman's carriers' and other similar liens;
  - (VI) security given to a public utility or any municipality or governmental or other public authority when required by such utility or other authority in connection with the operations of the Corporation, all in the ordinary course of business;
  - (VII) title defects or irregularities which, in the aggregate will not, in the opinion of the Holder, acting reasonably, materially impair the use of the property for the purpose for which it is held;
  - (VIII) applicable municipal and other governmental restrictions affecting the use of land or the nature of any structures which may be erected thereon, provided such restrictions have been complied with and will not, in the opinion of the Holder, acting reasonably, materially impair the use of the property for the purpose for which it is held;

- (IX) Liens to secure Permitted Indebtedness; and
- (X) the extension, renewal or refinancing of any Permitted Lien, provided that the amount so secured does not exceed the original amount secured immediately prior to such extension, renewal or refinancing and the Lien is not extended to any additional property.
- (pp) "Person" means an individual, partnership, corporation, trust or other business or legal entity.
- (qq) "Principal Amount" has the meaning ascribed thereto in the first paragraph of this Debenture.
- (rr) "Properties" means the mineral properties and mine facilities which comprise the Caribou and Restigouche mines in New Brunswick described in Schedule 1.1(6) of the Asset Purchase Agreement.
- (ss) "Property Interest Conversion Option" has the meaning ascribed thereto in Subsection 3.1(a).
- (tt) "Redemption Date" means the date that is twelve (12) months from the date of Commencement of Commercial Production on the Properties.
- (uu) "Right of First Refusal" has the meaning ascribed thereto in Subsection 10.2(b).
- (vv) "Sale Date" has the meaning ascribed thereto in Section 10.2.
- (ww) "Sale Notice" has the meaning ascribed thereto in Section 10.2.
- (xx) "Sale Price" has the meaning ascribed thereto in Section 10.2.
- (yy) "Senior Indebtedness" means the principal of and premium, if any, of and the interest on and other amounts in respect of all:
  - (i) Indebtedness of the Corporation (other than indebtedness evidenced by this Debenture) created, incurred, assumed or guaranteed by the Corporation prior the date of this Debenture;
  - (ii) Indebtedness of the Corporation created, incurred, assumed or guaranteed by the Corporation after the date of this Debenture that is secured or unsecured not to exceed CDN\$25,000,000, in the aggregate, without the prior written approval of the Holder, which approval shall not be unreasonably withheld; and
  - (iii) renewals, extensions or re-fundings of any Indebtedness referred to in Subsections 1.1(yy)(i) or 1.1(yy)(ii);

unless in any case it is provided by the terms of the instrument creating or evidencing such indebtedness or pursuant to which such indebtedness is outstanding that such indebtedness is not prior in right of payment of this Debenture but ranks *pari passu* with or is subordinated in right of payment to this Debenture.

- (zz) "Share Redemption Price" has the meaning ascribed thereto in Section 5.1(b).
- (aaa) "Shareholder Approval" means the approval of the holders of a majority of the outstanding Voting Common Shares present in person or by proxy at a Shareholders' Meeting of the Corporation and at which a quorum was present and acting throughout.
- (bbb) "Shareholders' Meeting" has the meaning ascribed thereto in Subsection 4.2(b).
- (ccc) "Voting Common Shares" means voting common shares in the capital of the Corporation, as such shares were constituted on the date hereof, as the same may be reorganized or reclassified pursuant to any of the events set out in Section 4.4.

### 1.2 Extended Meanings

The terms "hereto", "hereby", "hereunder", "herein" and similar expressions refer to the whole of this Debenture and not to any particular Article, Section, clause or part hereof. Words importing the singular number only include the plural and vice versa and words importing gender include all genders.

### 1.3 Currency

Unless otherwise specified herein, all dollar amounts referred to in this Debenture are in Canadian dollars.

### 1.4 Sections and Headings

The division of this Debenture into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction and interpretation of this Debenture.

### 1.5 Exhibits

The following are the Exhibits which form part of this Debenture:

- Exhibit A: Notice of Exercise of Property Interest Conversion Option
- Exhibit B: Form of Joint Venture Agreement
- Exhibit C: Notice of Exercise of Common Share Conversion Option
- Exhibit D: Form of NSR Royalty Agreement

## ARTICLE 2 THE DEBENTURE

### 2.1 Principal Payments

Subject to the right of repayment described in Section 2.3, the Principal Amount owing under this Debenture shall be repaid by the Corporation on the Maturity Date.

### 2.2 Interest

This Debenture shall be non-interest bearing.

### 2.3 Repayment Right

Subject to the terms and conditions of this Debenture, the Corporation shall have the privilege, at its option and without the consent of the Holder, at any time after the Redemption Date and prior to the Maturity Date, to repay all of the Principal Amount owing under this Debenture, without bonus or penalty.

### 2.4 Forgiveness

The Holder shall be entitled, at its option, at any time up to and including the Maturity Date, to forgive, in whole or in part, the Principal Amount owing under this Debenture, provided that any such forgiveness will not affect the status of the NSR Royalty Agreement.

## ARTICLE 3 RIGHT OF CONVERSION INTO PROPERTY INTEREST

### 3.1 Conversion Privilege into Property Interest

- (a) **Conversion Privilege into Property Interest.** Subject to and upon compliance with the provisions of this Article, the Holder may, at its option (the "Property Interest Conversion Option"), at any time up to the Redemption Date, convert this Debenture in exchange for a twenty percent (20%) interest in the Properties (the "Holder's Interest").
- (b) **Extension.** If, by the Redemption Date, the Corporation has not met the Exploration Cost Minimum in connection with the Properties, the Holder shall be granted an extension on its Property Interest Conversion Option until such time that the Corporation has met the Exploration Cost Minimum.

### 3.2 Exercise of Conversion Privilege into Property Interest

- (a) **Notice.** In order to exercise the Property Interest Conversion Option set out in this Article 3, the Holder shall surrender this Debenture to the Corporation at its office set out on the face page hereof, accompanied by written notice substantially in the form of Exhibit A attached hereto signed by the Holder stating that it elects to exercise its Property Interest Conversion Option.
- (b) **Contract between the Holder and the Corporation.** The surrender of this Debenture accompanied by notice given pursuant to Subsection 3.2(a) shall be deemed to constitute a contract between the Holder and the Corporation whereby: (I) the Holder and the Corporation shall enter into a joint venture agreement, substantially in the form of the joint venture agreement attached hereto at Exhibit B (the "Joint Venture Agreement"), which Joint Venture Agreement shall govern the parties' common interests in the Properties; and (II) the Holder releases the Corporation from all liability under this Debenture.
- (c) **Date of Conversion.** The date of receipt by the Corporation of this Debenture and the notice referred to in Subsection 3.2(a) is herein referred to as the "Date of Property Interest Conversion" of this Debenture. Such conversion shall be deemed to have been effected immediately prior to the close of business on the Date of Property Interest Conversion and at such time the rights of the Holder under this Debenture as a holder

shall cease and the Holder shall be deemed to have become on such date the holder of the Holder's Interest.

- (d) **Title.** As promptly as practicable after the Date of Property Interest Conversion, the Corporation shall cause title to the Properties to be recorded in the Holder's name in proportion to the Holder's Interest.

#### ARTICLE 4 RIGHT OF CONVERSION INTO COMMON SHARES

##### 4.1 Conversion Privilege into Common Shares

Subject to and upon compliance with the provisions of this Article, the Holder may, at its option at any time after the Redemption Date and prior to the Maturity Date, convert all, but not less than all, of the Principal Amount owing under this Debenture into either Voting Common Shares or, subject to Subsection 4.2(b) hereof, Non-Voting Common Shares at the Conversion Price (the "Common Share Conversion Option").

##### 4.2 Exercise of Conversion Privilege into Common Shares

- (a) **Notice.** In order to exercise the Common Share Conversion Option set out in this Article 4, the Holder shall surrender this Debenture to the Corporation at its office set out on the face page hereof, accompanied by written notice substantially in the form of Exhibit C attached hereto signed by the Holder stating that it elects to (i) exercise its Common Share Conversion Option and (ii) receive either Voting Common Shares or Non-Voting Common Shares in connection with such exercise.
- (b) **Non-Voting Common Shares.** If the Holder elects to receive Non-Voting Common Shares upon the exercise of its Common Share Conversion Option pursuant to Subsection 4.2(a) hereof and the Corporation has been unsuccessful in obtaining the Approvals, the Corporation shall redeem this Debenture, within thirty (30) days of receiving such written notice, at a price equal to the Cash Redemption Price (as defined in Subsection 5.1(a) below) to be satisfied by a cash payment by the Corporation to the Holder in the amount of the Cash Redemption Price.
- (c) **Contract between the Holder and the Corporation.** The surrender of this Debenture accompanied by notice given pursuant to Subsection 4.2(a) shall be deemed to constitute a contract between the Holder and the Corporation whereby: (I) the Holder subscribes for the number of Voting Common Shares or, subject to Subsection 4.2(b) hereof, Non-Voting Common Shares, as the case may be, which it shall be entitled to receive on such conversion; (II) the Holder releases the Corporation from all liability under this Debenture; and (III) the Corporation agrees that the surrender of this Debenture for conversion constitutes full payment of the subscription price for the Voting Common Shares or Non-Voting Common Shares issuable upon such conversion.
- (d) **Date of Conversion.** The date of receipt by the Corporation of this Debenture and the notice referred to in Subsection 4.2(a) is herein referred to as the "Date of Common Share Conversion" of this Debenture. Such conversion shall be deemed (a) in the case of an election to receive Voting Common Shares, to have been effected immediately prior to the close of business on the Date of Common Share Conversion or (b) in the case of an election to receive Non-Voting Common Shares, to have been effected (regardless of

whether the Holder is entitled to receive Voting Common Shares or Non-Voting Common Shares pursuant to Subsection 4.2(b) hereof) immediately prior to the close of business on the date of the Shareholders' Meeting, and at such time the rights of the Holder under this Debenture as a holder shall cease and the Holder shall be deemed to have become on such date the holder of record of the Voting Common Shares or the Non-Voting Common Shares, as the case may be, represented thereby.

- (e) **Certificates.** As promptly as practicable after the Date of Common Share Conversion or the date of the Shareholders' Meeting, as the case may be, the Corporation shall issue or cause to be issued and deliver or cause to be delivered to the Holder a certificate or certificates in the name of the Holder for the number of Voting Common Shares or Non-Voting Common Shares, as applicable, deliverable upon the conversion of this Debenture.

#### 4.3 No Fractional Common Shares

Notwithstanding anything herein contained, the Corporation shall in no case be required to issue fractional Voting Common Shares or Non-Voting Common Shares, as the case may be, upon the conversion of this Debenture. If any fractional interest would, except for the provisions of this Section 4.3, be deliverable upon the conversion of all or any part of this Debenture, the number of Voting Common Shares or Non-Voting Common Shares, as applicable, issuable to the Holder shall be rounded up or down to the nearest whole number.

#### 4.4 Conversion Adjustment

The Conversion Price in effect at any time is subject to adjustment from time to time in the events and in the manner provided as follows:

- (a) **Common Share Reorganization.** If and whenever at any time after the date hereof the Corporation:
  - (i) issues Common Shares or securities exchangeable for or convertible into Common Shares to the holders of the Common Shares as a stock dividend;
  - (ii) makes a distribution on its outstanding Common Shares payable in Common Shares or securities exchangeable for or convertible into Common Shares;
  - (iii) subdivides or re-divides its outstanding Common Shares into a greater number of shares; or
  - (iv) consolidates its outstanding Common Shares into a smaller number of shares,

(any of such events being called a "Common Share Reorganization"), then the Conversion Price will be adjusted effective immediately after the effective date or record date for the happening of a Common Share Reorganization, as the case may be, at which the holders of Common Shares are determined for the purpose of the Common Share Reorganization by multiplying the Conversion Price in effect immediately prior to such effective date or record date by a fraction, the numerator of which is the number of Common Shares outstanding on such effective date or record date before giving effect to such Common Share Reorganization and the denominator of which is the number of Common Shares outstanding immediately after giving effect to such Common Share

Reorganization (including, in the case where securities exchangeable for or convertible into Common Shares are distributed, the number of Common Shares that would have been outstanding had all such securities been exchanged for or converted into Common Shares on such effective date or record date).

- (b) **Capital Reorganization.** If and whenever at any time after the date hereof there is a reclassification of the Common Shares outstanding at any time or a change of the Common Shares into other shares or into other securities (other than a Common Share Reorganization), or a consolidation, amalgamation, arrangement or merger of the Corporation with or into any other corporation or other entity (other than a consolidation, amalgamation, arrangement or merger which does not result in any reclassification of the outstanding Common Shares or a change of the Common Shares into other shares), or a transfer of the undertaking or assets of the Corporation as an entirety or substantially as an entirety to another corporation or other entity (any of such events being called a "Capital Reorganization"), the Holder, upon exercising the Common Share Conversion Option after the effective date of such Capital Reorganization, will be entitled to receive in lieu of the number of Common Shares to which the Holder was theretofore entitled upon such conversion, the aggregate number of shares, other securities or other property which the Holder would have been entitled to receive as a result of such Capital Reorganization if, on the effective date thereof, the Holder had been the registered holder of the number of Common Shares to which the Holder was theretofore entitled upon exercising its Common Share Conversion Option. If determined appropriate by action of the directors of the Corporation, appropriate adjustments will be made as a result of any such Capital Reorganization in the application of the provisions set forth in this Section 4.4 with respect to the rights and interests thereafter of the Holder to the end that the provisions set forth in this Section 4.4 will thereafter correspondingly be made applicable as nearly as may reasonably be practicable in relation to any shares, other securities or other property thereafter deliverable upon the exercise of the Common Share Conversion Option. Any such adjustment must be made by and set forth in an amendment to this Debenture approved by action of the directors of the Corporation and will for all purposes be conclusively deemed to be an appropriate adjustment.

#### 4.5 Rules Regarding Calculation of Adjustment of Conversion Price

- (a) **Cumulative.** The adjustments provided for in Section 4.4 are cumulative and will, in the case of adjustments to the Conversion Price, be computed to the nearest one-tenth of one cent and will be made successively whenever an event referred to therein occurs, subject to the following provisions of this Section 4.5.
- (b) **Minimum 1% Change.** No adjustment in the Conversion Price is required to be made unless such adjustment would result in a change of at least 1% in the prevailing Conversion Price; provided, however, that any adjustments which, except for the provisions of this Section 4.5, would otherwise have been required to be made, will be carried forward and taken into account in any subsequent adjustments.
- (c) **Discretion of the Board.** In case the Corporation after the date of this Debenture takes any action affecting the Common Shares, other than actions described in Section 4.4, which in the opinion of the board of directors of the Corporation would materially affect the rights of the Holder hereunder, the Conversion Price will be adjusted in such manner, if any, and at such time, by action of the directors of the Corporation, but subject in all cases to any necessary regulatory approval. Failure to take any action by the directors of

the Corporation so as to provide for an adjustment on or prior to the effective date of any action by the Corporation affecting the Common Shares will be conclusive evidence that the board of directors of the Corporation has determined that it is equitable to make no adjustment in the circumstances.

- (d) **Disputes.** If at any time a dispute arises with respect to adjustments provided for in Section 4.4, such dispute will be conclusively determined by the auditors of the Corporation or if they are unable or unwilling to act, by such other firm of independent chartered accountants as may be selected by action of the directors of the Corporation and any such determination will be binding upon the Corporation, the Holder and shareholders of the Corporation. The Corporation will provide such auditors or accountants with access to all necessary records of the Corporation.
- (e) **Notice of Event Requiring Adjustment.** The Corporation will from time to time, as soon as is reasonably practicable after the occurrence of any event which requires an adjustment or readjustment as provided in Section 4.4, give written notice to the Holder specifying the event requiring such adjustment or readjustment and the results thereof, including the resulting Conversion Price.
- (f) **Notice of Intention to Fix Record Date.** The Corporation covenants to and in favour of the Holder that so long as any Principal Amount hereunder remains outstanding, it will give written notice to the Holder of its intention to fix a record date for any event referred to in Section 4.4 (other than a subdivision or consolidation of Common Shares) which may give rise to an adjustment in the Conversion Price and, in each case, such notice must specify the particulars of such event, the record date and the effective date for such event; provided that the Corporation is only required to specify in such notice such particulars of such event as have been fixed and determined on the date on which such notice is given. Such notice must be given not less than 5 days, in each case, prior to such applicable record date or effective date.

#### 4.6 Reservation of Sufficient Shares

The Corporation shall at all times when any part of this Debenture remains outstanding reserve and keep available out of its authorized but unissued Common Shares, for the purpose of effecting the exercise of the Holder's Common Share Conversion Option, such number of Voting Common Shares and, subject to Subsection 4.2(b) hereof, Non-Voting Common Shares as shall from time to time be sufficient to effect such conversion. The Corporation shall use its best efforts to ensure that any Voting Common Shares (a) issuable upon the exercise of the Holder's Common Share Conversion Option or (b) issuable in connection with Subsection 5.1(b) hereof will be listed upon their issue and will continue to be listed on the TSX Venture Exchange or other stock exchange on which the Voting Common Shares are listed or quoted, as the case may be, from time to time. As a condition precedent to the taking of any action which would require an adjustment to the Conversion Price, the Corporation shall take any corporate action which may be necessary in order that the Corporation shall have unissued and reserved in its authorized capital, and may validly and legally issue, the Voting Common Shares and, subject to Subsection 4.2(b) hereof, the Non-Voting Common Shares to which the Holder is entitled on the full exercise of its Common Share Conversion Option in accordance with the provisions hereof.

#### 4.7 Notice of Issuance and Securities Law Compliance

The Corporation shall give notice of the issuance of this Debenture to the securities regulatory authority in each province of Canada having legislation requiring notice in order that trades of Voting Common

Shares, if any, acquired on the conversion of this Debenture will not be subject to any prospectus requirements of such legislation. To the extent the Voting Common Shares reserved or to be reserved for the purpose of conversion of this Debenture hereunder require prospectus qualification with or without approval of any securities regulatory authority or stock exchange under any Canadian or provincial law before such shares may be validly issued, listed and posted for trading upon conversion, the Corporation will take such action as may be necessary to secure such qualification or approval, as the case may be.

## ARTICLE 5 REDEMPTION AND PURCHASE FOR CANCELLATION OF DEBENTURE

### 5.1 Redemption of Debenture

- (a) **Payment in Cash on Redemption of Debenture.** This Debenture shall be redeemable by the Corporation, in its sole discretion, at any time after the Redemption Date and up to and including the Maturity Date at a price equal to the Principal Amount (the "Cash Redemption Price"), to be satisfied by a cash payment by the Corporation to the Holder in the amount of the Cash Redemption Price.
- (b) **Payment in Common Shares on Redemption by Corporation upon Maturity Date.** Subject to applicable securities law, the Corporation may, at its option, satisfy its obligation hereunder to pay the Principal Amount on the Maturity Date by the issue to the Holder in exchange for this Debenture of that number of either Voting Common Shares or Non-Voting Common Shares (as elected by the Holder in its sole discretion) determined by dividing the Principal Amount to be repaid by the Conversion Price (the "Share Redemption Price").
- (c) **Redemption by Corporation upon Incurring Non-Permitted Indebtedness.** In the event that the Corporation wishes to incur Indebtedness in excess of \$25,000,000, in the aggregate (the "Non-Permitted Indebtedness"), the Corporation shall immediately provide notice to the Holder of its intention to incur such Non-Permitted Indebtedness, and request that the Holder provide its prior written approval thereof (the "Consent Notice"). Within thirty (30) days after receipt of the Consent Notice, the Holder shall have the option to (i) provide its written approval of the Non-Permitted Indebtedness or (ii) elect in writing to have the Corporation redeem this Debenture (the "Mandatory Redemption"), within thirty (30) days of receiving such written election, at a price equal to the Cash Redemption Price, to be satisfied by a cash payment by the Corporation to the Holder in the amount of the Cash Redemption Price.

### 5.2 Notice of Redemption

In order to exercise its redemption rights under Subsection 5.1(a) and 5.1(b) hereof or in the case of a Mandatory Redemption pursuant to Subsection 5.1(c) hereof, the Corporation shall notify the Holder in writing of its intention to redeem this Debenture (a "Notice of Redemption"), which Notice of Redemption shall be given by the Corporation to the Holder at its address for notice set out on the face page hereof, not less than 3 Business Days before the date fixed for redemption (the "Corporation Redemption Date") and shall state that the entire Principal Amount is to be redeemed. Further, such Notice of Redemption shall be in writing and specify the Corporation Redemption Date, the Cash Redemption Price or the Share Redemption Price, as applicable, and place of payment and shall state that the right to convert, in accordance with the provisions of Article 4, and the Principal Amount of this Debenture so to be redeemed will terminate and expire at the close of business on the Business Day next preceding the Corporation Redemption Date.

### 5.3 Debenture Due on Redemption Date

Upon the delivery of the Notice of Redemption, this Debenture so called for redemption shall thereupon be and become due and payable at the Cash Redemption Price or the Share Redemption Price, as applicable, on the Corporation Redemption Date specified in such Redemption Notice, in the same manner and with the same effect as if it were the Maturity Date specified in this Debenture, anything therein or herein to the contrary notwithstanding, and from and after such Redemption Date, once the monies necessary to redeem this Debenture shall have been deposited with the Holder, this Debenture so to be redeemed shall not be considered as outstanding and interest upon such portion of the Principal Amount of this Debenture shall cease.

### 5.4 Surrender of Debenture for Cancellation

If the Principal Amount due upon this Debenture shall become payable by redemption or otherwise before the date of maturity thereof, the Holder must surrender the same for cancellation. This Debenture so surrendered for cancellation shall forthwith be delivered to the Corporation and shall be cancelled by it.

## ARTICLE 6 SUBORDINATION OF DEBENTURE

### 6.1 Subordination to Senior Indebtedness

The Corporation covenants and agrees, and the Holder, by its acceptance hereof, likewise covenants and agrees, that the payment of the Principal Amount on this Debenture is hereby expressly subordinated and subrogated in right of payment to the prior payment in full of all Senior Indebtedness of the Corporation. Nothing contained in this Article 6 or elsewhere in this Debenture is intended to or shall impair, as between the Corporation and its creditors (other than the holders of Senior Indebtedness) and the Holder, the obligation of the Corporation, which is unconditional and absolute, to pay to the Holder the Principal Amount on this Debenture as and when the same shall become due and payable in accordance with the terms hereof, or to affect the relative rights of the Holder and creditors of the Corporation other than the holders of Senior Indebtedness, nor shall anything herein or therein prevent the Holder from exercising all remedies otherwise permitted by applicable law upon default under this Debenture.

### 6.2 Distribution on Dissolution, Winding-Up, Liquidation, etc.

- (a) Upon any distribution of assets of the Corporation on any dissolution, winding-up, total liquidation, reorganization, bankruptcy, insolvency or receivership of the Corporation or other marshalling of assets of the Corporation:
  - (i) the holder of Senior Indebtedness shall be entitled to receive any payment in full of the principal of and premium, if any, and interest on and other amounts (including fees, indemnity payments and lawyer's costs) in respect of all Senior Indebtedness before the Holder shall be entitled to receive payment upon the Principal due hereunder; and
  - (ii) any payment or distribution of assets of the Corporation of any kind or character, whether in cash, property or securities shall be paid by the liquidating trustee or agent or other person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders

of Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any Senior Indebtedness may have been issued prior to any payment or distribution to the Holder.

- (b) Upon any distribution of assets of the Corporation referred to in this Section 6.2, the Holder shall be entitled to rely upon a certificate of the liquidating trustee or agent or other person making any distribution to the Holder for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Corporation, the amount thereof or payable thereon, the amount paid or distributed thereon and all other facts pertinent thereto or to this Article 6.

### 6.3 Payment to Holder if Senior Indebtedness Due or in Default

- (a) Upon the maturity of any Senior Indebtedness by lapse of time, acceleration or otherwise, all principal and interest on or outstanding under the Senior Indebtedness shall first be paid in full, or shall first have been duly provided for, before any payment on account of the Principal Amount on this Debenture is made.
- (b) Upon the happening of an event of default with respect to any Senior Indebtedness, as defined therein or in the instrument under which the same is outstanding, permitting the Holder thereof to accelerate the maturity thereof, then unless and until such event of default shall have been cured or waived or shall have ceased to exist, no payment whatsoever shall be made by the Corporation with respect to the Principal Amount on this Debenture unless and until all principal and interest on or outstanding under the Senior Indebtedness shall first be paid in full, or shall first have been duly provided for.

## ARTICLE 7 NSR ROYALTY AGREEMENT

### 7.1 NSR Royalty Agreement

In connection with this Debenture, the Corporation and the Holder shall enter into a net smelter return royalty agreement, substantially in the form of the net smelter return royalty agreement attached at Exhibit D (the "NSR Royalty Agreement").

## ARTICLE 8 REPRESENTATIONS, WARRANTIES AND COVENANTS

### 8.1 Representations and Warranties of the Corporation

The Corporation hereby represents and warrants to the Holder as follows:

- (a) **Corporate Existence.** It is a corporation duly incorporated and validly subsisting under the laws of Canada.
- (b) **Share Capital.** As of the date hereof, the authorized capital of the Corporation consists of an unlimited number of Common Shares, 67,137,042 of which are outstanding as fully paid and non assessable shares in the capital of the Corporation and other than up to 1,612,820 stock options issued or issuable under the Corporation's stock option plan and 8,073,500 issued warrants, there are no options, warrants or other rights to subscribe for

or otherwise acquire (or any right capable of becoming an option, warrant or right) any unissued Common Shares or any security convertible into or exchangeable for, or any other commitment (whether contingent or absolute) to issue or sell any unissued Common Shares.

- (c) **Due Authorization.** It is duly authorized and empowered to execute, deliver, observe and perform its obligations under this Debenture and the entering into and the observance and performance by it of the provisions of this Debenture has been duly authorized by all necessary corporate action.
- (d) **No Defaults, Approvals.** The execution, delivery, performance and observance of the terms of this Debenture: (i) do not require any consent or approval of or registration or filing with any governmental authority, except as has been obtained; (ii) will not result in the violation of any laws, statutes or regulations applicable to or binding upon the Corporation; and (iii) will not result in a breach of or constitute a default under any provisions in the articles, by-laws or resolutions of the Corporation, or any contracts, agreements or arrangements to which the Corporation is a party or by which it is bound.
- (e) **Event of Default.** No event has occurred which, with the giving of notice or passage of time or both, would constitute an Event of Default.
- (f) **Shares Listed.** The Voting Common Shares are listed and posted for trading on the TSX Venture Exchange and the Corporation is not in breach of any material rules or regulations of the TSX Venture Exchange.
- (g) **Acceptance by the TSX Venture Exchange.** The TSX Venture Exchange has accepted notice of the issuance of this Debenture and the Common Shares issuable upon conversion of this Debenture and all transactions related to the issuance of this Debenture and the Voting Common Shares which may be issuable upon conversion of this Debenture have been accepted for listing on the TSX Venture Exchange.
- (h) **Securities Law Compliance.** The issue and sale of this Debenture by the Corporation to the Holder is exempt from the prospectus and registration requirements of Canadian securities regulations, and no prospectus, offering memorandum or other document is required to be filed, no proceeding is required to be taken and no approval, permit, consent or authorization is required to be obtained by the Corporation under such securities laws in connection with such issuance and sale except for the filing by the Corporation, within the prescribed time period, of (i) a report of such sale with the TSX Venture Exchange, together with the applicable fees, if required; and (ii) a report prepared on Form 45-106F1 pursuant to Canadian Securities Administrators' National Instrument 45-106 *Prospectus and Registration Exemptions* and filed with the applicable regulator or securities regulatory authority, together with the applicable fees.
- (i) **Underlying Securities.** The issue by the Corporation of the Voting Common Shares which may be issuable on conversion of this Debenture, when issued in accordance with the terms of this Debenture will be exempt from the prospectus and registration requirements of Canadian securities regulations and no prospectus, offering memorandum or other document is required to be filed, no proceeding is required to be taken and no approval, permit, consent or other authorization is required to be obtained by the Corporation under such securities laws in connection with such issue, provided that (i) no order, ruling or decision is in effect at the time of any such issue that has the

effect of restricting such issue; and (ii) the reports and fees described in Subsection 8.1(h) hereof have been properly filed and paid.

- (j) **Reporting Issuer.** The Corporation is a reporting issuer or equivalent under the securities laws of Alberta, British Columbia and Quebec and has been a reporting issuer in Alberta, British Columbia and Quebec for at least 12 months prior to the date hereof, has not breached any of the requirements of, and has made all material filings required by, such securities laws, including the regulations and policies adopted thereunder.
- (k) **Cease Trade Order.** To the best of the Corporation's knowledge, no order suspending the sale or ceasing the trading of the shares of the Corporation or the sale of this Debenture or the exercise of the conversion rights contained therein has been issued by any court, securities commission or regulatory authority in Canada, and no proceedings for such purpose are pending, or, to the knowledge of the Corporation, after reasonable inquiry, threatened.

## 8.2 Affirmative Covenants

The Corporation hereby declares, covenants and agrees as follows:

- (a) **Corporate Existence.** Subject to the express provisions hereof, the Corporation will carry on and conduct its business in the manner heretofore carried on and it will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and rights.
- (b) **Reporting Issuer Status.** The Corporation will use its best and diligent efforts to remain a reporting issuer under the securities laws of Alberta, British Columbia and Quebec for a period of 12 months from the date hereof.
- (c) **Shareholder Approval.** The Corporation will use its best and diligent efforts to obtain all necessary regulatory approvals, and Shareholder Approval (collectively, the "Approvals") at the next regularly scheduled shareholders' meeting of the Corporation (the "Shareholders' Meeting"), to amend the Corporation's articles of incorporation to provide for the creation of a class of Non-Voting Common Shares (the "Amendment"), which efforts shall include management of the Corporation recommending that the shareholders of the Corporation approve the Amendment. The Corporation shall provide the Holder with a timely opportunity to review and comment on those provisions of the draft management information circular (the "Circular") prepared by the Corporation in connection with the Shareholder's Meeting, which deal solely with the Amendment (the "Amendment Provisions"). The Corporation shall incorporate therein all reasonable comments made by the Holder and its counsel with respect to the Amendment Provisions, provided that the Holder will provide the Corporation with its comments and any proposed additions and deletions within five Business Days after receipt of the Circular from the Corporation.
- (d) **Event of Default.** It shall give the Holder prompt written notice of the occurrence of any Event of Default, or any event or circumstance that, with the giving of notice or lapse of time or both, would constitute an Event of Default.
- (e) **Monthly Operational Reports.** Up to the Redemption Date, the Corporation shall furnish the Holder with such monthly information and operational reports relating to the

Properties as may be reasonably requested by the Holder from time to time, provided that the Corporation shall not be required to incur significant additional expenses to provide such requested information or reports.

- (f) **Quarterly Operational Reports.** From the period commencing after the Redemption Date and until the Maturity Date, the Corporation shall furnish the Holder with such quarterly information and operational reports relating to the Properties as may be reasonably requested by the Holder from time to time, provided that the Corporation shall not be required to incur significant additional expenses to provide such requested information or reports.
- (g) **Access to Properties and Financial Records.** So long as any amount under this Debenture is outstanding, the Corporation shall, at the expense of the Holder, allow any authorized representatives, agents or designees of the Holder the right to access the Properties and inspect the financial records maintained by the Corporation in respect of the Properties upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Corporation. The Corporation shall have the right to have its representatives, agents or designees present during any such inspection.
- (h) **Notice of Litigation.** The Corporation shall notify the Holder of any litigation commenced by or against the Corporation.
- (i) **Notice of Material Adverse Change.** The Corporation shall notify the Holder of any Material Adverse Change affecting the Corporation.
- (j) **Environmental Laws and Bonding.** The Corporation shall use reasonable efforts to ensure that (I) the Properties are maintained and operated in accordance with sound industry practice and in accordance with all applicable Environmental Law; and (II) all performance bonds for mine reclamation are maintained by the Corporation in accordance with the standards required by the New Brunswick government.
- (k) **Additional Information.** While any amount of the Principal Amount is outstanding, the Corporation shall provide the Holder with any reasonably requested additional information regarding the Corporation and its affairs.
- (l) **Commencement of Commercial Production.** The Corporation shall notify the Holder within five Business Days of making the determination that the Commencement of Commercial Production has occurred.

### 8.3 Restrictive Covenants

The Corporation hereby covenants and agrees with the Holder that, until all obligations under this Debenture have been terminated and unless the Holder has otherwise consented thereto in writing:

- (a) **Encumbrances.** The Corporation shall not enter into or grant, create, assume or suffer to exist any Lien affecting any of its property, assets or undertaking, save and except only for the Permitted Liens.
- (b) **Indebtedness.** The Corporation shall not incur or permit or suffer to exist any Indebtedness other than the Permitted Indebtedness.

#### 8.4 Waiver

The Holder may waive in writing any breach by the Corporation of any of the provisions contained in this Debenture or any default by the Corporation in the observance or performance of any covenant or condition required to be observed or performed by the Corporation hereunder, provided that no such waiver or any other act, failure to act or omission by the Holder shall extend to or be taken in any manner to affect any subsequent breach or default or the rights of the Holder resulting therefrom.

### ARTICLE 9 EVENTS OF DEFAULT

#### 9.1 Events of Default

The whole of the Principal Amount remaining unpaid shall, at the option of the Holder, become immediately due and payable in each of the following events (each such event being herein called an "Event of Default"):

- (a) if the Corporation defaults in the payment when due of any amount payable hereunder;
- (b) if the Corporation defaults in the performance or observance of any other covenant or condition herein contained and such default shall continue for 30 days after written notice thereof is given to the Corporation by the Holder;
- (c) if there is any material misrepresentation or misstatement contained in this Debenture or any document or certificate delivered by the Corporation in connection with this Debenture;
- (d) if an order is made or an effective resolution passed for the winding-up, liquidation or dissolution of the Corporation;
- (e) if the Corporation consents to or makes a general assignment for the benefit of creditors or makes a proposal under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any other bankruptcy, insolvency or analogous laws;
- (f) if the Corporation becomes bankrupt or insolvent or commits an act of bankruptcy, or any proceeding is commenced against or affecting the Corporation:
  - (i) seeking to adjudicate it a bankrupt or insolvent;
  - (ii) seeking liquidation, dissolution, winding-up, restructuring, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or similar laws (including, without limitation, any reorganization, arrangement or compromise of debt under the laws of its jurisdiction of incorporation or organization); or
  - (iii) seeking appointment of a receiver, receiver and manager, liquidator, trustee, agent, custodian or other similar official for it or for any part of its properties and assets;

- (g) if any Permitted Indebtedness of the Corporation shall become due, or be declared pursuant to the terms thereof to be due prior to the expressed maturity thereof, and shall not be paid, after the expiry of any applicable cure period; or
- (h) a writ, execution, attachment or similar process is issued or levied against all or any portion of any property or asset of the Corporation in connection with any final judgment without appeal against the Corporation in an amount exceeding \$5,000,000 and such writ, execution, attachment or similar process is not released, bonded, satisfied, discharged, vacated or stayed within 180 days after its entry, commencement or levy

## 9.2 Rights on Default

Upon the occurrence of any one or more Events of Default the outstanding Principal Amount owing hereunder shall, at the option of the Holder, immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by the Corporation.

## 9.3 Remedies Cumulative

All powers and remedies given herein to the Holder shall, to the extent permitted by law, be deemed cumulative and not exclusive of, but in addition to, any other powers and remedies available to the Holder hereunder, by law, equity, statute, judicial proceedings or otherwise, to enforce the performance and observance of the covenants and agreements contained in this Debenture. No delay or omission by the Holder to exercise any right or power accruing hereunder shall impair any such right or power, or shall be construed to be a waiver of any such right or power or an acquiescence therein. Every power and remedy given herein or by law to the Holder may be exercised from time to time, and as often as shall be deemed expedient by the Holder.

## 9.4 Conflict with Applicable Law

All rights, remedies and powers provided herein may be exercised only to the extent that the exercise thereof does not violate any mandatory provision of applicable law and all provisions of this Debenture are intended to be subject to all mandatory provisions of applicable law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Debenture invalid, unenforceable or not entitled to be recorded, registered or filed under the mandatory provisions of any applicable law. Any provision hereof contrary to mandatory provisions of applicable law shall be deemed to be ineffective and shall be severable from and not invalidate any other provision of this Debenture.

# ARTICLE 10 TRANSFER OF DEBENTURE

## 10.1 Transfer of Debenture

The Corporation cannot assign or transfer all or any of its rights and obligations under this Debenture without the prior written consent of the Holder. Notwithstanding the foregoing, in the case of a Capital Reorganization, this Debenture may be assigned by the Corporation to the successor entity resulting from such Capital Reorganization; provided that, such successor entity shall (i) be listed on the TSX Venture Exchange or other stock exchange acceptable to the Holder, acting reasonably; and (ii) expressly assume the due and punctual performance and observance of each and every covenant and condition of this Debenture to be performed and observed by the Corporation. This Debenture is binding upon the parties hereto and their respective successors and permitted assigns.

## 10.2 Corporation's Right of First Refusal

The Holder may assign, sell or transfer its rights and obligations under this Debenture to a bona fide, arm's length third party (the "Assignee"), provided that the Holder gives notice (the "Sale Notice") to the Corporation of its intention to transfer this Debenture to the Assignee. Such Sale Notice shall set forth the cash price at which the Holder is prepared to sell this Debenture (the "Sale Price"), any other applicable terms and conditions, and the proposed date of the sale (the "Sale Date"). In such event, the following provisions shall govern such assignment, sale or transfer:

- (a) The Sale Notice shall be deemed to be an irrevocable offer by the Holder to assign, sell or transfer this Debenture to the Corporation on the terms set forth therein.
- (b) Within 15 days after receipt of the Sale Notice, the Corporation shall have the right (the "Right of First Refusal") to purchase this Debenture from the Holder on payment by the Corporation to the Holder of the same Sale Price that the Holder specified in its Sale Notice. Where the Corporation determines to exercise its Right of First Refusal, then, on the Sale Date, the Corporation shall deliver or cause to be delivered to the Holder payment of the total Sale Price for this Debenture.
- (c) If the Corporation determines not to exercise its Right of First Refusal herein, the Holder may sell this Debenture to the Assignee under the same terms and conditions and Sale Price as originally stated in the Sale Notice to the Corporation. If the terms and conditions and/or Sale Price changes with respect to the Assignee, then the Holder shall re-send a new Sale Notice to the Corporation and the provisions of this section 10.2 shall apply.

## ARTICLE 11 TRANSFER OF PROPERTY INTEREST

### 11.1 Transfer of Property Interest

Notwithstanding anything herein contained, the Corporation may sell, assign or otherwise dispose of all of its interest in the Properties, or part thereof (the "Corporation's Interest"), to an Affiliate of the Corporation (the "Corporation Affiliate") without the consent of the Holder provided that, in any such event, the Corporation Affiliate shall deliver to the Holder an agreement between the Corporation Affiliate and the Holder under which such Corporation Affiliate:

- (a) acknowledges the Holder's Property Interest Conversion Option rights under this Debenture;
- (b) covenants to provide the Holder with the Holder's Interest in the Properties in the event the Holder exercises its Property Interest Conversion Option pursuant to Subsection 3.1(a) hereof; and
- (c) agrees to retransfer the Corporation's Interest to the Corporation in the event that the Corporation Affiliate ceases to be an Affiliate of the Corporation.

## ARTICLE 12 GENERAL

### 12.1 Corporate Changes

In the event that the Corporation should file articles of amendment or amalgamation or undertake any corporate restructuring, arrangement, merger or reorganization, the result of which is to change the name of the Corporation, it shall, within 7 days of the effective date of such change, deliver written notice of the same together with particulars thereof (including a notarially certified copy of the instrument or instruments effecting such change) to the Holder.

### 12.2 Notice

Any demand, notice, document or communication required or permitted by this Debenture to be given by a party hereto shall be in writing and is sufficiently given if delivered personally, or if sent by prepaid registered mail posted in Canada, or if transmitted by any form of recorded telecommunication tested prior to transmission, to such party addressed to it at the address noted on the first page hereof. Notice so mailed shall be deemed to have been given on the third Business Day after deposit in a post office or public letter box. Neither party shall mail any notice, request or other communication hereunder during any period in which Canadian postal workers are on strike or if such strike is imminent and may reasonably be anticipated to affect the normal delivery of mail. Notice transmitted by a form of recorded telecommunication or delivered personally shall be deemed given on the day of transmission or personal delivery, provided such day is a Business Day (and on the next succeeding Business Day if such day is not a Business Day) as the case may be. Any party may from time to time notify the other in the manner provided herein of any change of address which thereafter, until change by like notice, shall be the address of such party for all purposes hereof. Payments required to be made hereunder shall be delivered to the Holder at the address noted on the first page hereof. Any payments not received by the Holder by 5:00 p.m. (Toronto time) on a Business Day shall be deemed to have been received on the next Business Day.

### 12.3 Extensions and Amendments

Any agreement for the extension of the time of payment of the moneys hereby secured or any part thereof made at, before or after maturity, and prior to the execution of a discharge or release of this Debenture, or any agreement for altering the term or any other covenant or condition hereof, need not be registered in any office of public record but shall be effectual and binding upon the Corporation and its successors and permitted assigns when executed by the Corporation and the Holder and delivered to the Holder. Any such amendments or extensions shall be subject to prior regulatory approval.

### 12.4 Governing Law

This Debenture shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### 12.5 Time of Essence

Time shall be of the essence of this Debenture in all respects.

IN WITNESS WHEREOF the Corporation has executed this Debenture as of the date first written above.

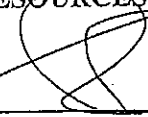
BLUE NOTE METALS INC.

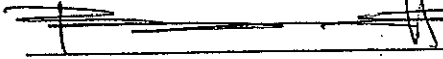
Per: \_\_\_\_\_  
Name:  
Title:

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

The terms and conditions of this Debenture are acknowledged and agreed to by the Holder.


BREAKWATER RESOURCES INC.

Per:   
Name: GEORGE E. PIRIE  
Title: PRESIDENT AND CEO

Per:   
Name: WILLIAM M. HEATH  
Title: EXECUTIVE VICE PRESIDENT

IN WITNESS WHEREOF the Corporation has executed this Debenture as of the date first written above.

BLUE NOTE METALS INC.

Per:   
Name: Michael J. Sussan  
Title: Chairman and Chief Executive Officer

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

The terms and conditions of this Debenture are acknowledged and agreed to by the Holder.

BREAKWATER RESOURCES INC.

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

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

EXHIBIT A TO THE  
UNSECURED SUBORDINATED CONVERTIBLE DEBENTURE OF  
BLUE NOTE METALS INC.

NOTICE OF EXERCISE OF PROPERTY INTEREST  
CONVERSION OPTION

TO: Blue Note Metals Inc.

The undersigned, the registered Holder of the Unsecured Subordinated Convertible Debenture issued by Blue Note Metals Inc. on [•], 2006 (the "Debenture") hereby irrevocably elects to convert the indebtedness outstanding under the Debenture into a 20% interest in the Properties (as defined in the Debenture) in accordance with the terms of the Debenture.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200 .

Breakwater Resources Inc.

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

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

EXHIBIT B TO THE  
UNSECURED SUBORDINATED CONVERTIBLE DEBENTURE OF  
BLUE NOTE METALS INC.

FORM OF JOINT VENTURE AGREEMENT

[See attached]

## JOINT VENTURE AGREEMENT

THIS AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_

BETWEEN:

**BREAKWATER RESOURCES LTD.**, a corporation incorporated under the laws of Canada and having its executive offices at 95 Wellington Street West, Suite 950, Toronto, Ontario, M5J 2N7;

(hereinafter called "Breakwater")

OF THE FIRST PART

AND:

**BLUE NOTE METALS INC.**, a corporation incorporated under the laws of Canada and having its head office at 2 Place Alexis-Nihon, 3500 de Maisonneuve West, Suite 1110, Westmount, Québec, H3Z 3C1;

(hereinafter referred to as "Blue Note")

OF THE SECOND PART

---

**WHEREAS** pursuant to a subordinated convertible debenture dated [•], 2006 (the "Blue Note Debenture"), Blue Note is indebted to Breakwater;

**WHEREAS** under Section 3.1 of the Blue Note Debenture, Breakwater has an option (the "Property Interest Conversion Option") to convert the Blue Note Debenture in exchange for a twenty percent (20%) Interest in and to the Property;

**WHEREAS** Breakwater has exercised its Property Interest Conversion Option and, as required under Section 3.2 of the Blue Note Debenture, the parties have agreed to form a joint venture to further explore and develop the Property, all upon and subject to the terms and conditions set out in this Agreement;

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

### 1. INTERPRETATION

1.1 In this Agreement the following words, phrases and expressions shall have the following meanings:

- (a) "Accounting Procedure" means the procedure attached to this Agreement as Appendix I.

- (b) “**Additional Environmental Protection Deposit**” means any additional environmental protection deposits required by the Department of Environment (New Brunswick) to be deposited by Blue Note to secure environmental protection obligations with respect to the Property.
- (c) “**Additional Reclamation Deposit**” means any additional reclamation deposits required by the Department of Natural Resources (New Brunswick) to be deposited by Blue Note to secure reclamation and remediation obligations with respect to the Property.
- (d) “**Affiliate**” shall have the meaning attributed to it in the *Canada Business Corporations Act*, as amended.
- (e) “**Agreement**” means this Agreement and the Appendices attached hereto, as amended from time to time, and the expressions “herein”, “hereof”, “hereby”, “hereunder” and similar expressions refer to this Agreement as a whole.
- (f) “**Assets**” means all tangible and intangible goods, chattels, improvements or other items including, without limiting the generality of the foregoing, land, buildings, and equipment, but excluding the Property, acquired for or made to the Property under this Agreement in connection with the Mining Operations.
- (g) “**Blue Note Debenture**” has the meaning ascribed thereto in the recitals to this Agreement.
- (h) “**Business Plan**” means The Business Plan For The Acquisition And Re-Opening Of The Caribou Mine And Restigouche Mine And Related Assets of CanZinco in New Brunswick dated March 2006 which outlines the re-opening of the Property.
- (i) “**Commercial Production**” means the day determined by the Operator as the first day of any three month period throughout which the Property operates, during each month of the three-month period, at sixty percent (60%) or more of its planned capacity as set out in the Business Plan.
- (j) “**Completion Date**” means the date on which Commercial Production is achieved.
- (k) “**Costs**” means, except as to Prior Production Costs, all items of outlay and expense whatsoever, direct or indirect, with respect to Mining Operations, recorded by the Operator in accordance with this Agreement. Without limiting the generality of the foregoing, the following categories of Costs shall have the following meanings:
  - (i) “**Production Program Costs**” means, for any period prior to the Completion Date, all Costs incurred directly or indirectly in

connection with a Production Program for purposes of bringing into Commercial Production any Mineral deposit on the Property, including, without limitation:

- (I) all monies expended to develop or construct the Mine, as contemplated in the Production Program, including all costs related to banking and financing charges;
  - (II) working capital required for the initial four (4) months of operation of the Property or part thereof as a Mine or for such longer period as may be reasonably justified in the circumstances.
- (ii) **“Operating Costs”** means, for any period after the Completion Date, all Costs incurred or chargeable, directly or indirectly, by the Operator in connection with the Operating Plan, which Costs include, without limiting the generality of the foregoing, the following:
- (I) all costs of or related to operating employee facilities, including housing;
  - (II) all duties, charges, levies, royalties, taxes (excluding taxes levied on the income of the parties) and other payments imposed by any government or municipality or department or agency thereof upon or in connection with operating the Property as a Mine;
  - (III) all costs of maintaining the Property in good standing, including any required vendor’s or royalty payments;
  - (IV) all reasonable costs of the Operator for providing technical, management and/or supervisory services;
  - (V) all reasonable costs of consulting, legal, accounting, insurance and other services;
  - (VI) all exploration expenditures incurred after the Completion Date;
  - (VII) all capital costs of operating the Property as a Mine including all costs of construction, equipment and mine development and including maintenance, repairs and replacements, and any capital expenditures relating to an improvement, expansion, modernization or replacement of the facilities located at the Mine;

- (VIII) a reasonable amount of funds set aside to cover reclamation costs and other costs associated with a permanent shut-down of the Mine;
- (IX) any costs or expenses incurred or to be incurred relating to a temporary or permanent shut-down of the Mine;
- (X) all reasonable costs of supplies and services purchased for the day-to-day operation of the Property as a Mine;
- (XI) all costs relating to banking and financing charges; and
- (XII) all costs relating to the shipping of Minerals to the point of sale,

and, except where specific provision is made otherwise, all Operating Costs shall be determined in accordance with generally accepted accounting principles applied consistently from year to year provided however that such costs shall not include any amount in respect of amortization of expenditures or Production Program Costs, depletion or depreciation. For greater certainty, Operating Costs shall not include any Costs or expenses incurred by the Operator which are solely related to general overhead and administrative expenses of the Operator including bonuses, salaries, auditor's fees, legal fees, consulting fees, insurance and rent; and

- (iii) **"Prior Production Costs"** means all exploration, production and operating Costs incurred by Blue Note prior to the Operative Date and as deemed by the parties under paragraph 3.4, and for greater certainty, shall not include the Reclamation Deposit, the Environmental Protection Deposit, any Additional Reclamation Deposits and any Additional Environmental Protection Deposits made by Blue Note prior to the Operative Date.
- (l) **"Distribution"** means a distribution of the Net Cash Flow Surplus Amount to each party *pro rata* to the party's Interest and paid in accordance with article 10.
- (m) **"Environmental Protection Deposit"** means the sum deposited by Blue Note and currently held by the Department of the Environment (New Brunswick) as security for the environmental protection of the Property together with all interest accrued or accruing due therein, as may be applicable.
- (n) **"Governmental Authority"** means any federal, provincial, municipal or local legislative, executive, judicial or administrative body or person having jurisdiction in the relevant circumstances.

- (o) “Interest” means an undivided beneficial percentage interest of a party in the Property, the Assets and any Mine, as determined pursuant to this Agreement.
- (p) “Joint Operation” shall have the meaning attributed to it in paragraph 2.1.
- (q) “Management Committee” means the committee established pursuant to article 4.
- (r) “Mine” means the workings established and Assets acquired that are directly related to the Property, including, without limiting the generality of the foregoing, development headings, plant and concentrator installations, infrastructure and other facilities in or in order to bring the Properties into Commercial Production in accordance with the Production Program.
- (s) “Minerals” means any and all minerals, precious and base, metallic and non-metallic (and concentrates derived therefrom) in, on or under the Property which may lawfully be explored for, mined and sold.
- (t) “Mining Operations” means every kind of work done by the Operator:
  - (i) on or in respect of the Property in accordance with a Production Program or Operating Plan; or
  - (ii) if not provided for in a Production Program or Operating Plan, unilaterally and in good faith to maintain the Property in good standing, to prevent waste or to otherwise discharge any obligation which is imposed upon it pursuant to this Agreement and in respect of which the Management Committee has not given its directions;

including, without limiting the generality of the foregoing, investigating, prospecting, exploring, developing, preparing, designing, equipping, improving, surveying, mining, milling, refining and other processing of Minerals, metals, tailings or concentrates derived from the Property and other ancillary activities and operations related thereto.
- (u) “Net Cash Flow” for any period means the sum of adding:
  - (i) cash at the beginning of such period; and
  - (ii) the difference resulting from subtracting:
    - (I) the sum of Operating Costs paid during such period plus the Operating Cost Reserve Amount plus any increase in working capital, from

- (II) all Revenue generated during such period.
- (v) “**Net Smelter Royalty**” shall mean two percent (2%) of the Net Smelter Return (as defined and as more particularly set out in Appendix III of this Agreement).
- (w) “**Operating Cost Reserve Amount**” for any period means an amount equal to the estimated Operating Costs and any estimated decrease in working capital for the subsequent two (2) month period.
- (x) “**Operating Plan**” means the annual plan of Mining Operations submitted pursuant to paragraph 9.2.
- (y) “**Operative Date**” means the date upon which Breakwater exercises its Property Interest Conversion Option in accordance with the Blue Note Debenture.
- (z) “**Operator**” means the party appointed as the Operator in accordance with article 5.
- (aa) “**Participant**” means a party that is contributing to Production Program Costs or Operating Costs, as the case may be.
- (bb) “**party**” or “**parties**” means the parties to this Agreement and their respective successors and permitted assigns which become parties pursuant to this Agreement.
- (cc) “**Prime Rate**” means the rate of interest stated by the main branch in Toronto, Ontario of the Bank of Montreal as being charged by it on Canadian dollar demand loans to its most creditworthy domestic commercial customers.
- (dd) “**Production Program**” means any program approved by the Management Committee for the purposes of bringing into Commercial Production any Mineral deposit on the Property.
- (ee) “**Property**” means the mineral property, mine facilities, claims, interests and other rights more particularly described in Appendix II that become subject to this Agreement on the Operative Date, the Minerals thereon, all information obtained from Mining Operations and those rights and benefits appurtenant to the Property that are acquired for the purpose of conducting Mining Operations.
- (ff) “**Property Interest Conversion Option**” has the meaning ascribed thereto in the recitals to this Agreement.
- (gg) “**Proportionate Share**” means that share which is equal to a party’s percentage Interest, as adjusted from time to time hereunder.

- (hh) "Reclamation Deposit" means the sum deposited by Blue Note and currently held in deposit by the Department of Natural Resources (New Brunswick) as security for the reclamation and remediation of environmental impact associated with the Property with all interest accrued or accruing due thereon, as may be applicable.
- (ii) "Revenues" means the total proceeds, calculated at the point of sale, to be derived from the sale of Minerals or other products extracted from the Property, plus any miscellaneous proceeds (including, without limitation, all net amounts received from the sale of plant, machinery, equipment or other Assets prior to the cessation of operations, any insurance proceeds not used for the replacement or repair of lost or damaged assets, compensation for expropriated properties, government grants and interest on Revenue earned from the date of receipt to the date of payment) from the Property.
- (jj) "Simple Majority" means a decision made by the Management Committee by more than 50 percent (50%) of the votes represented and entitled to be cast at a meeting thereof.
- (kk) "\$" means Canadian dollars.

1.2 The words "article", "paragraph", "subparagraph", "herein" and "hereunder" refer to this Agreement.

1.3 The captions and the emphases of the defined terms have been inserted for convenience and do not define the scope of any provision.

## 2. FORMATION OF THE JOINT VENTURE

2.1 Commencing on the Operative Date, the parties hereby agree to associate and participate in a joint operation (herein called the "Joint Operation") for the purpose of:

- (a) exploring claims on the Property;
- (b) bringing the Property or a portion thereof into Commercial Production;
- (c) operating Mines; and
- (d) to engage in such other activities as may be considered by the parties to be necessary or desirable in connection with the foregoing.

2.2 Subsequent to the Operative Date, except as otherwise provided herein, each party shall be liable for its Proportionate Share of all Costs, debts, liabilities or obligations under this Agreement and at the time incurred by the Operator.

2.3 Except as expressly provided in this Agreement, each party shall have the right independently to engage in and receive full benefits from business activities, whether or not competitive with the Joint Operation, without consulting any other party. The doctrines of "corporate opportunity" or "business opportunity" shall not be applied to any other activity, venture or operation of any party and no party shall have any obligation to another party with respect to any opportunity to acquire any assets outside of the Property at any time, or within the Property after the termination of this Agreement. Unless otherwise agreed in writing, no party shall have any obligation to mill, beneficiate or otherwise treat any Minerals or any other party's share of Minerals in any facility owned or controlled by such party.

### 3. INTERESTS

3.1 Commencing on the Operative Date, the Interests of each of the parties shall be as follows until varied as provided for in this Agreement:

Blue Note	80%
Breakwater	20%

3.2 Subsequent to the Operative Date, the Interest of each party shall be determined from time to time to be that percentage which is equivalent to:

(i) the sum of its Prior Production Costs, its contribution to Production Program Costs and its contribution to Operating Costs;

divided by

(ii) the sum of the total Prior Production Costs, total Production Program Costs and the total Operating Costs of all the parties;

multiplied by

(iii) 100.

3.3 The respective Interests of the parties shall be as set out in paragraph 3.1 so long as they contribute their respective Proportionate Share of Production Program Costs and Operating Costs, as applicable, as set out in this Agreement. At any time and from time to time if a party fails to contribute to such Costs, its respective Interest shall be reduced in accordance with the formula set out in paragraph 3.2. If, as a result of such calculation, the Interest of any party is reduced to or below 5%, its Interest shall be deemed to be converted (the "**Deemed Conversion**") to a 2% Net Smelter Royalty as more particularly described in Appendix III and thereafter such party shall have no further rights, interests, obligations or liabilities in respect of the Assets or under this Agreement, save and except (a) such Net Smelter Royalty and (b) any liabilities

or obligations incurred hereunder from the Operative Date to the date of the Deemed Conversion.

- 3.4 The following expenditures shall be deemed to be the “**Prior Production Costs**” of each party effective the Operative Date strictly for the purposes of determining a party’s Interest under this Agreement from time to time pursuant to paragraph 3.2:

	<u>Prior Production Costs</u>	<u>Interest</u>
Blue Note	[\$•]	80%
Breakwater	[\$•]	20%

- 3.5 During the subsistence of this Agreement, the parties agree that:

- (a) all Revenue generated by Blue Note in connection with the Property prior to the Operative Date;
- (b) all stockpiles of Minerals or other products extracted from the Property which are not sold by Blue Note prior to the Operative Date (the “**Blue Note Stockpiles**”); and
- (c) any rebate or credits granted by any Governmental Authority in respect of any deposits, guarantees, fees or other payments (including without limitation, the Reclamation Deposit, the Environmental Protection Deposit, any Additional Reclamation Deposits and any Additional Environmental Protection Deposits) made by Blue Note in connection with the Property prior to the Operative Date,

shall be entirely to the account and credit of Blue Note and shall not form part of (i) this Joint Operation or (ii) any calculation made to determine any of the following in connection with this Agreement: (I) Prior Production Costs; (II) Net Cash Flow; (III) Revenues; or (IV) Distributions.

- 3.6 For purposes of reconciling the Blue Note Stockpiles as of the Operative Date, the Operator shall:

- (a) immediately, on the Operative Date, segregate the Blue Note Stockpiles from all stockpiles of Minerals or other products extracted from the Property on and after the Operative Date; and
- (b) select, within thirty (30) days after the Operative Date, an independent organization (the “**Independent Evaluator**”) which is generally recognized and accepted within the industry, to evaluate the Blue Note

Stockpiles and provide the parties with an inventory reconciliation of same.

Blue Note shall be liable for all costs and charges for services rendered by the Independent Evaluator in connection with the inventory reconciliation of the Blue Note Stockpiles.

#### 4. MANAGEMENT COMMITTEE

- 4.1 A Management Committee shall be established on or forthwith after the Operative Date. Except as herein otherwise provided, the Management Committee shall make all decisions in respect of Mining Operations.
- 4.2 Each party shall nominate two (2) representatives, one (1) voting representative and one (1) alternate representative, to represent it on the Management Committee and shall be bound by the actions of its nominees. Such nomination shall be given in writing to the other Parties, and the representatives may be changed from time to time by written notice to the other Parties. Alternate representatives may attend meetings of the Management Committee and, in the absence of the voting representative, the alternate representative may vote and otherwise act in place and stead of the voting representative. Whenever any voting representative (or the alternate representative in the absence of the voting representative) votes or acts, his votes or actions shall for all purposes of this Agreement be considered the actions of the party whom such representative represents.
- 4.3 The Operator shall give notice, specifying the time and place of, and the agenda for, the meeting, to all representatives at least seven (7) days before the time appointed for the meeting.
- 4.4 Notice of a meeting shall not be required if representatives of all the parties are present and unanimously agree upon the agenda.
- 4.5 Except as provided below, at any meeting of the Management Committee, each party must have one representative present to constitute a quorum. If a quorum is present at the meeting, the Management Committee shall be competent to exercise all of the authorities, powers and discretions herein bestowed upon it hereunder. The Management Committee shall not transact any business at a meeting unless a quorum is present at the commencement of the meeting. In the event there shall be no quorum at any meeting of the Management Committee called by notice pursuant to paragraph 4.3, the meeting shall be adjourned for seven (7) days with notice thereof being given by the chairman on behalf of the attending parties to the absent parties. After such seven (7) days, the meeting shall resume and a quorum for that meeting shall be such representative or representatives of the Management Committee then in attendance.

- 4.6 The Management Committee shall decide every question submitted to it by a vote with each voting representative (or the alternate representative in the absence of the voting representative) being entitled to cast that number of votes which is equal to its party's Interest percentage. The Management Committee shall make all decisions by Simple Majority. In the event of a tied vote, the chairman shall have a casting vote in addition to the votes to which the chairman is entitled to cast as the representative of a party.
- 4.7 Notwithstanding the provisions of paragraph 4.6, a decision as to any of the following matters shall require the approval of 100% of the votes cast by the parties' representatives on the Management Committee:
- (a) the permanent closure of the Mine; and
  - (b) capital expenditure items requiring aggregate expenditures in excess of \$25,000,000 in any one calendar year.
- 4.8 The voting representative (or the alternative representative in the absence of the voting representative) of the Operator shall be chairman and secretary of the Management Committee meeting.
- 4.9 The secretary of the Management Committee meeting shall take minutes of that meeting and circulate copies thereof to each representative.
- 4.10 The Management Committee may make decisions by obtaining the consent in writing of the voting representative (or the alternative representative in the absence of the voting representative) of each party. Any decision so made shall be as valid as a decision made at a duly called and held meeting of the Management Committee.
- 4.11 Management Committee decisions made in accordance with this Agreement shall be binding upon all parties.
- 4.12 Each party shall bear the expenses incurred by its representatives in attending meetings of the Management Committee.
- 4.13 The Management Committee may establish such other rules of procedure, not inconsistent with this Agreement, as the Management Committee deems fit.

## 5. OPERATOR

- 5.1 Following the Operative Date, but subject to paragraph 5.2, Blue Note shall continue to act as the Operator under this Agreement and as such, subject to the discretion and control of the Management Committee, shall have full right, power and authority to do everything necessary or desirable to carry out the purposes of the parties in connection with this Agreement.

- 5.2 The party acting as Operator may resign as Operator on at least ninety (90) days' notice to all the parties and the parties shall, within ninety (90) days after receipt of such notice, convene a meeting of the Management Committee which shall appoint a party who consents to act as Operator, and determine its terms of engagement.
- 5.3 The new Operator shall assume all of the rights, duties, liabilities and status of the previous Operator as provided in this Agreement. The new Operator shall have no obligation to hire any other employees of the former Operator resulting from a change of Operator.
- 5.4 Upon ceasing to be Operator, the former Operator shall forthwith deliver to the person nominated for that purpose by the Management Committee, the custody of all Assets, Property, books, records, and other property both real and personal relating to this Agreement. If the Operator resigns and no other party consents to act as Operator, the Joint Operation shall terminate and the provisions of article 16 shall apply mutatis mutandis.
- 5.5 If the Operator fails to perform in a manner that is consistent with good engineering and mining practices or fails to perform in a manner consistent with its duties and responsibilities under this Agreement, then the Management Committee shall give to the Operator written notice setting forth particulars of the Operator's default. The Operator shall within ninety (90) days of receipt of such notice commence to remedy the default. Failure of the Operator to commence to remedy the default within such 90-day period (and thereafter to proceed continuously and diligently to complete all required remedial action) will be grounds for termination of the Operator's appointment; provided that no steps shall be taken to remove or replace the Operator in such circumstances while the Operator is contesting in good faith the alleged default. On any termination of the Operator's appointment hereunder, a meeting of the Management Committee shall forthwith be convened to appoint another party who consents to act as Operator, and determine its terms of engagement.
- 5.6 If the Operator resigns or is removed and no other party consents to act as Operator, the Joint Operation hereunder shall be terminated and the Assets shall be liquidated or sold and the Assets or proceeds from the sale thereof distributed to the parties, net of liabilities hereunder or related thereto, in accordance with their Interests. Each party shall be responsible for its Proportionate Share of all costs and expenses related to such termination and liquidation. The party which was the Operator may, if it consents to act, continue to act as Operator to effect such termination and liquidation and it shall have a lien on the parties' respective Interests in the Assets and any proceeds therefrom as security for their respective Proportionate Shares of all costs, expenses and other liabilities owing in respect of or as of the date of such termination.

## 6. RIGHTS, DUTIES AND STATUS OF OPERATOR

- 6.1 The Operator in performing its duties and carrying out its responsibilities hereunder shall be deemed to be an independent contractor. The Operator shall not act or hold itself out as agent for any of the parties nor make any commitments on their individual behalf unless specifically permitted by this Agreement or directed in writing by a party.
- 6.2 Subject to any specific provisions of this Agreement and subject to it having the right to reject any direction on reasonable grounds by virtue of its status as an independent contractor, the Operator shall perform its duties hereunder in accordance with the directions of the Management Committee and in accordance with this Agreement.
- 6.3 The Operator shall manage and carry out such Mining Operations as the Management Committee may direct and in connection therewith shall, in advance if reasonably possible, notify the Management Committee of any change in Mining Operations which the Operator considers material.
- 6.4 The Operator shall have the sole and exclusive right and authority to manage and carry out all Mining Operations and to incur the Costs required for that purpose, including but not limited to the cost of retaining such subcontractors as it deems fit. In so doing the Operator shall:
- (a) comply with the provisions of all agreements or instruments of title under which the Property or Assets are held;
  - (b) pay all Costs properly incurred promptly as and when due;
  - (c) keep the Property and Assets free of all liens and encumbrances (other than those, if any, in effect on the Operative Date, those the creation of which are permitted pursuant to this Agreement, or builder's or mechanic's liens) arising out of the Mining Operations and, in the event of any lien being filed as aforesaid, proceed with diligence to contest or discharge same;
  - (d) prosecute claims or, where a defence is available, defend litigation arising out of the Mining Operations, provided that any Participant may join in the prosecution or defence at its own expense;
  - (e) perform such assessment work or make payments in lieu thereof and pay such rentals, taxes or other payments and do all such other things as may be necessary to maintain the Property in good standing, including, without limiting the generality of the foregoing, staking and re-staking mining claims, and applying for licenses, leases, grants, concessions, permits, patents and other rights to and interests in the Minerals;

- (f) maintain accounts in accordance with the Accounting Procedure, provided that the judgement of the Operator as to matters related to accounting, for which provision is not made in the Accounting Procedure, shall govern if the Operator's accounting practices are in accordance with accounting principles generally accepted in the mining industry in Canada; and
- (g) perform its duties and obligations hereunder in a sound and workmanlike manner, in accordance with good mining and engineering practices and in substantial compliance with this Agreement and all applicable federal, provincial, territorial and municipal laws, by-laws, ordinances, rules and regulations.

## **7. OPERATOR'S FEE**

7.1 The Operator may charge the following fees in return for its head office overhead functions:

- (a) an amount equal to ten percent (10%) of any Production Program with Production Program Costs estimated at \$2,000,000 or less;
- (b) an amount equal to eight percent (8%) of any Production Program with Production Program Costs estimated between \$2,000,001 and \$5,000,000;
- (c) an amount equal to five percent (5%) of any Production Program with Production Program Costs estimated above \$5,000,000; and
- (d) an amount equal to ten percent (10%) of all Operating Costs to a maximum of 10% of budgeted Operating Costs, other than those referred to in subparagraph 1.1(k)(ii)(IV).

## **8. PRODUCTION PROGRAM**

8.1 Upon the approval of the Management Committee, but subject to paragraph 8.2, the Operator shall prepare and deliver to each party, within sixty (60) days of receipt of such approval, a Production Program for purposes of bringing into Commercial Production any Mineral deposit on the Property and establishing and operating a Mine.

8.2 If on the Operative Date, the Operator has already incurred Production Program Costs as part of ongoing work then in progress in connection with a Production Program, such work shall be deemed to have been approved by the Management Committee as a Production Program. Under such circumstances, the Operator shall, within sixty (60) days of the Operative Date, deliver to each party the Production Program so deemed approved pursuant to this paragraph 8.2 and the provisions of this article 8 shall apply.

- 8.3 Each party may, within thirty (30) days of receipt of a Production Program, give notice to the Operator committing to contribute its Proportionate Share of the Production Program Costs to be incurred in connection with the Production Program. A party which fails to give notice within the thirty (30) day period shall be deemed to have elected not to contribute.
- 8.4 If any party elects or is deemed to have elected not to contribute its Proportionate Share of Production Program Costs, the other party which has elected to contribute its Proportionate Share of Production Program Costs may give notice in writing to the Operator stating that it will contribute, in addition to its own Proportionate Share, the Proportionate Share of the non-contributing party. In such event, the Interests of the parties shall be adjusted in accordance with paragraph 3.2.
- 8.5 An election to contribute to a Production Program shall make a party liable to pay its Proportionate Share of Production Program Costs actually incurred under or pursuant to a Production Program, including Production Program Overruns (as hereinafter defined) up to but not exceeding twenty percent (20%). For greater certainty, a party electing to contribute to a Production Program deemed approved pursuant to paragraph 8.2 shall only be liable to pay its Proportionate Share of Production Program Costs incurred after the Operative Date.
- 8.6 After having elected to contribute to a Production Program, each Participant shall, within fifteen (15) days after being requested in writing to do so by the Operator, pay such portion of its Proportionate Share of the Production Program Costs as the Operator may require.
- 8.7 If it appears to the Operator that Production Program Costs will exceed those estimated under the Production Program, the Operator shall immediately give written notice to the Participants outlining the nature and extent of the additional costs and expenses (herein called the "Production Program Overruns") and the reasons therefore. If Production Program Overruns are estimated to exceed by more than twenty percent (20%) those estimated under the Production Program (herein called "Excess Production Program Overruns"), the notice of the Operator shall contain notice of a meeting of the Management Committee, to be held no sooner than five (5) business days after the date of delivery of the notice, called for the purpose of considering and, if deemed advisable, approving the Excess Production Program Overruns. If the Excess Production Program Costs are approved by the Management Committee, each Participant shall, within fifteen (15) days after the receipt of a written request from the Operator, pay to the Operator its Proportionate Share of such Excess Production Program Overruns.
- 8.8 If Excess Production Program Overruns are not approved by the Management Committee, as provided in paragraph 8.7, the Operator will have the right to curtail or abandon the Production Program.

- 8.9 If a Participant at any time fails to pay its Proportionate Share of Production Program Costs (including Production Program Overruns and approved Excess Production Program Overruns) in accordance with this article 8, the Operator may give written notice to such Participant demanding payment and, if such Participant has not paid such amount within fifteen (15) days after receipt of such notice, such Participant shall be deemed to be in default hereunder and the other party which has paid its Proportionate Share of Production Program Costs may give notice in writing to the Operator stating that it will contribute the Proportionate Share of the defaulting party. In such event, the Interests of the parties shall be adjusted in accordance with paragraph 3.2.
- 8.10 If a Participant elects (a) not to contribute the Proportionate Share of Production Program Costs of the non-contributing party pursuant to paragraph 8.4 or (b) not to contribute the Proportionate Share of Production Program Costs of the defaulting Participant pursuant to paragraph 8.9, the Operator shall have the right to curtail or abandon the Production Program.

## 9. OPERATING PLANS

- 9.1 Commencing on the Completion Date, all Mining Operations shall be planned and conducted and all estimates, reports and statements shall be prepared and made on the basis of a calendar year. Each Participant shall be liable to pay its Proportionate Share of all Operating Costs incurred under an Operating Plan, including Operating Cost Overruns (as hereinafter defined) up to but not exceeding twenty percent (20%).
- 9.2 With the exception of the year in which the Completion Date occurs, an Operating Plan for each calendar year shall be submitted by the Operator to the Participants not later than October 31 in the year immediately preceding the calendar year to which the Operating Plan relates. Each Operating Plan shall contain the following:
- (a) a plan for the proposed Mining Operations, including any plans for further exploration or expansion of the Mine;
  - (b) a detailed estimate of all Operating Costs (including, if applicable, all additional estimated capital expenditures for further exploration or expansion of the Mine), plus a reasonable allowance for contingencies;
  - (c) an estimate of the quantity and quality of the Minerals to be mined and the concentrates or metals or other products and by-products to be produced; and
  - (d) such other facts as may be necessary to reasonably illustrate the results intended to be achieved by the Operating Plan. Upon request of any Participant, the Operator shall meet with that Participant to discuss the Operating Plan and shall provide such additional or supplemental

information as that Participant may reasonably require with respect thereto.

- 9.3 The Management Committee shall adopt each Operating Plan, with such changes as it deems necessary, by November 30 in the year immediately preceding the calendar year to which the Operating Plan relates.
- 9.4 If on the Operative Date, the Completion Date has been achieved and the Operator has already incurred Operating Costs as part of ongoing work then in progress in connection with an Operating Plan, such Operating Plan shall be deemed to have been adopted by the Management Committee and each party shall be liable for its Proportionate Share of Operating Costs incurred after the Operative Date. Under such circumstances, the Operator shall, within sixty (60) days of the Operative Date, deliver to each party the Operating Plan so deemed adopted pursuant to this paragraph 9.4 and the provisions of this article 9 shall apply.
- 9.5 Except as herein provided, the Operator shall have the power and authority to deviate from or make modifications to Operating Plans from time to time, in accordance with good engineering and mining practice. If it appears to the Operator that Operating Costs will exceed those estimated under an Operating Plan, the Operator shall immediately give written notice to the Participants outlining the nature and extent of the additional costs and expenses (herein called "**Operating Cost Overruns**") and the reasons therefor. If Operating Cost Overruns are estimated to exceed by more than twenty percent (20%) those estimated under the Operating Plan (herein called "**Excess Operating Cost Overruns**"), the notice of the Operator shall contain notice of a meeting of the Management Committee, to be held no sooner than five (5) business days after the date of delivery of the notice, together with a proposed amendment to the Operating Plan. The meeting of the Management Committee shall be convened to review, amend (if deemed appropriate) and approve same.
- 9.6 In the event that a proposed Operating Plan or amendment thereto is not approved by the Management Committee as hereinbefore provided, the Operator may submit such matter to arbitration in accordance with Article 13. Pending the outcome of such arbitration, the Operator may continue to operate the Property as a Mine on behalf of the Participants, based as closely as practicable on the most recently approved Operating Plan, and notwithstanding that such operations may be carried over to a subsequent operating year.
- 9.7 The Operator shall be entitled to include in the estimate of Operating Costs referred to in subparagraph 9.2(b) hereof the reasonably estimated costs of satisfying continuing obligations that may remain after this Agreement terminates, in excess of amounts actually expended. Such continuing obligations are or will be incurred as a result of the Joint Operation and shall include such things as monitoring, stabilization, reclamation or restoration obligations, severance and other employee benefit costs, costs relating to

environmental protection, rehabilitation and de-commissioning and all other obligations incurred or imposed as a result of the Joint Operation which continue or arise after termination of this Agreement and settlement of all accounts. The amount accrued from time to time for the satisfaction of such continuing obligations shall be classified as Costs hereunder but shall be segregated into a separate account.

#### 10. NET CASH FLOW DEFICITS AND DISTRIBUTIONS

- 10.1 The Operator will submit to the parties on or before the 15th day of each month (the "**Submission Date**") a statement indicating the calculation of Net Cash Flow hereunder for the applicable period (the "**Net Cash Flow Statement**").
- 10.2 If the Net Cash Flow for the period is positive, the amount of such surplus (the "**Net Cash Flow Surplus Amount**") will be paid as a Distribution to the parties on the Submission Date, which Distribution shall be paid by direct bank account transfer or by any other method of payment agreed upon in writing by the parties.
- 10.3 If the Net Cash Flow for any period is negative, each party must contribute its Proportionate Share of such shortfall (the "**Net Cash Flow Deficit Amount**") in accordance with this article 10. Under such circumstances, the Net Cash Flow Statement delivered by the Operator to each party on the Submission Date pursuant to paragraph 10.1 hereof shall be accompanied by an invoice indicating such party's Proportionate Share of the Net Cash Flow Deficit Amount for the applicable period.
- 10.4 Each Participant shall pay its Proportionate Share of the Net Cash Flow Deficit Amount within fifteen (15) days of the Submission Date.
- 10.5 If a Participant at any time fails to pay its Proportionate Share of the Net Cash Flow Deficit Amount in accordance with paragraph 10.4, the Operator may give written notice to such Participant demanding payment and, if such Participant has not paid such amount within fifteen (15) days after receipt of such notice, such Participant shall be deemed to be in default hereunder and the other party which has paid its Proportionate Share of the Net Cash Flow Deficit Amount may give notice in writing to the Operator stating that it will contribute the Proportionate Share of the defaulting party. In such event, the Interests of the parties shall be adjusted in accordance with paragraph 3.2.
- 10.6 If a Participant elects not to contribute the Proportionate Share of the Net Cash Flow Amount of the defaulting Participant pursuant to paragraph 10.5, the Operator shall have the right to curtail the Operating Plan.
- 10.7 Notwithstanding anything herein contained to the contrary, the Operator shall be entitled to incur, and the Participants shall be responsible for their respective Proportionate Shares of, any expenditures which the Operator deems necessary to preserve or protect life, limb or property in respect of the Property and the

operations hereunder and the payment provision of paragraph 10.4 shall apply mutatis mutandis.

## 11. MINE FINANCING

- 11.1 The contributions of the Participants toward all Costs shall be individually and separately provided by them.
- 11.2 The parties hereto shall not pledge, mortgage, charge or otherwise encumber their Interest for any purposes whatsoever.

## 12. SURRENDER OF INTEREST

- 12.1 Any party may, at any time upon notice, surrender its entire Interest to the other parties by giving those parties notice of surrender.

The notice of surrender shall:

- (a) indicate a date for surrender not less than three (3) months after the date on which the notice is given; and
  - (b) contain an undertaking that the surrendering party will:
    - (i) satisfy its Proportionate Share, based on its then Interest, of all obligations and liabilities which arose at any time prior to the date of surrender;
    - (ii) if the Operator has not included in Operating Costs the costs of continuing obligations as set out in paragraph 9.7 hereof, pay on the date of surrender its reasonably estimated Proportionate Share, based on the surrendering party's then Interest, of the Costs of rehabilitating the Mine site and of reclamation as at the date of surrender; and
    - (iii) will hold in confidence, for a period of two (2) years from the date of surrender, all information and data which it acquired pursuant to this Agreement.
- 12.2 Upon the surrender of its entire Interest as contemplated in paragraph 12.1 and upon delivery of a release in writing, in form acceptable to counsel for the other parties, releasing the other parties from all claims and demands hereunder, the surrendering party shall be relieved of all obligations or liabilities hereunder except for those which arose or accrued or were accruing due on or before the date of the surrender.
  - 12.3 A party to whom a notice of surrender has been given as contemplated in paragraph 12.1 may elect, by notice within ninety (90) days to the party which first gave the notice to accept the surrender, in which case paragraphs 12.1 and

12.2 shall apply, or to join in the surrender. If all of the parties join in the surrender, the Joint Operation shall be terminated in accordance with article 16.

### 13. ARBITRATION

- 13.1 Any disagreement, dispute or controversy (hereinafter collectively called a "dispute") between the parties with respect to any matter arising under this Agreement or the construction hereof, will be determined by a single arbitrator to be appointed by the parties hereto.
- 13.2 Any party may refer any such matter to arbitration by written notice to the others and, within ten (10) days after receipt of such notice, the parties will agree on the appointment of an arbitrator. No person will be appointed as an arbitrator hereunder unless such person agrees in writing to act.
- 13.3 If the parties cannot agree on a single arbitrator as provided in paragraph 13.2, or if the person appointed is unwilling or unable to act, either party may apply to a judge of an Ontario court of competent jurisdiction to appoint an arbitrator.
- 13.4 Except as specifically provided in this article 13, an arbitration hereunder shall be conducted in accordance with the *Arbitrations Act* (Ontario) (the "Act"). The arbitrator shall fix a time and place in Toronto, Ontario for the purpose of hearing the evidence and representations of the parties and the arbitrator shall preside over the arbitration and determine all questions of procedure not provided for under such Act or this article 13. After hearing evidence and representations that the parties may submit, the arbitrator shall make an award and reduce the same in writing and deliver one copy thereof to each of the parties. The decision of the arbitrator will be made within forty-five (45) days after his appointment, subject to any reasonable delay due to unforeseen circumstances. The expense of the arbitration shall be paid as specified in the award. The parties agree that the award of the single arbitrator shall be final and binding upon each of them and shall not be subject to appeal.

### 14. ASSIGNMENT OF INTEREST – RIGHT OF FIRST REFUSAL

- 14.1 If a party (hereafter in this subparagraph 14.1 called the "Vendor") shall wish or seek to sell, assign, transfer, convey or otherwise dispose of all or part of its Interest at any time during the currency of this Agreement, the other parties then having an Interest (hereafter in this subparagraph 14.1 called the "Purchasers") shall be entitled to a right of first refusal in respect thereof as follows:

- (a) The Vendor shall give written notice (hereafter called the "Offering Notice") to the Purchasers of the Vendor's desire to sell. The Offering Notice shall describe the Interest or part thereof that is offered for sale, and shall also state the bona fide consideration and other terms on which the sale is desired to be made by the Vendor; excepting that if any element of the consideration for the Interest stipulated in the Offering Notice cannot be assumed or met in kind by the Purchaser or Purchasers,

the Vendor shall, upon notice from the Purchaser or Purchasers to such effect, set out in an amendment to the Offering Notice the bona fide cash value of the said element of the consideration. Included in the Offering Notice shall be written notice (hereinafter called the "list of names") containing the names and addresses of not more than four persons or corporations, who may be parties, to which the Vendor proposes to offer to sell for a price and on terms not less favourable to the Vendor than those contained in the Offering Notice and only persons who are, to the knowledge of the Vendor, reasonably capable of financing such purchase shall be placed on such list.

- (b) The offer in the Offering Notice shall be open for acceptance for a period of sixty (60) days (herein called the "Acceptance Period") after receipt by the Purchasers and shall be irrevocable by the Vendor during the Acceptance Period.
- (c) The Purchasers shall be entitled to acquire all but not part of the Interest offered for sale, and the Purchasers may purchase the amount offered in the ratios they agree upon, or failing agreement, in the ratio of the Interests of those Purchasers who wish to buy what is offered for sale.
- (d) The Purchasers wishing to buy shall give written notice thereof to the Vendor and to all other Purchasers before the expiration of the Acceptance Period. Such notice of acceptance shall state the limit, if any, on the amount of the Interest each of the Purchasers wishes to buy from the Vendor. The other Purchasers may acquire the amount not desired by a Purchaser and shall acquire it by purchase in such ratios as they agree upon prior to the expiration of the Acceptance Period, or in the ratio of their Interests prior to the offer being made.
- (e) During the Acceptance Period, no offer shall be made to anyone on the list of names unless the Vendor first obtains prior written approval from the Purchasers, which approval will not be unreasonably withheld.
- (f) If the Purchasers do not within the Acceptance Period give notice of acceptance for the price and on the terms offered in the Offering Notice, then the Purchasers shall give to the Vendor within thirty (30) days after the conclusion of the Acceptance Period written approval of those names on the list of names to which the Vendor may make the offer to sell for a price and on terms not less favourable to the Vendor than those contained in the Offering Notice, which approval will not be unreasonably withheld. It shall be reasonable to withhold consent if the person or corporation is guilty of committing a crime or is being sued in a civil or criminal court for improper business activity involving allegations of dishonesty or unconscionable practices, or if the purchase of the Interest by the person or corporation would reduce the equity of the objecting party by virtue of the foreign ownership policies or laws of

Canada. The Vendor shall be entitled to offer for sale and to sell the Interest referred to in the Offering Notice to any of the approved parties within a period of 120 days after the expiration of the Acceptance Period.

- (g) If the Vendor does not sell, assign, transfer, convey or otherwise dispose of its Interest or part thereof by one of the methods provided for in this subparagraph 14.1, then any subsequent sale of the same, or of any other Interest which the Vendor wishes to sell, shall again be subject to all of the provisions of this subparagraph 14.1.

14.2 The provisions of subparagraph 14.1 shall not prevent a party from entering into an amalgamation or corporate reorganization which will have the effect in law of the amalgamated or surviving company possessing all the property, rights and interests and being subject to all the debts, liabilities and obligations of each amalgamating or predecessor company or from selling or transferring all of its Interest to an Affiliate provided that in any such event the transferring party and such Affiliate shall be jointly and severally liable for all obligations of the transferring party under this Agreement following such sale or transfer.

14.3 Any and all sales, assignments, transfers and dispositions of Interests made by a party or its successors in interest whether under the provisions of subparagraph 14.1 or subparagraph 14.2 shall be subject to the terms, covenants and conditions of this Agreement and to all applicable laws. It is agreed that the terms of this Agreement shall be deemed to be covenants running with the Property and with all transfers and assignments thereof. The parties in implementation of this subparagraph 14.3 shall require any and all transferees of an Interest hereunder to execute a counterpart of this Agreement thereby agreeing to be bound by the terms and provisions hereof in the same manner and to the same extent as though they had been a party in the first instance.

## 15. SALE OF PROPERTY – RIGHT OF FIRST REFUSAL

15.1 At any time during the subsistence of this Agreement during which Blue Note holds a majority Interest in the Properties, Blue Note may sell or transfer the Property to a third party (the “Assignee”), provided that Blue Note gives notice (the “Sale Notice”) to Breakwater of its intention to sell or transfer the Property to the Assignee. Such Sale Notice shall set forth the cash price at which Blue Note is prepared to sell or transfer the Property (the “Sale Price”), any other applicable terms and conditions, and the proposed date of the sale (the “Sale Date”). In such event, the following provisions shall govern such sale or transfer:

- (a) The Sale Notice shall be deemed to be an irrevocable offer by Blue Note to sell or transfer the Property to Breakwater on the terms set forth therein.

- (b) Within 45 days after receipt of the Sale Notice, Breakwater shall have the right (the “**Right of First Refusal**”) to purchase the Property from Blue Note on payment by Breakwater to Blue Note of the same Sale Price that Blue Note specified in its Sale Notice. Where Breakwater determines to exercise its Right of First Refusal, then, on the Sale Date, Breakwater shall deliver or cause to be delivered to Blue Note payment of the total Sale Price for the Property.
- (c) If Breakwater determines not to exercise its Right of First Refusal herein within the 45 day period set out in subparagraph 16.1(b) above, Blue Note may sell the Property to the Assignee under substantially the same terms and conditions and Sale Price as originally stated in the Sale Notice to Breakwater. If the terms and conditions and/or Sale Price change materially when taken as a whole with respect to the Assignee, then Blue Note shall re-send a new Sale Notice to Breakwater and the provisions of this paragraph 16.1 shall apply.

## 16. TERMINATION OF MINING OPERATIONS

- 16.1 The Operator may, at any time subsequent to the Completion Date, on at least thirty (30) days notice to all Participants, recommend that the Management Committee approve that the Mining Operations be suspended. The Operator’s recommendation shall include a plan and budget (in this article 16 called the “**Mine Maintenance Plan**”), in reasonable detail, of the activities to be performed to maintain the Assets and Property during the period of suspension and the Costs to be incurred. The Management Committee may, at any time subsequent to the Completion Date, cause the Operator to suspend Mining Operations in accordance with the Operator’s recommendation with such changes to the Mine Maintenance Plan as the Management Committee deems necessary. The Participants shall be committed to contribute their Proportionate Share of the Costs incurred in connection with the Mine Maintenance Plan. The Management Committee may cause Mining Operations to be resumed at any time.
- 16.2 The Operator may, at any time following a period of at least ninety (90) days during which Mining Operations have been suspended, upon at least thirty (30) days notice to all Participants, or in the events described in paragraph 16.1, recommend that the Management Committee approve the permanent termination of Mining Operations. The Operator’s recommendation shall include a plan and budget (in this article 16 called the “**Mine Closure Plan**”), in reasonable detail, of the activities to be performed to close the Mine and reclaim the Property. The Management Committee may approve the Operator’s recommendation with such changes to the Mine Closure Plan as the Management Committee deems necessary.
- 16.3 If the Management Committee approves the Operator’s recommendation as aforesaid, it shall cause the Operator to:

- (a) implement the Mine Closure Plan, whereupon the Participants shall be committed to pay, in proportion to their respective Interests, such Costs as may be required to implement the Mine Closure Plan;
- (b) remove, sell and dispose of such Assets as may reasonably be removed and disposed of profitably and such other Assets as the Operator may be required to remove pursuant to applicable environmental and mining laws; and
- (c) sell, abandon or otherwise dispose of the Property.

The disposal price for the Assets and the Property shall be the best price obtainable and the net revenues, if any, from the removal and sale shall be credited to the Participants in proportion to their respective Interests.

16.4 If the Management Committee does not approve the Operator's recommendation contemplated in paragraph 16.2, the Operator shall maintain Mining Operations in accordance with the Mine Maintenance Plan.

## 17. NO AREA OF COMMON INTEREST

17.1 During the subsistence of this Agreement, no acquisition, directly or indirectly, of any right to or interest in, or any right to receive proceeds of production from, any mining claim, license, lease, grant, concession, permit, patent, or other form of mineral tenure, regardless of its proximity to the Property, shall be included in or hereafter form part of the Property, nor shall it be subject to the terms of this Agreement.

## 18. INFORMATION AND DATA

18.1 At all times during the subsistence of this Agreement, the duly authorized representatives of each Participant shall, at its and their sole risk and expense, during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the Operator, have access to the Property and to all technical records and other factual engineering data and information relating to the Property which is in the possession of the Operator.

18.2 All information and data concerning or derived from the Mining Operations shall be kept confidential and, except to the extent required by law or by regulation of any securities commission or stock exchange, shall not be disclosed to any person other than an Affiliate without the prior written consent of all the Participants, which consent shall not unreasonably be withheld.

18.3 Each party hereto shall consult with the other party prior to issuing any press release or other public statement with respect to the Property or the activities of the parties with respect thereto and the disclosing party shall use its best efforts to give to the other party not less than 24 hours prior notice of such press release including a draft of the content of such press release or public announcement.

## 19. LIABILITY OF THE OPERATOR

- 19.1 Subject to paragraph 19.2, each party shall indemnify and save the Operator harmless from and against any loss, liability, claim, demand, damage, expense, injury, or death (including, without limiting the generality of the foregoing, legal fees) resulting from any acts or omissions of the Operator or its officers, employees or agents.
- 19.2 Notwithstanding paragraph 19.1, the Operator shall not be indemnified nor held harmless by any of the parties for any loss, liability, claim, damage, expense, injury or death, (including, without limiting the generality of the foregoing, legal fees) resulting from the negligence or wilful misconduct of the Operator or its officers, employees or agents.
- 19.3 An act or omission of the Operator or its officers, employees or agents done or omitted to be done:
- (a) at the direction, or within the scope of the direction, of the Management Committee; or
  - (b) with the concurrence of the Management Committee; or
  - (c) unilaterally and in good faith by the Operator to protect life or property;
- shall be deemed not to be negligence or wilful misconduct.
- 19.4 The obligation of the other parties to indemnify and save the Operator harmless pursuant to paragraph 19.1 shall be in proportion to its Interest as at the date that the loss, liability, claim, demand, damage, expense, injury or death occurred or arose.
- 19.5 The Operator shall not be liable to any other party nor shall any party be liable to the Operator in contract, tort or otherwise for special or consequential damages, including without limiting the generality of the foregoing, loss of profits or revenues.

## 20. INSURANCE

- 20.1 If not already in place upon the Operative Date, the Management Committee shall cause the Operator to place and maintain with a reputable insurer or insurers such insurance, as the Management Committee in its discretion deems advisable in order to protect the parties, together with such other insurance, as any Participant may by notice reasonably request. The certificate of insurance shall show each Participant as a named insured and the Operator shall provide each Participant with a copy of such certificate.
- 20.2 Paragraph 20.1 shall not preclude any party from placing, for its own account, insurance for greater or other coverage than that placed by the Operator.

## 21. RELATIONSHIP OF PARTIES

- 21.1 The rights, duties, obligations and liabilities of the parties shall be several and not joint nor joint and several, it being the express purpose and intention of the parties that their respective Interests shall be held as tenants in common.
- 21.2 Nothing herein contained shall be construed as creating a partnership of any kind or as imposing upon any party any partnership duty, obligation or liability to any other party hereto.
- 21.3 No party shall use, suffer or permit to be used, directly or indirectly, the name of any other party for any purpose related to the Property, except when required by this Agreement or by any law, by-law, ordinance, rule, order or regulation.

## 22. PARTITION

- 22.1 Each of the parties hereto waives, during the term of this Agreement, any right to partition of the Property or Assets or any part thereof and no party shall seek to be entitled to partition of the Property or the Assets whether by way of physical partition, judicial sale or otherwise during the term of this Agreement.

## 23. TAXATION

- 23.1 All Costs incurred hereunder shall be for the account of the party or parties making or incurring same, if more than one then in proportion to their respective Interests, and each party on whose behalf any Costs have been incurred shall be entitled to claim all tax benefits, write-offs, and deductions with respect thereto.

## 24. FORCE MAJEURE

- 24.1 Notwithstanding anything herein contained to the contrary, if any Participant is prevented from or delayed in performing any obligation under this Agreement, and such failure is occasioned by any cause beyond its reasonable control, excluding only lack of finances, then, subject to paragraph 25.2, the time for the observance of the condition or performance of the obligation in question shall be extended for a period equivalent to the total period the cause of the prevention or delay persists or remains in effect.
- 24.2 Any party hereto claiming suspension of its obligations as aforesaid shall promptly notify the other parties to that effect and shall take all reasonable steps to remove or remedy the cause and effect of the force majeure described in the said notice insofar as it is reasonably able to do and as soon as possible; provided that the terms of settlement of any labour disturbance or dispute, strike or lockout shall be wholly in the discretion of the party claiming suspension of its obligations by reason thereof; and that party shall not be required to accede to the demands of its opponents in any such labour disturbance or dispute,

strike, or lockout solely to remedy or remove the force majeure thereby constituted.

- 24.3 The extension of time for the observance of conditions or performance of obligations as a result of force majeure shall not relieve the Operator from its obligations to keep the Property in good standing.

**25. NOTICE**

- 25.1 All invoices, notices, consents and demands under this Agreement shall be in writing and may be delivered personally or sent by fax or prepaid overnight courier to the address of each party set out herein. Any notice delivered or sent by fax or prepaid overnight courier shall be deemed to have been given and received on the business day next following the date of delivery.

**26. WAIVER**

- 26.1 No waiver, express or implied, by any party to, or any breach by any other party of any or all of its obligations under this Agreement shall be valid and binding unless evidenced in writing. Any waiver shall extend only to the particular breach so waived and shall not limit any rights with respect to any future breach.

**27. AMENDMENTS**

- 27.1 This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any amendment or variation of this Agreement shall be in writing dated subsequent to the Operative Date and duly executed by each of the parties.

**28. TERM**

- 28.1 Unless earlier terminated by agreement of all parties having an Interest or as a result of one party acquiring a one-hundred percent (100%) Interest, the Joint Operation and this Agreement shall remain in full force and effect for so long as any party has any right, title or Interest in the Property. Termination of this Agreement shall not, however, relieve any party from any obligations theretofore accrued but unsatisfied, nor from its obligations with respect to rehabilitation of the Mine site and reclamation.

**29. TIME OF ESSENCE**

- 29.1 Time is of the essence of this Agreement.

**30. SUCCESSORS AND ASSIGNS**

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

31. **GOVERNING LAW**

31.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

**IN WITNESS WHEREOF** the parties hereto have executed this agreement as of the day and year first above written.

**BREAKWATER  
RESOURCES LTD.**

\_\_\_\_\_  
Authorized Signing Officer

\_\_\_\_\_  
Authorized Signing Officer

**BLUE NOTE METALS INC.**

\_\_\_\_\_  
Authorized Signing Officer

## APPENDIX I

### ACCOUNTING PROCEDURE

#### 1. INTERPRETATION

- 1.1 In this Appendix the following words, phrases and expressions shall have the following meanings:
- (a) “**Agreement**” means the Agreement to which this Accounting Procedure is attached as Appendix I.
  - (b) “**Count**” means a physical inventory count.
  - (c) “**Employee**” means those employees of the Operator who are assigned to and directly engaged in the conduct of Mining Operations, whether on a full-time or part-time basis.
  - (d) “**Employee Benefits**” means the Operator’s cost of holiday, vacation, sickness, disability benefits, field bonuses, amounts paid to and the Operator’s cost of established plans for employee’s group life insurance, hospitalization, pension, retirement and other customary plans maintained for the benefit of Employees and Personnel, as the case may be, which costs may be charged as a percentage assessment on the salaries and wages of Employees or Personnel, as the case may be, on a basis consistent with the Operator’s cost experience.
  - (e) “**Field Offices**” means the necessary sub-office or sub-offices in each place where a Production Program is being conducted or a Mine is being operated.
  - (f) “**Joint Account**” means the books of account maintained by the Operator to record all costs, expenses, credits and other transactions arising out of or in connection with the Mining Operations.
  - (g) “**Material**” means the personal property, equipment and supplies acquired or held, at the direction or with the approval of the Management Committee, for use in the Mining Operations.
  - (h) “**Offices**” means collectively, the Field Offices and the Supervisory Offices.
  - (i) “**Personnel**” means those management, supervisory, administrative, clerical or other personnel of the Operator normally associated with the Supervision Offices whose salaries and wages are charged directly to the Supervision Office in question.
  - (j) “**Reasonable Expenses**” means the reasonable expenses of Employees or Personnel, as the case may be, for which those Employees or Personnel may be reimbursed under the Operator’s usual expense account practice.

(k) "Supervision Offices" means the Operator's offices or department within the Operator's offices from which the Mining Operations are generally supervised.

1.2 All capitalized terms used but not defined in this Appendix I shall, unless the context otherwise requires, have the meanings ascribed to them in the Agreement.

## 2. STATEMENTS AND BILLINGS

2.1 The Operator shall, by invoice, charge each Participant with its Proportionate Share of Production Program Costs and Net Cash Flow Deficit Amounts in the manner provided in articles 8 and 10 of the Agreement respectively. Any Net Cash Flow Surplus Amount shall be distributed as a Distribution in accordance with article 10 of the Agreement.

2.2 The Operator shall deliver, with each invoice rendered for Costs incurred a statement indicating:

- (a) a summary of all charges or credits to the Joint Account relating to Material;
- (b) a summary of all other charges and credits to the Joint Account summarized by appropriate classification indicative of the nature of the charges and credits; and
- (c) such additional information as may be reasonably necessary in order for the Participant to understand the nature of the charges and credits.

2.3 The Operator shall deliver with each invoice for an advance of Costs a statement indicating:

- (a) the estimated Production Program Costs or Net Cash Flow Deficit Amounts in accordance with articles 8 and 10 of the Agreement, respectively;
- (b) the addition thereto or subtraction therefrom, as the case may be, made in respect of Production Program Costs actually having been incurred in an amount greater or lesser than the advance which was made by each Participant for the penultimate month preceding the month of the invoice; and
- (c) the advances made by each Participant to date and the Production Program Costs incurred to the end of the penultimate month preceding the month of the invoice.

### 3. DIRECT CHARGES

3.1 The Operator shall charge the Joint Account with the following items:

(a) Contractor's Charges:

All proper Costs relative to the Mining Operations incurred under contracts entered into by the Operator with third parties.

(b) Labour Charges:

- (i) The salaries and wages of Employees in an amount calculated by taking the full salary or wage of each Employee multiplied by that fraction which has as its numerator the total time for the month that the Employees were directly engaged in the conduct of Mining Operations and as its denominator the total normal working time for the month of the Employee;
- (ii) the Reasonable Expenses of the Employees; and
- (iii) Employee Benefits and government contributions in respect of the Employees in an amount proportionate to the charge made to the Joint Account in respect to their salaries and wages.

(c) Office Maintenance:

- (i) The cost or a pro rata portion of the costs, as the case may be, of maintaining and operating the Offices. The basis for charging the Joint Account for Office maintenance costs shall be as follows:
  - (A) the expense of maintaining and operating Field Offices, less any revenue therefrom; and
  - (B) that position of maintaining and operating the Supervision Offices which is equal to
    - (1) the anticipated total operating expenses of the Supervision Offices;
    - (2) the anticipated total staff man days for the Employees whether in connection with the Mining Operations or not;multiplied by
  - (3) the actual total time spent on the Mining Operations by the Employee expressed in man days.
- (ii) Without limiting the generality of the foregoing, the anticipated total operating expenses of the Supervision Offices shall include:

- (A) the salaries and wages of the Operator's Personnel which have been directly charged to those Offices;
  - (B) the Reasonable Expenses of the Personnel; and
  - (C) Employee Benefits.
- (iii) The Operator shall make an adjustment in respect of the Office Maintenance costs forthwith after the end of each Operating Year upon having determined the actual operating expenses and actual total staff man days referred to in clause 3.1(c)(i)(B) of this Appendix I.
- (d) Material:
- Material purchased or furnished by the Operator for use on the Property as provided under section 7 of this Appendix I.
- (e) Transportation Charges:
- The cost of transporting Employees and Material necessary for the Mining Operations.
- (f) Service Charges:
- (i) The cost of services and utilities procured from outside sources other than services covered by paragraph 3.1(h); and
  - (ii) Use and service of equipment and facilities furnished by the Operator as provided in subsection 5.5 of this Appendix I.
- (g) Damage and Losses to Joint Property:
- All costs necessary for the repair or replacement of Assets made necessary because of damages or losses by fire, flood, storms, theft, accident or other cause. The Operator shall furnish each Participant with written particulars of the damages or losses incurred as soon as practicable after the damage or loss has been discovered. The proceeds, if any, received on claims against any policies of insurance in respect of those damages or losses shall be credited to the Joint Account.
- (h) Legal Expense:
- All costs of handling, investigating and settling litigation or recovering the Assets, including, without limiting the generality of the foregoing, attorney's fees, court costs, costs of investigation or procuring evidence and amounts paid in settlement or satisfaction of any litigation or claims; provided, however, that, unless otherwise approved in advance by the Management Committee, no charge shall

be made for the services of the Operator's legal staff or the fees and expenses of outside solicitors.

(i) Taxes:

All taxes, duties or assessments of every kind and nature (except income taxes) assessed or levied upon or in connection with the Property, the Mining Operations thereon, or the production therefrom, which have been paid by the Operator for the benefit of the parties.

(j) Insurance:

Net premiums paid for:

- (i) such policies of insurance on or in connection with Mining Operations as may be required to be carried in accordance with applicable laws; and
- (ii) such other policies of insurance as the Operator may carry for the protection of the parties in accordance with the Agreement; and

the applicable deductibles in event of an insured loss.

(k) Royalties:

Fees and other similar charges required to be paid for acquiring, recording and maintaining permits, mineral claims and mining leases and royalties which are paid as a consequence of the Mining Operations.

(l) Permits:

Permit costs, fees and other similar charges which are assessed by various governmental agencies.

(m) Shipping Fees:

All costs relating to the shipping of Minerals to the point of sale.

(n) Operator's Fees:

Operator's fees as set out in article 7 of the Agreement.

(o) Marketing and Representation Fees

All fees and charges related to marketing and sale of Minerals (or concentrates derived therefrom).

(p) Banking and Financing Charges

All costs related to banking and financing charges

(q) Other Expenditures:

Such other costs and expenses which are not covered or dealt with in the foregoing provisions of this subsection 3.1 of this Appendix I as are incurred with the approval of the Management Committee for Mining Operations or as may be contemplated in the Agreement.

**4. EXCLUDED CHARGES**

- 4.1 For greater certainty, the Operator shall not charge each Participant for any Costs or expenses incurred by the Operator which are solely related to general overhead and administrative expenses of the Operator (other than the Operator's fees as set out in article 7 of the Agreement) including bonuses, salaries, auditor's fees, legal fees, consulting fees, insurance and rent.

**5. PURCHASE OF MATERIAL**

- 5.1 Subject to subsection 5.4 of this Appendix I, the Operator shall purchase all Material and procure all services required in the Mining Operations.
- 5.2 Materials purchased and services procured by the Operator directly for the Mining Operations shall be charged to the Joint Account at the price paid by the Operator less all discounts actually received.
- 5.3 So far as it is reasonably practical and consistent with efficient and economical operations, the Operator shall purchase, furnish or otherwise acquire only such Material and Assets as may be required for immediate use. The Operator shall attempt to optimize the accumulation of surplus stocks of Material.
- 5.4 Any Participant may sell Material or services required in the Mining Operations to the Operator for such price and upon such terms and conditions as the Management Committee may approve.
- 5.5 Notwithstanding the foregoing provisions of this section 5, the Operator shall be entitled to supply for use in connection with the Mining Operations equipment and facilities which are owned by the Operator and to charge the Joint Account with such reasonable costs as are commensurate with the ownership and use thereof.

**6. DISPOSAL OF MATERIAL**

- 6.1 The Operator, with the approval of the Management Committee may, from time to time, sell any Material which has become surplus to the foreseeable needs of the Mining Operations for the best price and upon the most favourable terms and conditions available.
- 6.2 Any Participant may purchase from the Operator any Material which may from time to time become surplus to the foreseeable need of the Mining Operations for such price and upon such terms and conditions as the Management Committee may approve.

- 6.3 Upon termination of the Agreement, the Management Committee, acting reasonably, may approve the division of any Material held by the Operator at that date which may be taken by the Participant in lieu of a portion of its Proportionate Share of the net revenues received from the disposal of the Assets and Property. The division of any Material for such purposes shall be for such price and on such terms and conditions as the Management Committee, acting reasonably, may approve.
- 6.4 The net revenues received from the sale of any Material to third parties or to a Participant shall be credited to the Joint Account.

## 7. INVENTORIES

- 7.1 The Operator shall maintain records of Material in reasonable detail.
- 7.2 The Operator shall perform Counts from time to time at reasonable intervals and in connection therewith shall give notice of its intention to perform a Count to each Participant at least thirty (30) days in advance of the date set for performing the Count. Each Participant shall be entitled to be represented at the performance of a Count upon giving notice thereof to the Operator within twenty (20) days of the Operator's notice. A Participant who is not represented at the performance of a Count shall be deemed to have approved the Count as taken.
- 7.3 Forthwith after performing a Count, the Operator shall reconcile the inventory with the Joint Account and provide each Participant with a statement listing the overages and shortages. The Operator shall not be held accountable for any shortages of inventory except such shortages as may have arisen due to a lack of diligence on the part of the Operator.

## 8. ADJUSTMENTS

- 8.1 Payment of any invoice or receipt of any Distribution by a Participant shall not prejudice the right of that Participant to protest the correctness of the statement supporting the payment; provided, however, that all invoices and statements presented to each Participant by the Operator during any operating year shall conclusively be presumed to be true and correct upon the expiration of twelve (12) months following the end of the operating year to which the invoice or statements relates, unless within that twelve (12) month period, that Participant gives notice to the Operator protesting the correctness of the invoice or statement and requesting an adjustment of same.
- 8.2 The Operator shall not adjust any invoice or statement in favour of itself after the expiration of twelve (12) months following the end of the operating year to which the invoice or statement relates.
- 8.3 Notwithstanding subsections 8.1 and 8.2 of this Appendix I, the Operator may make adjustments to an invoice or statement which arises out of a physical inventory of Material or Assets.

- 8.4 A Participant shall be entitled upon notice to the Operator to request that the independent external auditor of the Operator provide that Participant with its opinion that any invoice or statement delivered pursuant to the Agreement in respect of the period referred to in subsection 8.1 of this Appendix I has been prepared in accordance with this Agreement.
- 8.5 The time for giving the audit opinion contemplated in subsection 8.4 of this Appendix I shall not extend the time for the taking of exception to and making claims on the Operator for adjustment as provided in subsection 8.1 of this Appendix I.
- 8.6 The cost of the auditor's opinion referred to in subsection 8.4 of this Appendix I shall be solely for the account of the Participant requesting the auditor's opinion, unless the audit disclosed a material error adverse to that Participant, in which case the cost shall be solely for the account of the Operator.

## APPENDIX II

### PROPERTY

#### Leases

ML246	Caribou Mining Lease – Exp. October 27, 2008
ML255	Restigouche Mining Lease – Exp. July 17, 2017
SIML2473	Restigouche Industrial Surface Mining Lease – Exp. June 30, 2017
SIML2271	Woodside Brook Industrial Surface Mining Lease (Tailings Area) – Exp. May 31, 2026

#### Mining Claims

##### Restigouche Property (Surrounding Mining Lease) – Exp. July 26, 2006

331904 – 331910  
331915 – 331921  
331942 – 331948  
331964 – 331966  
331969 – 331970  
331988 – 331990  
331993 – 331994  
335612 – 335614  
335617 – 335618  
335636 – 335642

##### Woodside Brook Property (Tailings Area) – Exp. June 15, 2007

334950 – 334969  
334972 – 334977  
334980 – 334986

##### Armstrong Property – Exp. July 29, 2007

335452 – 335469  
335471 – 335473  
335475 – 335497

##### Carroll Armstrong Property – Exp. July 29, 2007

362338 – 362339  
363049  
367917 – 367918  
367923 – 367927

McMaster Property – Exp. July 27, 2006

333600 – 333614  
335436 – 335444

Orvan Brook Property – Exp. July 27, 2006

329142 – 329151  
335445 – 335451

**Real Estate**

All that certain lot, piece and parcel of land and premises owned by the Vendor and situate, lying and being in the County of Restigouche, Province of New Brunswick identified as PID 50072032, being 509 hectares, more or less, together with all other real property owned or controlled by the Vendor and used in connection with the Mine.

## APPENDIX III

### NET SMELTER ROYALTY

#### 1. Interpretation

##### 1.1 Definitions: Where used herein:

“**Agreement**” means the Agreement to which this Net Smelter Royalty is attached as Appendix III.

“**Asset Purchase Agreement**” shall mean the asset purchase agreement dated [●], 2006 between CanZinco Ltd. and Blue Note.

“**Blue Note**” shall mean Blue Note Metals Inc.

“**Caribou Mine**” shall mean the Caribou mine site in New Brunswick as more particularly described in the Asset Purchase Agreement.

“**Debenture**” shall mean the subordinated convertible debenture dated [●], 2006 issued by Blue Note to Breakwater Resources Ltd.

“**Net Smelter Return**” shall mean the actual market value received, from time to time, for lead, zinc and copper concentrates or other Products recovered from the ore extracted from the Caribou Mine and the Restigouche Mine by the Operator from any independent smelter, or other purchaser or user, less:

- (a) all actual charges and costs, including insurance premiums, for transportation of Products from the processing facilities on or near the Caribou Mine and the Restigouche Mine to the place of sale, or other disposition, whether transported by the Operator or a third party;
- (b) all actual charges and costs for marketing the Products;
- (c) all actual charges, costs, deductions, and penalties for the treatment, tolling, or smelting of the Products and all costs and charges associated therewith, such as costs and charges with respect to handling, weighing, sampling, assaying and marketing, as well as presentation charges, referee's fees and expenses, after said Products leave the processing facility on or near the Caribou Mine and the Restigouche Mine; and
- (d) severance, production, *ad valorem*, excise, sales, and any other similar taxes or fees (excluding income taxes) paid to any lawful taxing authority on Products mined from the Property.

If Products are transported, processed or smelted by the Operator or an affiliate thereof, all charges, costs, penalties, and deductions referred to above and used for calculating Net Smelter Return shall be equivalent to the prevailing competitive rates charged by a

person who is not an affiliate in an arm's length transaction for transportation or smelting of a like quantity and quality of such Products.

**"Net Smelter Return Royalty"** shall mean two percent (2%) of the Net Smelter Return.

**"Owner"** shall mean the owner of the Net Smelter Return Royalty.

**"Products"** shall mean all ores, minerals, metals and concentrates and any other mineral resources produced from the Caribou Mine and the Restigouche Mine.

**"Property"** shall mean the Caribou Mine and the Restigouche Mine.

**"Restigouche Mine"** shall mean the Restigouche mine site in New Brunswick as more particularly described in the asset purchase agreement dated [●], 2006 between CanZinco and Blue Note.

1.2 **Interpretation:** Where used herein:

- (a) all other defined terms used in this Appendix which are not defined herein have the meanings ascribed thereto in the Agreement;
- (b) unless something in the subject matter or context is inconsistent therewith, words and expressions importing the singular numbers shall include the plural and *vice versa*, and words and expressions importing the use or any gender shall include the masculine, feminine and neuter genders;
- (c) reference to "Articles" refer to articles herein; references to "Sections" and "subsections" refer to sections and subsections herein; references to "paragraphs" and "subparagraphs" refer to paragraphs and subparagraphs herein; and
- (d) the division of this Appendix into Articles, Sections, subsections, paragraphs, subparagraphs and other portions and the insertion of headings are for convenience only and shall not affect or be taken into account in construing or interpreting anything herein.

1.3 **Currency:** All dollar amounts referred to herein are in Canadian dollars unless specifically stated to be otherwise, for example, as US\$.

2. **Calculation of Net Smelter Return Royalty:** An estimate of quarterly Net Smelter Return Royalty shall be calculated by the Operator at the end of each calendar quarter, and the Net Smelter Return Royalty shall be calculated by the Operator at the end of each calendar year. The estimate of the quarterly Net Smelter Return Royalty and a statement containing the Operator's calculation of the annual Net Smelter Return Royalty shall be transmitted to the Owner, together with payments of Net Smelter Return Royalty, if any, within 60 days of the end of the first three quarters of each calendar year and within ninety (90) days of the end of each calendar year, respectively.

3. **Verification and Disputing of Net Smelter Return Royalty:** The Owner may verify and contest the Operator's calculation of Net Smelter Return Royalty during a period of sixty days (60) following receipt of the annual statement of Net Smelter Return Royalty. The Operator shall maintain adequate records, which shall be made available to the Owner during said six (6) month period to enable the Owner to verify the correctness of the Operator's calculation of the Net Smelter Return Royalty. If the Owner disputes, in writing, the correctness of the Operator's determination of Net Smelter Return Royalty, the determination of whether an entry has been properly categorized or calculated shall be finally made by an independent auditor to be appointed by the Operator. If the Owner does not dispute, in writing, the correctness of the Operator's determination of Net Smelter Return Royalty within six (6) months following the delivery of an annual statement, such annual statement shall be deemed to be correct and the Owner shall waive all of its right to challenge said annual statement.
  
4. **Assignment:** The Net Smelter Return Royalty is a right running with the Caribou Mine and the Restigouche Mine. The Owner shall have no right, title or interest in the Caribou Mine or the Restigouche Mine other than the rights granted herein. The Owner may file or register notice of this Net Smelter Royalty or notice thereof as it deems fit, including with the Mining Recorder in New Brunswick. The Net Smelter Royalty shall be binding on any successor to the Operator and on any assignee or purchaser of the Caribou Mine or the Restigouche Mine. The Owner may not assign its rights under this Net Smelter Royalty to any person without the prior written approval of Blue Note Metals Inc., which approval shall not be unreasonably withheld.

EXHIBIT C TO THE  
UNSECURED SUBORDINATED CONVERTIBLE DEBENTURE OF  
BLUE NOTE METALS INC.

NOTICE OF EXERCISE OF COMMON SHARE  
CONVERSION OPTION

TO: Blue Note Metals Inc.

The undersigned, the registered Holder of the Unsecured Subordinated Convertible Debenture issued by Blue Note Metals Inc. on [•], 2006 (the "Debenture") hereby irrevocably elects to convert \$ \_\_\_\_\_ of the indebtedness outstanding under the Debenture into \_\_\_\_\_ [voting/non-voting] common shares of Blue Note Metals Inc. in accordance with the terms of the Debenture and directs that such common shares be issued and delivered to the Holder at the address indicated below.

A Debenture representing any unconverted indebtedness outstanding under the Debenture, if any, shall be registered in the name of and delivered to the Holder.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200 .

Breakwater Resources Inc.

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

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

EXHIBIT D TO THE  
UNSECURED SUBORDINATED CONVERTIBLE DEBENTURE OF  
BLUE NOTE METALS INC.

FORM OF NSR ROYALTY AGREEMENT

[See attached]

## NET SMELTER ROYALTY AGREEMENT

THIS AGREEMENT dated \_\_\_\_\_, 2006 is made:

**B E T W E E N:**

**BLUE NOTE METALS INC.**, a Canadian corporation  
("Blue Note")

- and -

**BREAKWATER RESOURCES LTD.**, a Canadian  
corporation ("Breakwater")

### RECITALS

- A. Blue Note has today acquired from CanZinco Inc. ("CanZinco"), a wholly-owned subsidiary of Breakwater, all of CanZinco's right, title and interest in and to assets that make up the Caribou mine and the Restigouche mine sites in New Brunswick, respectively the "Caribou Mine" and the "Restigouche Mine" as more particularly described in the asset purchase agreement dated July 26, 2006 between CanZinco and Blue Note (the "Asset Purchase Agreement") attached as Schedule "A" hereto;
- B. Part of the consideration to be paid by Blue Note to CanZinco for the Caribou Mine and the Restigouche Mine consists of this Agreement, between Blue Note and Breakwater pursuant to a direction from CanZinco to Blue Note;

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **Interpretation**

- 1.1 **Definitions:** In this Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

"**Caribou Mine**" shall have the meaning ascribed thereto in the Recitals to this Agreement;

"**Debenture**" shall mean the subordinated convertible debenture dated \_\_\_\_\_, 2006 issued by Blue Note to Breakwater;

"**Net Smelter Return**" shall mean the actual market value received, from time to time, for lead, zinc and copper concentrates or other Products recovered from the ore extracted from the Caribou Mine and the Restigouche Mine by Blue Note from any independent smelter, or other purchaser or user, less:

- (a) all actual charges and costs, including insurance premiums, for transportation of Products from the processing facilities on or near the Caribou Mine and the

Restigouche Mine to the place of sale, or other disposition, whether transported by Blue Note or a third party;

- (b) all actual charges and costs for marketing the Products;
- (c) all actual charges, costs, deductions, and penalties for the treatment, tolling, or smelting of the Products and all costs and charges associated therewith, such as costs and charges with respect to handling, weighing, sampling, assaying and marketing, as well as presentation charges, referee's fees and expenses, after said Products leave the processing facility on or near the Caribou Mine and the Restigouche Mine; and
- (d) severance, production, *ad valorem*, excise, sales, and any other similar taxes or fees (excluding income taxes) paid to any lawful taxing authority on Products mined from the Property.

If Products are transported, processed or smelted by Blue Note or an affiliate thereof, all charges, costs, penalties, and deductions referred to above and used for calculating Net Smelter Return shall be equivalent to the prevailing competitive rates charged by a person who is not an affiliate in an arm's length transaction for transportation or smelting of a like quantity and quality of such Products.

"**Net Smelter Return Royalty**" means (i) one percent (1%) of the Net Smelter Return when the average price for zinc on the London Metal Exchange ("LME") for a quarter for which the calculation is made under section 3 is US \$0.65 to US \$0.70 inclusive per pound; and (ii) two percent (2%) of the Net Smelter Return when the average price of zinc on the LME is greater than US \$0.70 per pound for a quarter for which the calculation is made under section 3. No royalty shall be paid when the average price for zinc on the LME is less than US \$0.65 per pound for a quarter for which the calculation is made under section 3. If the LME ceases to publish a price for zinc, the price quoted by an equivalent market shall be used.

"**Restigouche Mine**" shall have the meaning ascribed thereto in the Recitals to this Agreement.

"**Products**" means all ores, minerals, metals and concentrates and any other mineral resources produced from the Caribou Mine and the Restigouche Mine during the term of this Agreement.

## 1.2 Interpretation: In this Agreement:

- (a) unless something in the subject matter or context is inconsistent therewith, words and expressions importing the singular numbers shall include the plural and *vice versa*, and words and expressions importing the use or any gender shall include the masculine, feminine and neuter genders;
- (b) reference to "Articles" refer to articles of this Agreement; references to "Sections" and "subsections" refer to sections and subsections of this Agreement; references to "paragraphs" and "subparagraphs" refer to paragraphs and subparagraphs of this Agreement; and

- (c) the division of this Agreement into Articles, Sections, subsections, paragraphs, subparagraphs and other portions and the insertion of headings are for convenience only and shall not affect or be taken into account in construing or interpreting this Agreement.
- 1.3 **Currency:** All dollar amounts referred to herein are in Canadian dollars unless specifically stated to be otherwise, for example, as US\$.
- 1.4 **Recitals and Schedule:** The Recitals and Schedule A hereto are incorporated into this Agreement and form parts hereof.
2. **Net Smelter Return Royalty:** Breakwater, shall be entitled to, and is hereby granted by Blue Note, the Net Smelter Return Royalty.
3. **Calculation of Net Smelter Return Royalty:** An estimate of quarterly Net Smelter Return Royalty shall be calculated by Blue Note at the end of each calendar quarter, and the Net Smelter Return Royalty shall be calculated by Blue Note at the end of each calendar year. The estimate of the quarterly Net Smelter Return Royalty and a statement containing Blue Note's calculation of the annual Net Smelter Return Royalty shall be transmitted to Breakwater together with payments of Net Smelter Return Royalty, if any, within 60 days of the end of the first three quarters of each calendar year and within ninety (90) days of the end of each calendar year, respectively.
4. **Verification and Disputing of Net Smelter Return Royalty:** Breakwater may verify and contest Blue Note's calculation of Net Smelter Return Royalty during a period of sixty days (60) following receipt of the annual statement of Net Smelter Return Royalty. Blue Note shall maintain adequate records, which shall be made available to Breakwater during said six (6) month period to enable Breakwater to verify the correctness of Blue Note's calculation of the Net Smelter Return Royalty. If Breakwater disputes, in writing, the correctness of Blue Note's determination of Net Smelter Return Royalty, the determination of whether an entry has been properly categorized or calculated shall be finally made by an independent auditor to be appointed by Blue Note. If Breakwater does not dispute, in writing, the correctness of Blue Note's determination of Net Smelter Return Royalty within six (6) months following the delivery of an annual statement, such annual statement shall be deemed to be correct and Breakwater shall waive all of its right to challenge said annual statement.
5. **Assignment:** The Net Smelter Return Royalty is a right running with the Caribou Mine and the Restigouche Mine. Breakwater shall have no right, title or interest in the Caribou Mine or the Restigouche Mine other than the rights granted in this Agreement. Breakwater may file or register notice of this Agreement or notice thereof as it deems fit, including with the Mining Recorder in New Brunswick. This Agreement shall be binding on any successor to Blue Note and on any assignee or purchaser of the Caribou Mine or the Restigouche Mine. Breakwater may not assign its rights under this Agreement to any person without the prior written approval of Blue Note, which approval shall not be unreasonably withheld.
6. **Representations and Warranties:** Each Party represents and warrants to the other that:

- (a) it is a body corporate duly incorporated and in good standing in its jurisdiction of incorporation and that it is qualified to do business and is in good standing in those jurisdictions where necessary in order to carry out the purposes of this Agreement;
  - (b) it has the capacity and authority to enter into and perform this Agreement and all transactions contemplated herein and that all corporate and other actions required to authorize it to enter into and perform this Agreement have been properly taken;
  - (c) it will not breach any other agreement, or any undertaking, security or arrangement by entering into or performing this Agreement; and
  - (d) this Agreement has been duly executed and delivered by it and is valid and binding upon it in accordance with its terms and that the person executing this Agreement on its behalf is duly authorized to do so.
7. **Term:** The initial term of this Agreement shall be 10 years from the date hereof and shall be automatically renewed for subsequent 10-year terms thereafter until both of the Caribou Mine and the Restigouche Mine have been permanently closed; provided that this Agreement shall terminate on the transfer of a direct interest in the Caribou Mine and the Restigouche Mine to Breakwater pursuant to exercise by Breakwater of its option under section 3.1 of the Debenture.
  8. **Governing Laws:** This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the parties hereby irrevocably attorn to the jurisdiction of the courts thereof.
  9. **Entire Agreement; Successors and Assigns.** This Agreement contains the entire understanding of the Parties and supersedes all prior agreements and understandings between the Parties relating to the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties.
  10. **Counterparts:** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument and any of the Parties hereto may execute this Agreement by signing any such counterpart.

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

**BLUE NOTE METALS INC.**

**BREAKWATER RESOURCES LTD.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Per: \_\_\_\_\_



Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trade-mark Agents  
199 Bay Street  
Suite 2800, Commerce Court West  
Toronto ON M5L 1A9 Canada  
Tel: 416-863-2400 Fax: 416-863-2653

February 28, 2008

**Michael J. Fabbri**  
Dir: 416-863-3054  
michael.fabbri@blakes.com

VIA MESSENGER

Reference: 70010/1

Mr. George E. Pirie  
President and Chief Executive Officer  
Breakwater Resources Ltd.  
95 Wellington Street West  
Suite 950  
Toronto, Ontario  
M5J 2N7

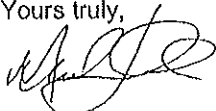
Dear Mr. Pirie:

Reference is made to the convertible debenture dated August 1, 2006 (the "**Convertible Debenture**") issued by Blue Note Mining Inc. ("**Blue Note**") in favour of Breakwater Resources Inc. ("**Breakwater**"). All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Convertible Debenture.

We are writing to inform you that on June 29, 2007, Blue Note transferred the Caribou and Restigouche mines to Blue Note Caribou Mines Inc. ("**BNC**"), its wholly-owned subsidiary. In accordance with Section 11.1 of the Convertible Debenture, please find enclosed one original executed copy of the agreement between Blue Note and BNC whereby, among other things, BNC acknowledges Breakwater's Property Interest Conversion Option.

Please do not hesitate to contact the undersigned should you have any questions.

Yours truly,



Michael J. Fabbri

Encl.

cc: Frank Guarascio, *Blake, Cassels & Graydon LLP* (via e-mail)  
Jean Mayer, *Blue Note Mining Inc.* (via e-mail)

**AGREEMENT FOR TRANSFER OF CARIBOU AND RESTIGOUCHE MINES**

**TO: BREAKWATER RESOURCES LTD. ("Breakwater")**

**WHEREAS** Blue Note Mining Inc. ("**Blue Note**") (formerly known as Blue Note Metals Inc.) and CanZinco Ltd., a wholly-owned subsidiary of Breakwater, entered into a purchase agreement (the "**Purchase Agreement**") dated July 26, 2006 relating to the purchase by Blue Note of the Caribou and Restigouche mines in New Brunswick (collectively, the "**Mines**") and the consideration for the Mines included the issuance by Blue Note of a \$15 million unsecured subordinated debenture to Breakwater (the "**Debenture**");

**AND WHEREAS** pursuant to the Debenture, Breakwater has the right to convert the Debenture into a 20% interest in the Mines which, if exercised, would be governed by a joint venture agreement, the form of which is appended to the Debenture (the "**JV Agreement**");

**AND WHEREAS** the Mines were purchased by Blue Note on August 1, 2006 and Blue Note has transferred the Mines to Blue Note Caribou Mines Inc. ("**BN Caribou**"), a wholly-owned subsidiary of Blue Note;

**AND WHEREAS** this agreement is entered into pursuant to Article 11 of the Debenture;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the undersigned and, by acceptance of this Agreement, by Breakwater, it is agreed by the undersigned and Breakwater as follows:

1. **Definitions.** All capitalized terms used in this agreement which are not otherwise defined herein shall have the meaning given to them in the Debenture.
2. **Acknowledgement and Covenant.** BN Caribou hereby acknowledges Breakwater's Property Interest Conversion Option rights under the Debenture and hereby covenants to provide Breakwater with the Holder's Interest in the Properties in the event that Breakwater exercises its Property Interest Conversion Option pursuant to Subsection 3.11(a) of the Debenture.
3. **JV Agreement.** BN Caribou and Blue Note hereby agree that in the event that Breakwater exercises its Property Interest Conversion Option, the JV Agreement will be entered into between BN Caribou and Breakwater and all references in the JV Agreement to Blue Note shall be references to BN Caribou.
4. **Agreement to Retransfer.** BN Caribou hereby agrees to transfer the Mines to Blue Note in the event that BN Caribou ceases to be an Affiliate of Blue Note.
5. **Termination.** This agreement shall automatically terminate on the termination or conversion of the Debenture.

6. Miscellaneous Covenants.

6.1 Severability. Any provision of this agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of the prohibition or unenforceability and shall be severed from the balance of this agreement, all without affecting the remaining provisions of this agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

6.2 Notices.

(1) Any notice, certificate, consent, determination or other communication required or permitted to be given or made under this agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent prepaid by fax or other similar means of electronic communication, in each case to the applicable address set out below:

(a) if to Blue Note or BN Caribou, to:

1, Place Ville-Marie  
Suite 2125  
Montreal, Quebec  
H3B 2C6

Attention: Secretary

(b) if to Breakwater, to:

95 Wellington Street West, Suite 950  
Toronto, Ontario M5J 2N7  
Canada

Attention: Secretary

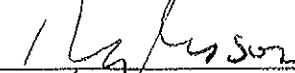
(2) Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that the day in either event is a business day and the communication is so delivered, faxed or sent prior to 4:30 p.m. on that day. Otherwise, the communication shall be deemed to have been given and made and to have been received on the next following business day. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth business day following the mailing thereof; provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.

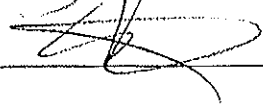
(3) Any party may from time to time change its address under this Section 6.2 by notice to the other party given in the manner provided by this section.

- 6.3 **Time of Essence.** Time shall be of the essence of this agreement in all respects.
- 6.4 **Successors and Assigns.** This agreement shall enure to the benefit of, and be binding on, the parties and their respective heirs, administrators, executors, successors and permitted assigns.
- 6.5 **Amendment.** No amendment of this agreement will be effective unless made in writing and signed by the parties.
- 6.6 **Entire Agreement.** This agreement constitutes the entire agreement between the parties pertaining to the subject matter of this agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, warranties, representations or other agreements between the parties in connection with the subject matter of this agreement (whether oral or written, express or implied, statutory or otherwise) except as specifically set out in this agreement.
- 6.7 **Assignment.** This agreement may not be assigned by the undersigned or Breakwater without the other parties prior written consent however Breakwater may assign its interest in this agreement to any person who validly purchases the Debenture from Breakwater.
- 6.8 **Governing Law.** This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated, in all respects, as an Ontario contract.
- 6.9 **Headings.** The division of this agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this agreement.


IN WITNESS WHEREOF the parties have executed this agreement as of the  
29<sup>th</sup> day of June, 2007.

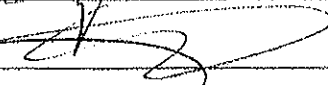
**BLUE NOTE MINING INC.**

By: 

By: 

**BLUE NOTE CARIBOU MINES INC.**

By: 

By: 

**NOTICE OF EXERCISE OF PROPERTY INTEREST**  
**CONVERSION OPTION**

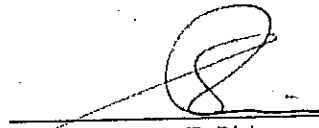
TO: Blue Note Mining Inc. (formerly, Blue Note Metals Inc.)  
AND TO: Blue Note Caribou Mines Inc.

The undersigned, the registered Holder of the Unsecured Subordinated Convertible Debenture issued by Blue Note Metals Inc. (now Blue Note Mining Inc.) on August 1, 2006 (the "Debenture") hereby irrevocably elects to convert the indebtedness outstanding under the Debenture into a 20% interest in the Properties (as defined in the Debenture) in accordance with the terms of the Debenture.

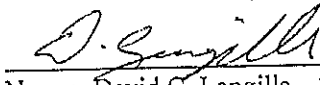
DATED this 29<sup>th</sup> day of August, 2008.

**BREAKWATER RESOURCES LTD.**

Per:

  
Name: George E. Pirie  
Title: President and Chief Executive Officer

Per:

  
Name: David C. Langille  
Title: Vice-President, Finance and Chief  
Financial Officer

## JOINT VENTURE AGREEMENT

THIS AGREEMENT made the 17<sup>th</sup> day of October, 2008

BETWEEN: **BREAKWATER RESOURCES LTD.**, a corporation incorporated under the laws of Canada and having its executive offices at 95 Wellington Street West, Suite 950, Toronto, Ontario, M5J 2N7;

(hereinafter called "Breakwater")

OF THE FIRST PART

AND: **BLUE NOTE MINING INC.**, a corporation incorporated under the laws of Canada and having its head office at 1 Place Ville-Marie, Suite 2125, Montreal, Québec, H3B 2C6;

(hereinafter referred to as "Blue Note")

OF THE SECOND PART

---

**WHEREAS** pursuant to a subordinated convertible debenture dated August 1, 2006 (the "Blue Note Debenture"), Blue Note is indebted to Breakwater;

**WHEREAS** under Section 3.1 of the Blue Note Debenture, Breakwater has an option (the "Property Interest Conversion Option") to convert the Blue Note Debenture in exchange for a twenty percent (20%) Interest in and to the Property;

**WHEREAS** Breakwater has exercised its Property Interest Conversion Option and, as required under Section 3.2 of the Blue Note Debenture, the parties have agreed to form a joint venture to further explore and develop the Property, all upon and subject to the terms and conditions set out in this Agreement;

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

### 1. INTERPRETATION

1.1 In this Agreement the following words, phrases and expressions shall have the following meanings:

- (a) "Accounting Procedure" means the procedure attached to this Agreement as Appendix I.
- (b) "Additional Environmental Protection Deposit" means any additional environmental protection deposits required by the Department of

Environment (New Brunswick) to be deposited by Blue Note to secure environmental protection obligations with respect to the Property.

- (c) **"Additional Reclamation Deposit"** means any additional reclamation deposits required by the Department of Natural Resources (New Brunswick) to be deposited by Blue Note to secure reclamation and remediation obligations with respect to the Property.
- (d) **"Affiliate"** shall have the meaning attributed to it in the *Canada Business Corporations Act*, as amended.
- (e) **"Agreement"** means this Agreement and the Appendices attached hereto, as amended from time to time, and the expressions "herein", "hereof", "hereby", "hereunder" and similar expressions refer to this Agreement as a whole.
- (f) **"Assets"** means all tangible and intangible goods, chattels, improvements or other items including, without limiting the generality of the foregoing, land, buildings, and equipment, but excluding the Property, acquired for or made to the Property under this Agreement in connection with the Mining Operations.
- (g) **"Blue Note Debenture"** has the meaning ascribed thereto in the recitals to this Agreement.
- (h) **"Business Plan"** means The Business Plan For The Acquisition And Re-Opening Of The Caribou Mine And Restigouche Mine And Related Assets of CanZinco in New Brunswick dated March 2006 which outlines the re-opening of the Property.
- (i) **"Commercial Production"** means the day determined by the Operator as the first day of any three month period throughout which the Property operates, during each month of the three-month period, at sixty percent (60%) or more of its planned capacity as set out in the Business Plan.
- (j) **"Completion Date"** means September 1, 2007.
- (k) **"Costs"** means, except as to Prior Production Costs, all items of outlay and expense whatsoever, direct or indirect, with respect to Mining Operations, recorded by the Operator in accordance with this Agreement. Without limiting the generality of the foregoing, the following categories of Costs shall have the following meanings:
  - (i) **"Production Program Costs"** means, for any period prior to the Completion Date, all Costs incurred directly or indirectly in connection with a Production Program for purposes of bringing into Commercial Production any Mineral deposit on the Property, including, without limitation:

- (I) all monies expended to develop or construct the Mine, as contemplated in the Production Program, including all costs related to banking and financing charges;
  - (II) working capital required for the initial four (4) months of operation of the Property or part thereof as a Mine or for such longer period as may be reasonably justified in the circumstances.
- (ii) "Operating Costs" means, for any period after the Completion Date, all Costs incurred or chargeable, directly or indirectly, by the Operator in connection with the Operating Plan, which Costs include, without limiting the generality of the foregoing, the following:
- (I) all costs of or related to operating employee facilities, including housing;
  - (II) all duties, charges, levies, royalties, taxes (excluding taxes levied on the income of the parties) and other payments imposed by any government or municipality or department or agency thereof upon or in connection with operating the Property as a Mine;
  - (III) all costs of maintaining the Property in good standing, including any required vendor's or royalty payments;
  - (IV) all reasonable costs of the Operator for providing technical, management and/or supervisory services;
  - (V) all reasonable costs of consulting, legal, accounting, insurance and other services;
  - (VI) all exploration expenditures incurred after the Completion Date;
  - (VII) all capital costs of operating the Property as a Mine including all costs of construction, equipment and mine development and including maintenance, repairs and replacements, and any capital expenditures relating to an improvement, expansion, modernization or replacement of the facilities located at the Mine;
  - (VIII) a reasonable amount of funds set aside to cover reclamation costs and other costs associated with a permanent shut-down of the Mine;

- (IX) any costs or expenses incurred or to be incurred relating to a temporary or permanent shut-down of the Mine;
- (X) all reasonable costs of supplies and services purchased for the day-to-day operation of the Property as a Mine;
- (XI) all costs relating to banking and financing charges; and
- (XII) all costs relating to the shipping of Minerals to the point of sale,

and, except where specific provision is made otherwise, all Operating Costs shall be determined in accordance with generally accepted accounting principles applied consistently from year to year provided however that such costs shall not include any amount in respect of amortization of expenditures or Production Program Costs, depletion or depreciation. For greater certainty, Operating Costs shall not include any Costs or expenses incurred by the Operator which are solely related to general overhead and administrative expenses of the Operator including bonuses, salaries, auditor's fees, legal fees, consulting fees, insurance and rent; and

- (iii) **"Prior Production Costs"** means all exploration, production and operating Costs incurred by Blue Note prior to the Operative Date and as deemed by the parties under paragraph 3.4, and for greater certainty, shall not include the Reclamation Deposit, the Environmental Protection Deposit, any Additional Reclamation Deposits and any Additional Environmental Protection Deposits made by Blue Note prior to the Operative Date.
- (l) **"Distribution"** means a distribution of the Net Cash Flow Surplus Amount to each party *pro rata* to the party's Interest and paid in accordance with article 10.
- (m) **"Environmental Protection Deposit"** means the sum deposited by Blue Note and currently held by the Department of the Environment (New Brunswick) as security for the environmental protection of the Property together with all interest accrued or accruing due therein, as may be applicable.
- (n) **"Governmental Authority"** means any federal, provincial, municipal or local legislative, executive, judicial or administrative body or person having jurisdiction in the relevant circumstances.
- (o) **"Interest"** means an undivided beneficial percentage interest of a party in the Property, the Assets and any Mine, as determined pursuant to this Agreement.

(p) **"Joint Operation"** shall have the meaning attributed to it in paragraph 2.1.

(q) **"Management Committee"** means the committee established pursuant to article 4.

(r) **"Mine"** means the workings established and Assets acquired that are directly related to the Property, including, without limiting the generality of the foregoing, development headings, plant and concentrator installations, infrastructure and other facilities in or in order to bring the Properties into Commercial Production in accordance with the Production Program.

(s) **"Minerals"** means any and all minerals, precious and base, metallic and non-metallic (and concentrates derived therefrom) in, on or under the Property which may lawfully be explored for, mined and sold.

(t) **"Mining Operations"** means every kind of work done by the Operator:

(i) on or in respect of the Property in accordance with a Production Program or Operating Plan; or

(ii) if not provided for in a Production Program or Operating Plan, unilaterally and in good faith to maintain the Property in good standing, to prevent waste or to otherwise discharge any obligation which is imposed upon it pursuant to this Agreement and in respect of which the Management Committee has not given its directions;

including, without limiting the generality of the foregoing, investigating, prospecting, exploring, developing, preparing, designing, equipping, improving, surveying, mining, milling, refining and other processing of Minerals, metals, tailings or concentrates derived from the Property and other ancillary activities and operations related thereto.

(u) **"Net Cash Flow"** for any period means the sum of adding:

(i) cash at the beginning of such period; and

(ii) the difference resulting from subtracting:

(I) the sum of Operating Costs paid during such period plus the Operating Cost Reserve Amount plus any increase in working capital, from

(II) all Revenue generated during such period.

- (v) **"Net Smelter Royalty"** shall mean two percent (2%) of the Net Smelter Return (as defined and as more particularly set out in Appendix III of this Agreement).
- (w) **"Operating Cost Reserve Amount"** for any period means an amount equal to the estimated Operating Costs and any estimated decrease in working capital for the subsequent two (2) month period.
- (x) **"Operating Plan"** means the annual plan of Mining Operations submitted pursuant to paragraph 9.2.
- (y) **"Operative Date"** means August 29, 2008.
- (z) **"Operator"** means the party appointed as the Operator in accordance with article 5.
- (aa) **"Participant"** means a party that is contributing to Production Program Costs or Operating Costs, as the case may be.
- (bb) **"party"** or **"parties"** means the parties to this Agreement and their respective successors and permitted assigns which become parties pursuant to this Agreement.
- (cc) **"Prime Rate"** means the rate of interest stated by the main branch in Toronto, Ontario of the Bank of Montreal as being charged by it on Canadian dollar demand loans to its most creditworthy domestic commercial customers.
- (dd) **"Production Program"** means any program approved by the Management Committee for the purposes of bringing into Commercial Production any Mineral deposit on the Property.
- (ee) **"Property"** means the mineral property, mine facilities, claims, interests and other rights more particularly described in Appendix II that become subject to this Agreement on the Operative Date, the Minerals thereon, all information obtained from Mining Operations and those rights and benefits appurtenant to the Property that are acquired for the purpose of conducting Mining Operations.
- (ff) **"Property Interest Conversion Option"** has the meaning ascribed thereto in the recitals to this Agreement.
- (gg) **"Proportionate Share"** means that share which is equal to a party's percentage Interest, as adjusted from time to time hereunder.
- (hh) **"Reclamation Deposit"** means the sum deposited by Blue Note and currently held in deposit by the Department of Natural Resources (New Brunswick) as security for the reclamation and remediation of

environmental impact associated with the Property with all interest accrued or accruing due thereon, as may be applicable.

- (ii) "Revenues" means the total proceeds, calculated at the point of sale, to be derived from the sale of Minerals or other products extracted from the Property, plus any miscellaneous proceeds (including, without limitation, all net amounts received from the sale of plant, machinery, equipment or other Assets prior to the cessation of operations, any insurance proceeds not used for the replacement or repair of lost or damaged assets, compensation for expropriated properties, government grants and interest on Revenue earned from the date of receipt to the date of payment) from the Property.
- (jj) "Simple Majority" means a decision made by the Management Committee by more than 50 percent (50%) of the votes represented and entitled to be cast at a meeting thereof.
- (kk) "\$" means Canadian dollars.

- 1.2 The words "article", "paragraph", "subparagraph", "herein" and "hereunder" refer to this Agreement.
- 1.3 The captions and the emphases of the defined terms have been inserted for convenience and do not define the scope of any provision.

## 2. FORMATION OF THE JOINT VENTURE

- 2.1 Commencing on the Operative Date, the parties hereby agree to associate and participate in a joint operation (herein called the "Joint Operation") for the purpose of:
  - (a) exploring claims on the Property;
  - (b) bringing the Property or a portion thereof into Commercial Production;
  - (c) operating Mines; and
  - (d) to engage in such other activities as may be considered by the parties to be necessary or desirable in connection with the foregoing.
- 2.2 Subsequent to the Operative Date, except as otherwise provided herein, each party shall be liable for its Proportionate Share of all Costs, debts, liabilities or obligations under this Agreement and at the time incurred by the Operator.
- 2.3 Except as expressly provided in this Agreement, each party shall have the right independently to engage in and receive full benefits from business activities,

whether or not competitive with the Joint Operation, without consulting any other party. The doctrines of "corporate opportunity" or "business opportunity" shall not be applied to any other activity, venture or operation of any party and no party shall have any obligation to another party with respect to any opportunity to acquire any assets outside of the Property at any time, or within the Property after the termination of this Agreement. Unless otherwise agreed in writing, no party shall have any obligation to mill, beneficiate or otherwise treat any Minerals or any other party's share of Minerals in any facility owned or controlled by such party.

### 3. INTERESTS

3.1 Commencing on the Operative Date, the Interests of each of the parties shall be as follows until varied as provided for in this Agreement:

Blue Note	80%
Breakwater	20%

3.2 Subsequent to the Operative Date, the Interest of each party shall be determined from time to time to be that percentage which is equivalent to:

(i) the sum of its Prior Production Costs, its contribution to Production Program Costs and its contribution to Operating Costs;

divided by

(ii) the sum of the total Prior Production Costs, total Production Program Costs and the total Operating Costs of all the parties;

multiplied by

(iii) 100.

3.3 The respective Interests of the parties shall be as set out in paragraph 3.1 so long as they contribute their respective Proportionate Share of Production Program Costs and Operating Costs, as applicable, as set out in this Agreement. At any time and from time to time if a party fails to contribute to such Costs, its respective Interest shall be reduced in accordance with the formula set out in paragraph 3.2. If, as a result of such calculation, the Interest of any party is reduced to or below 5%, its Interest shall be deemed to be converted (the "Deemed Conversion") to a 2% Net Smelter Royalty as more particularly described in Appendix III and thereafter such party shall have no further rights, interests, obligations or liabilities in respect of the Assets or under this Agreement, save and except (a) such Net Smelter Royalty and (b) any liabilities or obligations incurred hereunder from the Operative Date to the date of the Deemed Conversion.

- 3.4 The following expenditures shall be deemed to be the "Prior Production Costs" of each party effective the Operative Date strictly for the purposes of determining a party's Interest under this Agreement from time to time pursuant to paragraph 3.2:

	<u>Prior Production Costs</u>	<u>Interest</u>
Blue Note	[\$•]	80%
Breakwater	[\$•]	20%

- 3.5 During the subsistence of this Agreement, the parties agree that:

- (a) all Revenue generated by Blue Note in connection with the Property prior to the Operative Date;
- (b) all stockpiles of Minerals or other products extracted from the Property which are not sold by Blue Note prior to the Operative Date (the "Blue Note Stockpiles"); and
- (c) any rebate or credits granted by any Governmental Authority in respect of any deposits, guarantees, fees or other payments (including without limitation, the Reclamation Deposit, the Environmental Protection Deposit, any Additional Reclamation Deposits and any Additional Environmental Protection Deposits) made by Blue Note in connection with the Property prior to the Operative Date,

shall be entirely to the account and credit of Blue Note and shall not form part of (i) this Joint Operation or (ii) any calculation made to determine any of the following in connection with this Agreement: (I) Prior Production Costs; (II) Net Cash Flow; (III) Revenues; or (IV) Distributions.

- 3.6 For purposes of reconciling the Blue Note Stockpiles as of the Operative Date, the Operator shall:

- (a) immediately, on the Operative Date, segregate the Blue Note Stockpiles from all stockpiles of Minerals or other products extracted from the Property on and after the Operative Date; and
- (b) select, within thirty (30) days after the Operative Date, an independent organization (the "Independent Evaluator") which is generally recognized and accepted within the industry, to evaluate the Blue Note Stockpiles and provide the parties with an inventory reconciliation of same.

Blue Note shall be liable for all costs and charges for services rendered by the Independent Evaluator in connection with the inventory reconciliation of the Blue Note Stockpiles.

#### 4. MANAGEMENT COMMITTEE

- 4.1 A Management Committee shall be established on or forthwith after the Operative Date. Except as herein otherwise provided, the Management Committee shall make all decisions in respect of Mining Operations.
- 4.2 Each party shall nominate two (2) representatives, one (1) voting representative and one (1) alternate representative, to represent it on the Management Committee and shall be bound by the actions of its nominees. Such nomination shall be given in writing to the other Parties, and the representatives may be changed from time to time by written notice to the other Parties. Alternate representatives may attend meetings of the Management Committee and, in the absence of the voting representative, the alternate representative may vote and otherwise act in place and stead of the voting representative. Whenever any voting representative (or the alternate representative in the absence of the voting representative) votes or acts, his votes or actions shall for all purposes of this Agreement be considered the actions of the party whom such representative represents.
- 4.3 The Operator shall give notice, specifying the time and place of, and the agenda for, the meeting, to all representatives at least seven (7) days before the time appointed for the meeting.
- 4.4 Notice of a meeting shall not be required if representatives of all the parties are present and unanimously agree upon the agenda.
- 4.5 Except as provided below, at any meeting of the Management Committee, each party must have one representative present to constitute a quorum. If a quorum is present at the meeting, the Management Committee shall be competent to exercise all of the authorities, powers and discretions herein bestowed upon it hereunder. The Management Committee shall not transact any business at a meeting unless a quorum is present at the commencement of the meeting. In the event there shall be no quorum at any meeting of the Management Committee called by notice pursuant to paragraph 4.3, the meeting shall be adjourned for seven (7) days with notice thereof being given by the chairman on behalf of the attending parties to the absent parties. After such seven (7) days, the meeting shall resume and a quorum for that meeting shall be such representative or representatives of the Management Committee then in attendance.
- 4.6 The Management Committee shall decide every question submitted to it by a vote with each voting representative (or the alternate representative in the absence of the voting representative) being entitled to cast that number of votes

which is equal to its party's Interest percentage. The Management Committee shall make all decisions by Simple Majority. In the event of a tied vote, the chairman shall have a casting vote in addition to the votes to which the chairman is entitled to cast as the representative of a party.

4.7 Notwithstanding the provisions of paragraph 4.6, a decision as to any of the following matters shall require the approval of 100% of the votes cast by the parties' representatives on the Management Committee:

(a) the permanent closure of the Mine; and

(b) capital expenditure items requiring aggregate expenditures in excess of \$25,000,000 in any one calendar year.

4.8 The voting representative (or the alternative representative in the absence of the voting representative) of the Operator shall be chairman and secretary of the Management Committee meeting.

4.9 The secretary of the Management Committee meeting shall take minutes of that meeting and circulate copies thereof to each representative.

4.10 The Management Committee may make decisions by obtaining the consent in writing of the voting representative (or the alternative representative in the absence of the voting representative) of each party. Any decision so made shall be as valid as a decision made at a duly called and held meeting of the Management Committee.

4.11 Management Committee decisions made in accordance with this Agreement shall be binding upon all parties.

4.12 Each party shall bear the expenses incurred by its representatives in attending meetings of the Management Committee.

4.13 The Management Committee may establish such other rules of procedure, not inconsistent with this Agreement, as the Management Committee deems fit.

## 5. OPERATOR

5.1 Following the Operative Date, but subject to paragraph 5.2, Blue Note shall continue to act as the Operator under this Agreement and as such, subject to the discretion and control of the Management Committee, shall have full right, power and authority to do everything necessary or desirable to carry out the purposes of the parties in connection with this Agreement.

5.2 The party acting as Operator may resign as Operator on at least ninety (90) days' notice to all the parties and the parties shall, within ninety (90) days after receipt of such notice, convene a meeting of the Management Committee which

shall appoint a party who consents to act as Operator, and determine its terms of engagement.

- 5.3 The new Operator shall assume all of the rights, duties, liabilities and status of the previous Operator as provided in this Agreement. The new Operator shall have no obligation to hire any other employees of the former Operator resulting from a change of Operator.
- 5.4 Upon ceasing to be Operator, the former Operator shall forthwith deliver to the person nominated for that purpose by the Management Committee, the custody of all Assets, Property, books, records, and other property both real and personal relating to this Agreement. If the Operator resigns and no other party consents to act as Operator, the Joint Operation shall terminate and the provisions of article 16 shall apply mutatis mutandis.
- 5.5 If the Operator fails to perform in a manner that is consistent with good engineering and mining practices or fails to perform in a manner consistent with its duties and responsibilities under this Agreement, then the Management Committee shall give to the Operator written notice setting forth particulars of the Operator's default. The Operator shall within ninety (90) days of receipt of such notice commence to remedy the default. Failure of the Operator to commence to remedy the default within such 90-day period (and thereafter to proceed continuously and diligently to complete all required remedial action) will be grounds for termination of the Operator's appointment; provided that no steps shall be taken to remove or replace the Operator in such circumstances while the Operator is contesting in good faith the alleged default. On any termination of the Operator's appointment hereunder, a meeting of the Management Committee shall forthwith be convened to appoint another party who consents to act as Operator, and determine its terms of engagement.
- 5.6 If the Operator resigns or is removed and no other party consents to act as Operator, the Joint Operation hereunder shall be terminated and the Assets shall be liquidated or sold and the Assets or proceeds from the sale thereof distributed to the parties, net of liabilities hereunder or related thereto, in accordance with their Interests. Each party shall be responsible for its Proportionate Share of all costs and expenses related to such termination and liquidation. The party which was the Operator may, if it consents to act, continue to act as Operator to effect such termination and liquidation and it shall have a lien on the parties' respective Interests in the Assets and any proceeds therefrom as security for their respective Proportionate Shares of all costs, expenses and other liabilities owing in respect of or as of the date of such termination.

## 6. RIGHTS, DUTIES AND STATUS OF OPERATOR

- 6.1 The Operator in performing its duties and carrying out its responsibilities hereunder shall be deemed to be an independent contractor. The Operator shall

not act or hold itself out as agent for any of the parties nor make any commitments on their individual behalf unless specifically permitted by this Agreement or directed in writing by a party.

- 6.2 Subject to any specific provisions of this Agreement and subject to it having the right to reject any direction on reasonable grounds by virtue of its status as an independent contractor, the Operator shall perform its duties hereunder in accordance with the directions of the Management Committee and in accordance with this Agreement.
- 6.3 The Operator shall manage and carry out such Mining Operations as the Management Committee may direct and in connection therewith shall, in advance if reasonably possible, notify the Management Committee of any change in Mining Operations which the Operator considers material.
- 6.4 The Operator shall have the sole and exclusive right and authority to manage and carry out all Mining Operations and to incur the Costs required for that purpose, including but not limited to the cost of retaining such subcontractors as it deems fit. In so doing the Operator shall:
- (a) comply with the provisions of all agreements or instruments of title under which the Property or Assets are held;
  - (b) pay all Costs properly incurred promptly as and when due;
  - (c) keep the Property and Assets free of all liens and encumbrances (other than those, if any, in effect on the Operative Date, those the creation of which are permitted pursuant to this Agreement, or builder's or mechanic's liens) arising out of the Mining Operations and, in the event of any lien being filed as aforesaid, proceed with diligence to contest or discharge same;
  - (d) prosecute claims or, where a defence is available, defend litigation arising out of the Mining Operations, provided that any Participant may join in the prosecution or defence at its own expense;
  - (e) perform such assessment work or make payments in lieu thereof and pay such rentals, taxes or other payments and do all such other things as may be necessary to maintain the Property in good standing, including, without limiting the generality of the foregoing, staking and re-staking mining claims, and applying for licenses, leases, grants, concessions, permits, patents and other rights to and interests in the Minerals;
  - (f) maintain accounts in accordance with the Accounting Procedure, provided that the judgement of the Operator as to matters related to accounting, for which provision is not made in the Accounting Procedure, shall govern if the Operator's accounting practices are in

accordance with accounting principles generally accepted in the mining industry in Canada; and

- (g) perform its duties and obligations hereunder in a sound and workmanlike manner, in accordance with good mining and engineering practices and in substantial compliance with this Agreement and all applicable federal, provincial, territorial and municipal laws, by-laws, ordinances, rules and regulations.

## 7. OPERATOR'S FEE

7.1 The Operator may charge the following fees in return for its head office overhead functions:

- (a) an amount equal to ten percent (10%) of any Production Program with Production Program Costs estimated at \$2,000,000 or less;
- (b) an amount equal to eight percent (8%) of any Production Program with Production Program Costs estimated between \$2,000,001 and \$5,000,000;
- (c) an amount equal to five percent (5%) of any Production Program with Production Program Costs estimated above \$5,000,000; and
- (d) an amount equal to ten percent (10%) of all Operating Costs to a maximum of 10% of budgeted Operating Costs, other than those referred to in subparagraph 1.1(k)(ii)(IV).

## 8. PRODUCTION PROGRAM

8.1 Upon the approval of the Management Committee, but subject to paragraph 8.2, the Operator shall prepare and deliver to each party, within sixty (60) days of receipt of such approval, a Production Program for purposes of bringing into Commercial Production any Mineral deposit on the Property and establishing and operating a Mine.

8.2 If on the Operative Date, the Operator has already incurred Production Program Costs as part of ongoing work then in progress in connection with a Production Program, such work shall be deemed to have been approved by the Management Committee as a Production Program. Under such circumstances, the Operator shall, within sixty (60) days of the Operative Date, deliver to each party the Production Program so deemed approved pursuant to this paragraph 8.2 and the provisions of this article 8 shall apply.

8.3 Each party may, within thirty (30) days of receipt of a Production Program, give notice to the Operator committing to contribute its Proportionate Share of the Production Program Costs to be incurred in connection with the Production

Program. A party which fails to give notice within the thirty (30) day period shall be deemed to have elected not to contribute.

- 8.4 If any party elects or is deemed to have elected not to contribute its Proportionate Share of Production Program Costs, the other party which has elected to contribute its Proportionate Share of Production Program Costs may give notice in writing to the Operator stating that it will contribute, in addition to its own Proportionate Share, the Proportionate Share of the non-contributing party. In such event, the Interests of the parties shall be adjusted in accordance with paragraph 3.2.
- 8.5 An election to contribute to a Production Program shall make a party liable to pay its Proportionate Share of Production Program Costs actually incurred under or pursuant to a Production Program, including Production Program Overruns (as hereinafter defined) up to but not exceeding twenty percent (20%). For greater certainty, a party electing to contribute to a Production Program deemed approved pursuant to paragraph 8.2 shall only be liable to pay its Proportionate Share of Production Program Costs incurred after the Operative Date:
- 8.6 After having elected to contribute to a Production Program, each Participant shall, within fifteen (15) days after being requested in writing to do so by the Operator, pay such portion of its Proportionate Share of the Production Program Costs as the Operator may require.
- 8.7 If it appears to the Operator that Production Program Costs will exceed those estimated under the Production Program, the Operator shall immediately give written notice to the Participants outlining the nature and extent of the additional costs and expenses (herein called the "Production Program Overruns") and the reasons therefore. If Production Program Overruns are estimated to exceed by more than twenty percent (20%) those estimated under the Production Program (herein called "Excess Production Program Overruns"), the notice of the Operator shall contain notice of a meeting of the Management Committee, to be held no sooner than five (5) business days after the date of delivery of the notice, called for the purpose of considering and, if deemed advisable, approving the Excess Production Program Overruns. If the Excess Production Program Costs are approved by the Management Committee, each Participant shall, within fifteen (15) days after the receipt of a written request from the Operator, pay to the Operator its Proportionate Share of such Excess Production Program Overruns.
- 8.8 If Excess Production Program Overruns are not approved by the Management Committee, as provided in paragraph 8.7, the Operator will have the right to curtail or abandon the Production Program.
- 8.9 If a Participant at any time fails to pay its Proportionate Share of Production Program Costs (including Production Program Overruns and approved Excess

Production Program Overruns) in accordance with this article 8, the Operator may give written notice to such Participant demanding payment and, if such Participant has not paid such amount within fifteen (15) days after receipt of such notice, such Participant shall be deemed to be in default hereunder and the other party which has paid its Proportionate Share of Production Program Costs may give notice in writing to the Operator stating that it will contribute the Proportionate Share of the defaulting party. In such event, the Interests of the parties shall be adjusted in accordance with paragraph 3.2.

- 8.10 If a Participant elects (a) not to contribute the Proportionate Share of Production Program Costs of the non-contributing party pursuant to paragraph 8.4 or (b) not to contribute the Proportionate Share of Production Program Costs of the defaulting Participant pursuant to paragraph 8.9, the Operator shall have the right to curtail or abandon the Production Program.

## 9. OPERATING PLANS

- 9.1 Commencing on the Completion Date, all Mining Operations shall be planned and conducted and all estimates, reports and statements shall be prepared and made on the basis of a calendar year. Each Participant shall be liable to pay its Proportionate Share of all Operating Costs incurred under an Operating Plan, including Operating Cost Overruns (as hereinafter defined) up to but not exceeding twenty percent (20%).

- 9.2 With the exception of the year in which the Completion Date occurs, an Operating Plan for each calendar year shall be submitted by the Operator to the Participants not later than October 31 in the year immediately preceding the calendar year to which the Operating Plan relates. Each Operating Plan shall contain the following:

- (a) a plan for the proposed Mining Operations, including any plans for further exploration or expansion of the Mine;
- (b) a detailed estimate of all Operating Costs (including, if applicable, all additional estimated capital expenditures for further exploration or expansion of the Mine), plus a reasonable allowance for contingencies;
- (c) an estimate of the quantity and quality of the Minerals to be mined and the concentrates or metals or other products and by-products to be produced; and
- (d) such other facts as may be necessary to reasonably illustrate the results intended to be achieved by the Operating Plan. Upon request of any Participant, the Operator shall meet with that Participant to discuss the Operating Plan and shall provide such additional or supplemental information as that Participant may reasonably require with respect thereto.

- 9.3 The Management Committee shall adopt each Operating Plan, with such changes as it deems necessary, by November 30 in the year immediately preceding the calendar year to which the Operating Plan relates.
- 9.4 If on the Operative Date, the Completion Date has been achieved and the Operator has already incurred Operating Costs as part of ongoing work then in progress in connection with an Operating Plan, such Operating Plan shall be deemed to have been adopted by the Management Committee and each party shall be liable for its Proportionate Share of Operating Costs incurred after the Operative Date. Under such circumstances, the Operator shall, within sixty (60) days of the Operative Date, deliver to each party the Operating Plan so deemed adopted pursuant to this paragraph 9.4 and the provisions of this article 9 shall apply.
- 9.5 Except as herein provided, the Operator shall have the power and authority to deviate from or make modifications to Operating Plans from time to time, in accordance with good engineering and mining practice. If it appears to the Operator that Operating Costs will exceed those estimated under an Operating Plan, the Operator shall immediately give written notice to the Participants outlining the nature and extent of the additional costs and expenses (herein called "**Operating Cost Overruns**") and the reasons therefor. If Operating Cost Overruns are estimated to exceed by more than twenty percent (20%) those estimated under the Operating Plan (herein called "**Excess Operating Cost Overruns**"), the notice of the Operator shall contain notice of a meeting of the Management Committee, to be held no sooner than five (5) business days after the date of delivery of the notice, together with a proposed amendment to the Operating Plan. The meeting of the Management Committee shall be convened to review, amend (if deemed appropriate) and approve same.
- 9.6 In the event that a proposed Operating Plan or amendment thereto is not approved by the Management Committee as hereinbefore provided, the Operator may submit such matter to arbitration in accordance with Article 13. Pending the outcome of such arbitration, the Operator may continue to operate the Property as a Mine on behalf of the Participants, based as closely as practicable on the most recently approved Operating Plan, and notwithstanding that such operations may be carried over to a subsequent operating year.
- 9.7 The Operator shall be entitled to include in the estimate of Operating Costs referred to in subparagraph 9.2(b) hereof the reasonably estimated costs of satisfying continuing obligations that may remain after this Agreement terminates, in excess of amounts actually expended. Such continuing obligations are or will be incurred as a result of the Joint Operation and shall include such things as monitoring, stabilization, reclamation or restoration obligations, severance and other employee benefit costs, costs relating to environmental protection, rehabilitation and de-commissioning and all other obligations incurred or imposed as a result of the Joint Operation which continue or arise after termination of this Agreement and settlement of all

accounts. The amount accrued from time to time for the satisfaction of such continuing obligations shall be classified as Costs hereunder but shall be segregated into a separate account.

#### 10. NET CASH FLOW DEFICITS AND DISTRIBUTIONS

- 10.1 The Operator will submit to the parties on or before the 15th day of each month (the "Submission Date") a statement indicating the calculation of Net Cash Flow hereunder for the applicable period (the "Net Cash Flow Statement").
- 10.2 If the Net Cash Flow for the period is positive, the amount of such surplus (the "Net Cash Flow Surplus Amount") will be paid as a Distribution to the parties on the Submission Date, which Distribution shall be paid by direct bank account transfer or by any other method of payment agreed upon in writing by the parties.
- 10.3 If the Net Cash Flow for any period is negative, each party must contribute its Proportionate Share of such shortfall (the "Net Cash Flow Deficit Amount") in accordance with this article 10. Under such circumstances, the Net Cash Flow Statement delivered by the Operator to each party on the Submission Date pursuant to paragraph 10.1 hereof shall be accompanied by an invoice indicating such party's Proportionate Share of the Net Cash Flow Deficit Amount for the applicable period.
- 10.4 Each Participant shall pay its Proportionate Share of the Net Cash Flow Deficit Amount within fifteen (15) days of the Submission Date.
- 10.5 If a Participant at any time fails to pay its Proportionate Share of the Net Cash Flow Deficit Amount in accordance with paragraph 10.4, the Operator may give written notice to such Participant demanding payment and, if such Participant has not paid such amount within fifteen (15) days after receipt of such notice, such Participant shall be deemed to be in default hereunder and the other party which has paid its Proportionate Share of the Net Cash Flow Deficit Amount may give notice in writing to the Operator stating that it will contribute the Proportionate Share of the defaulting party. In such event, the Interests of the parties shall be adjusted in accordance with paragraph 3.2.
- 10.6 If a Participant elects not to contribute the Proportionate Share of the Net Cash Flow Amount of the defaulting Participant pursuant to paragraph 10.5, the Operator shall have the right to curtail the Operating Plan.
- 10.7 Notwithstanding anything herein contained to the contrary, the Operator shall be entitled to incur, and the Participants shall be responsible for their respective Proportionate Shares of, any expenditures which the Operator deems necessary to preserve or protect life, limb or property in respect of the Property and the operations hereunder and the payment provision of paragraph 10.4 shall apply mutatis mutandis.

## 11. MINE FINANCING

- 11.1 The contributions of the Participants toward all Costs shall be individually and separately provided by them.
- 11.2 The parties hereto shall not pledge, mortgage, charge or otherwise encumber their Interest for any purposes whatsoever.

## 12. SURRENDER OF INTEREST

- 12.1 Any party may, at any time upon notice, surrender its entire Interest to the other parties by giving those parties notice of surrender.

The notice of surrender shall:

- (a) indicate a date for surrender not less than three (3) months after the date on which the notice is given; and
  - (b) contain an undertaking that the surrendering party will:
    - (i) satisfy its Proportionate Share, based on its then Interest, of all obligations and liabilities which arose at any time prior to the date of surrender;
    - (ii) if the Operator has not included in Operating Costs the costs of continuing obligations as set out in paragraph 9.7 hereof, pay on the date of surrender its reasonably estimated Proportionate Share, based on the surrendering party's then Interest, of the Costs of rehabilitating the Mine site and of reclamation as at the date of surrender; and
    - (iii) will hold in confidence, for a period of two (2) years from the date of surrender, all information and data which it acquired pursuant to this Agreement.
- 12.2 Upon the surrender of its entire Interest as contemplated in paragraph 12.1 and upon delivery of a release in writing, in form acceptable to counsel for the other parties, releasing the other parties from all claims and demands hereunder, the surrendering party shall be relieved of all obligations or liabilities hereunder except for those which arose or accrued or were accruing due on or before the date of the surrender.
  - 12.3 A party to whom a notice of surrender has been given as contemplated in paragraph 12.1 may elect, by notice within ninety (90) days to the party which first gave the notice to accept the surrender, in which case paragraphs 12.1 and 12.2 shall apply, or to join in the surrender. If all of the parties join in the surrender, the Joint Operation shall be terminated in accordance with article 16.

### 13. ARBITRATION

- 13.1 Any disagreement, dispute or controversy (hereinafter collectively called a "dispute") between the parties with respect to any matter arising under this Agreement or the construction hereof, will be determined by a single arbitrator to be appointed by the parties hereto.
- 13.2 Any party may refer any such matter to arbitration by written notice to the others and, within ten (10) days after receipt of such notice, the parties will agree on the appointment of an arbitrator. No person will be appointed as an arbitrator hereunder unless such person agrees in writing to act.
- 13.3 If the parties cannot agree on a single arbitrator as provided in paragraph 13.2, or if the person appointed is unwilling or unable to act, either party may apply to a judge of an Ontario court of competent jurisdiction to appoint an arbitrator.
- 13.4 Except as specifically provided in this article 13, an arbitration hereunder shall be conducted in accordance with the *Arbitrations Act* (Ontario) (the "Act"). The arbitrator shall fix a time and place in Toronto, Ontario for the purpose of hearing the evidence and representations of the parties and the arbitrator shall preside over the arbitration and determine all questions of procedure not provided for under such Act or this article 13. After hearing evidence and representations that the parties may submit, the arbitrator shall make an award and reduce the same in writing and deliver one copy thereof to each of the parties. The decision of the arbitrator will be made within forty-five (45) days after his appointment, subject to any reasonable delay due to unforeseen circumstances. The expense of the arbitration shall be paid as specified in the award. The parties agree that the award of the single arbitrator shall be final and binding upon each of them and shall not be subject to appeal.

### 14. ASSIGNMENT OF INTEREST – RIGHT OF FIRST REFUSAL

- 14.1 If a party (hereafter in this subparagraph 14.1 called the "Vendor") shall wish or seek to sell, assign, transfer, convey or otherwise dispose of all or part of its Interest at any time during the currency of this Agreement, the other parties then having an Interest (hereafter in this subparagraph 14.1 called the "Purchasers") shall be entitled to a right of first refusal in respect thereof as follows:
- (a) The Vendor shall give written notice (hereafter called the "Offering Notice") to the Purchasers of the Vendor's desire to sell. The Offering Notice shall describe the Interest or part thereof that is offered for sale, and shall also state the bona fide consideration and other terms on which the sale is desired to be made by the Vendor; excepting that if any element of the consideration for the Interest stipulated in the Offering Notice cannot be assumed or met in kind by the Purchaser or Purchasers, the Vendor shall, upon notice from the Purchaser or Purchasers to such effect, set out in an amendment to the Offering Notice the bona fide cash

value of the said element of the consideration. Included in the Offering Notice shall be written notice (hereinafter called the "list of names") containing the names and addresses of not more than four persons or corporations, who may be parties, to which the Vendor proposes to offer to sell for a price and on terms not less favourable to the Vendor than those contained in the Offering Notice and only persons who are, to the knowledge of the Vendor, reasonably capable of financing such purchase shall be placed on such list.

- (b) The offer in the Offering Notice shall be open for acceptance for a period of sixty (60) days (herein called the "Acceptance Period") after receipt by the Purchasers and shall be irrevocable by the Vendor during the Acceptance Period.
- (c) The Purchasers shall be entitled to acquire all but not part of the Interest offered for sale, and the Purchasers may purchase the amount offered in the ratios they agree upon, or failing agreement, in the ratio of the Interests of those Purchasers who wish to buy what is offered for sale.
- (d) The Purchasers wishing to buy shall give written notice thereof to the Vendor and to all other Purchasers before the expiration of the Acceptance Period. Such notice of acceptance shall state the limit, if any, on the amount of the Interest each of the Purchasers wishes to buy from the Vendor. The other Purchasers may acquire the amount not desired by a Purchaser and shall acquire it by purchase in such ratios as they agree upon prior to the expiration of the Acceptance Period, or in the ratio of their Interests prior to the offer being made.
- (e) During the Acceptance Period, no offer shall be made to anyone on the list of names unless the Vendor first obtains prior written approval from the Purchasers, which approval will not be unreasonably withheld.
- (f) If the Purchasers do not within the Acceptance Period give notice of acceptance for the price and on the terms offered in the Offering Notice, then the Purchasers shall give to the Vendor within thirty (30) days after the conclusion of the Acceptance Period written approval of those names on the list of names to which the Vendor may make the offer to sell for a price and on terms not less favourable to the Vendor than those contained in the Offering Notice, which approval will not be unreasonably withheld. It shall be reasonable to withhold consent if the person or corporation is guilty of committing a crime or is being sued in a civil or criminal court for improper business activity involving allegations of dishonesty or unconscionable practices, or if the purchase of the Interest by the person or corporation would reduce the equity of the objecting party by virtue of the foreign ownership policies or laws of Canada. The Vendor shall be entitled to offer for sale and to sell the Interest referred to in the Offering Notice to any of the approved parties

within a period of 120 days after the expiration of the Acceptance Period.

- (g) If the Vendor does not sell, assign, transfer, convey or otherwise dispose of its Interest or part thereof by one of the methods provided for in this subparagraph 14.1, then any subsequent sale of the same, or of any other Interest which the Vendor wishes to sell, shall again be subject to all of the provisions of this subparagraph 14.1.

14.2 The provisions of subparagraph 14.1 shall not prevent a party from entering into an amalgamation or corporate reorganization which will have the effect in law of the amalgamated or surviving company possessing all the property, rights and interests and being subject to all the debts, liabilities and obligations of each amalgamating or predecessor company or from selling or transferring all of its Interest to an Affiliate provided that in any such event the transferring party and such Affiliate shall be jointly and severally liable for all obligations of the transferring party under this Agreement following such sale or transfer.

14.3 Any and all sales, assignments, transfers and dispositions of Interests made by a party or its successors in interest whether under the provisions of subparagraph 14.1 or subparagraph 14.2 shall be subject to the terms, covenants and conditions of this Agreement and to all applicable laws. It is agreed that the terms of this Agreement shall be deemed to be covenants running with the Property and with all transfers and assignments thereof. The parties in implementation of this subparagraph 14.3 shall require any and all transferees of an Interest hereunder to execute a counterpart of this Agreement thereby agreeing to be bound by the terms and provisions hereof in the same manner and to the same extent as though they had been a party in the first instance.

## 15. SALE OF PROPERTY - RIGHT OF FIRST REFUSAL

15.1 At any time during the subsistence of this Agreement during which Blue Note holds a majority Interest in the Properties, Blue Note may sell or transfer the Property to a third party (the "Assignee"), provided that Blue Note gives notice (the "Sale Notice") to Breakwater of its intention to sell or transfer the Property to the Assignee. Such Sale Notice shall set forth the cash price at which Blue Note is prepared to sell or transfer the Property (the "Sale Price"), any other applicable terms and conditions, and the proposed date of the sale (the "Sale Date"). In such event, the following provisions shall govern such sale or transfer:

- (a) The Sale Notice shall be deemed to be an irrevocable offer by Blue Note to sell or transfer the Property to Breakwater on the terms set forth therein.
- (b) Within 45 days after receipt of the Sale Notice, Breakwater shall have the right (the "Right of First Refusal") to purchase the Property from

Blue Note on payment by Breakwater to Blue Note of the same Sale Price that Blue Note specified in its Sale Notice. Where Breakwater determines to exercise its Right of First Refusal, then, on the Sale Date, Breakwater shall deliver or cause to be delivered to Blue Note payment of the total Sale Price for the Property.

- (c) If Breakwater determines not to exercise its Right of First Refusal herein within the 45 day period set out in subparagraph 16.1(b) above, Blue Note may sell the Property to the Assignee under substantially the same terms and conditions and Sale Price as originally stated in the Sale Notice to Breakwater. If the terms and conditions and/or Sale Price change materially when taken as a whole with respect to the Assignee, then Blue Note shall re-send a new Sale Notice to Breakwater and the provisions of this paragraph 16.1 shall apply.

## 16. TERMINATION OF MINING OPERATIONS

- 16.1 The Operator may, at any time subsequent to the Completion Date, on at least thirty (30) days notice to all Participants, recommend that the Management Committee approve that the Mining Operations be suspended. The Operator's recommendation shall include a plan and budget (in this article 16 called the "**Mine Maintenance Plan**"), in reasonable detail, of the activities to be performed to maintain the Assets and Property during the period of suspension and the Costs to be incurred. The Management Committee may, at any time subsequent to the Completion Date, cause the Operator to suspend Mining Operations in accordance with the Operator's recommendation with such changes to the Mine Maintenance Plan as the Management Committee deems necessary. The Participants shall be committed to contribute their Proportionate Share of the Costs incurred in connection with the Mine Maintenance Plan. The Management Committee may cause Mining Operations to be resumed at any time.
- 16.2 The Operator may, at any time following a period of at least ninety (90) days during which Mining Operations have been suspended, upon at least thirty (30) days notice to all Participants, or in the events described in paragraph 16.1, recommend that the Management Committee approve the permanent termination of Mining Operations. The Operator's recommendation shall include a plan and budget (in this article 16 called the "**Mine Closure Plan**"), in reasonable detail, of the activities to be performed to close the Mine and reclaim the Property. The Management Committee may approve the Operator's recommendation with such changes to the Mine Closure Plan as the Management Committee deems necessary.
- 16.3 If the Management Committee approves the Operator's recommendation as aforesaid, it shall cause the Operator to:

- (a) implement the Mine Closure Plan, whereupon the Participants shall be committed to pay, in proportion to their respective Interests, such Costs as may be required to implement the Mine Closure Plan;
- (b) remove, sell and dispose of such Assets as may reasonably be removed and disposed of profitably and such other Assets as the Operator may be required to remove pursuant to applicable environmental and mining laws; and
- (c) sell, abandon or otherwise dispose of the Property.

The disposal price for the Assets and the Property shall be the best price obtainable and the net revenues, if any, from the removal and sale shall be credited to the Participants in proportion to their respective Interests.

16.4 If the Management Committee does not approve the Operator's recommendation contemplated in paragraph 16.2, the Operator shall maintain Mining Operations in accordance with the Mine Maintenance Plan.

#### **17. NO AREA OF COMMON INTEREST**

17.1 During the subsistence of this Agreement, no acquisition, directly or indirectly, of any right to or interest in, or any right to receive proceeds of production from, any mining claim, license, lease, grant, concession, permit, patent, or other form of mineral tenure, regardless of its proximity to the Property, shall be included in or hereafter form part of the Property, nor shall it be subject to the terms of this Agreement.

#### **18. INFORMATION AND DATA**

18.1 At all times during the subsistence of this Agreement, the duly authorized representatives of each Participant shall, at its and their sole risk and expense, during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the Operator, have access to the Property and to all technical records and other factual engineering data and information relating to the Property which is in the possession of the Operator.

18.2 All information and data concerning or derived from the Mining Operations shall be kept confidential and, except to the extent required by law or by regulation of any securities commission or stock exchange, shall not be disclosed to any person other than an Affiliate without the prior written consent of all the Participants, which consent shall not unreasonably be withheld.

18.3 Each party hereto shall consult with the other party prior to issuing any press release or other public statement with respect to the Property or the activities of the parties with respect thereto and the disclosing party shall use its best efforts to give to the other party not less than 24 hours prior notice of such press release including a draft of the content of such press release or public announcement.

## 19. LIABILITY OF THE OPERATOR

- 19.1 Subject to paragraph 19.2, each party shall indemnify and save the Operator harmless from and against any loss, liability, claim, demand, damage, expense, injury, or death (including, without limiting the generality of the foregoing, legal fees) resulting from any acts or omissions of the Operator or its officers, employees or agents.
- 19.2 Notwithstanding paragraph 19.1, the Operator shall not be indemnified nor held harmless by any of the parties for any loss, liability, claim, damage, expense, injury or death, (including, without limiting the generality of the foregoing, legal fees) resulting from the negligence or wilful misconduct of the Operator or its officers, employees or agents.
- 19.3 An act or omission of the Operator or its officers, employees or agents done or omitted to be done:
- (a) at the direction, or within the scope of the direction, of the Management Committee; or
  - (b) with the concurrence of the Management Committee; or
  - (c) unilaterally and in good faith by the Operator to protect life or property;
- shall be deemed not to be negligence or wilful misconduct.
- 19.4 The obligation of the other parties to indemnify and save the Operator harmless pursuant to paragraph 19.1 shall be in proportion to its Interest as at the date that the loss, liability, claim, demand, damage, expense, injury or death occurred or arose.
- 19.5 The Operator shall not be liable to any other party nor shall any party be liable to the Operator in contract, tort or otherwise for special or consequential damages, including without limiting the generality of the foregoing, loss of profits or revenues.

## 20. INSURANCE

- 20.1 If not already in place upon the Operative Date, the Management Committee shall cause the Operator to place and maintain with a reputable insurer or insurers such insurance, as the Management Committee in its discretion deems advisable in order to protect the parties, together with such other insurance, as any Participant may by notice reasonably request. The certificate of insurance shall show each Participant as a named insured and the Operator shall provide each Participant with a copy of such certificate.
- 20.2 Paragraph 20.1 shall not preclude any party from placing, for its own account, insurance for greater or other coverage than that placed by the Operator.

**21. RELATIONSHIP OF PARTIES**

- 21.1 The rights, duties, obligations and liabilities of the parties shall be several and not joint nor joint and several, it being the express purpose and intention of the parties that their respective Interests shall be held as tenants in common.
- 21.2 Nothing herein contained shall be construed as creating a partnership of any kind or as imposing upon any party any partnership duty, obligation or liability to any other party hereto.
- 21.3 No party shall use, suffer or permit to be used, directly or indirectly, the name of any other party for any purpose related to the Property, except when required by this Agreement or by any law, by-law, ordinance, rule, order or regulation.

**22. PARTITION**

- 22.1 Each of the parties hereto waives, during the term of this Agreement, any right to partition of the Property or Assets or any part thereof and no party shall seek to be entitled to partition of the Property or the Assets whether by way of physical partition, judicial sale or otherwise during the term of this Agreement.

**23. TAXATION**

- 23.1 All Costs incurred hereunder shall be for the account of the party or parties making or incurring same, if more than one then in proportion to their respective Interests, and each party on whose behalf any Costs have been incurred shall be entitled to claim all tax benefits, write-offs, and deductions with respect thereto.

**24. FORCE MAJEURE**

- 24.1 Notwithstanding anything herein contained to the contrary, if any Participant is prevented from or delayed in performing any obligation under this Agreement, and such failure is occasioned by any cause beyond its reasonable control, excluding only lack of finances, then, subject to paragraph 25.2, the time for the observance of the condition or performance of the obligation in question shall be extended for a period equivalent to the total period the cause of the prevention or delay persists or remains in effect.
- 24.2 Any party hereto claiming suspension of its obligations as aforesaid shall promptly notify the other parties to that effect and shall take all reasonable steps to remove or remedy the cause and effect of the force majeure described in the said notice insofar as it is reasonably able to do and as soon as possible; provided that the terms of settlement of any labour disturbance or dispute, strike or lockout shall be wholly in the discretion of the party claiming suspension of its obligations by reason thereof; and that party shall not be required to accede to the demands of its opponents in any such labour disturbance or dispute,

strike, or lockout solely to remedy or remove the force majeure thereby constituted.

- 24.3 The extension of time for the observance of conditions or performance of obligations as a result of force majeure shall not relieve the Operator from its obligations to keep the Property in good standing.

**25. NOTICE**

- 25.1 All invoices, notices, consents and demands under this Agreement shall be in writing and may be delivered personally or sent by fax or prepaid overnight courier to the address of each party set out herein. Any notice delivered or sent by fax or prepaid overnight courier shall be deemed to have been given and received on the business day next following the date of delivery.

**26. WAIVER**

- 26.1 No waiver, express or implied, by any party to, or any breach by any other party of any or all of its obligations under this Agreement shall be valid and binding unless evidenced in writing. Any waiver shall extend only to the particular breach so waived and shall not limit any rights with respect to any future breach.

**27. AMENDMENTS**

- 27.1 This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any amendment or variation of this Agreement shall be in writing dated subsequent to the Operative Date and duly executed by each of the parties.

**28. TERM**

- 28.1 Unless earlier terminated by agreement of all parties having an Interest or as a result of one party acquiring a one-hundred percent (100%) Interest, the Joint Operation and this Agreement shall remain in full force and effect for so long as any party has any right, title or Interest in the Property. Termination of this Agreement shall not, however, relieve any party from any obligations theretofore accrued but unsatisfied, nor from its obligations with respect to rehabilitation of the Mine site and reclamation.

**29. TIME OF ESSENCE**

- 29.1 Time is of the essence of this Agreement.

**30. SUCCESSORS AND ASSIGNS**

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

**31. GOVERNING LAW**

31.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

**IN WITNESS WHEREOF** the parties hereto have executed this agreement as of the day and year first above written.

**BREAKWATER  
RESOURCES LTD.**

\_\_\_\_\_  
Authorized Signing Officer

\_\_\_\_\_  
Authorized Signing Officer

**BLUE NOTE MINING INC.**

  
\_\_\_\_\_  
Authorized Signing Officer

## APPENDIX I

### ACCOUNTING PROCEDURE

#### 1. INTERPRETATION

1.1 In this Appendix the following words, phrases and expressions shall have the following meanings:

- (a) **"Agreement"** means the Agreement to which this Accounting Procedure is attached as Appendix I.
- (b) **"Count"** means a physical inventory count.
- (c) **"Employee"** means those employees of the Operator who are assigned to and directly engaged in the conduct of Mining Operations, whether on a full-time or part-time basis.
- (d) **"Employee Benefits"** means the Operator's cost of holiday, vacation, sickness, disability benefits, field bonuses, amounts paid to and the Operator's cost of established plans for employee's group life insurance, hospitalization, pension, retirement and other customary plans maintained for the benefit of Employees and Personnel, as the case may be, which costs may be charged as a percentage assessment on the salaries and wages of Employees or Personnel, as the case may be, on a basis consistent with the Operator's cost experience.
- (e) **"Field Offices"** means the necessary sub-office or sub-offices in each place where a Production Program is being conducted or a Mine is being operated.
- (f) **"Joint Account"** means the books of account maintained by the Operator to record all costs, expenses, credits and other transactions arising out of or in connection with the Mining Operations.
- (g) **"Material"** means the personal property, equipment and supplies acquired or held, at the direction or with the approval of the Management Committee, for use in the Mining Operations.
- (h) **"Offices"** means collectively, the Field Offices and the Supervisory Offices.
- (i) **"Personnel"** means those management, supervisory, administrative, clerical or other personnel of the Operator normally associated with the Supervision Offices whose salaries and wages are charged directly to the Supervision Office in question.
- (j) **"Reasonable Expenses"** means the reasonable expenses of Employees or Personnel, as the case may be, for which those Employees or Personnel may be reimbursed under the Operator's usual expense account practice.

(k) "Supervision Offices" means the Operator's offices or department within the Operator's offices from which the Mining Operations are generally supervised.

1.2 All capitalized terms used but not defined in this Appendix I shall, unless the context otherwise requires, have the meanings ascribed to them in the Agreement.

## 2. STATEMENTS AND BILLINGS

2.1 The Operator shall, by invoice, charge each Participant with its Proportionate Share of Production Program Costs and Net Cash Flow Deficit Amounts in the manner provided in articles 8 and 10 of the Agreement respectively. Any Net Cash Flow Surplus Amount shall be distributed as a Distribution in accordance with article 10 of the Agreement.

2.2 The Operator shall deliver, with each invoice rendered for Costs incurred a statement indicating:

- (a) a summary of all charges or credits to the Joint Account relating to Material;
- (b) a summary of all other charges and credits to the Joint Account summarized by appropriate classification indicative of the nature of the charges and credits; and
- (c) such additional information as may be reasonably necessary in order for the Participant to understand the nature of the charges and credits.

2.3 The Operator shall deliver with each invoice for an advance of Costs a statement indicating:

- (a) the estimated Production Program Costs or Net Cash Flow Deficit Amounts in accordance with articles 8 and 10 of the Agreement, respectively;
- (b) the addition thereto or subtraction therefrom, as the case may be, made in respect of Production Program Costs actually having been incurred in an amount greater or lesser than the advance which was made by each Participant for the penultimate month preceding the month of the invoice; and
- (c) the advances made by each Participant to date and the Production Program Costs incurred to the end of the penultimate month preceding the month of the invoice.

### 3. DIRECT CHARGES

3.1 The Operator shall charge the Joint Account with the following items:

(a) Contractor's Charges:

All proper Costs relative to the Mining Operations incurred under contracts entered into by the Operator with third parties.

(b) Labour Charges:

(i) The salaries and wages of Employees in an amount calculated by taking the full salary or wage of each Employee multiplied by that fraction which has as its numerator the total time for the month that the Employees were directly engaged in the conduct of Mining Operations and as its denominator the total normal working time for the month of the Employee;

(ii) the Reasonable Expenses of the Employees; and

(iii) Employee Benefits and government contributions in respect of the Employees in an amount proportionate to the charge made to the Joint Account in respect to their salaries and wages.

(c) Office Maintenance:

(i) The cost or a pro rata portion of the costs, as the case may be, of maintaining and operating the Offices. The basis for charging the Joint Account for Office maintenance costs shall be as follows:

(A) the expense of maintaining and operating Field Offices, less any revenue therefrom; and

(B) that position of maintaining and operating the Supervision Offices which is equal to

(1) the anticipated total operating expenses of the Supervision Offices;

(2) the anticipated total staff man days for the Employees whether in connection with the Mining Operations or not;

multiplied by

(3) the actual total time spent on the Mining Operations by the Employee expressed in man days.

(ii) Without limiting the generality of the foregoing, the anticipated total operating expenses of the Supervision Offices shall include:

- (A) the salaries and wages of the Operator's Personnel which have been directly charged to those Offices;
  - (B) the Reasonable Expenses of the Personnel; and
  - (C) Employee Benefits.
- (iii) The Operator shall make an adjustment in respect of the Office Maintenance costs forthwith after the end of each Operating Year upon having determined the actual operating expenses and actual total staff man days referred to in clause 3.1(c)(i)(B) of this Appendix I.
- (d) Material:
- Material purchased or furnished by the Operator for use on the Property as provided under section 7 of this Appendix I.
- (e) Transportation Charges:
- The cost of transporting Employees and Material necessary for the Mining Operations.
- (f) Service Charges:
- (i) The cost of services and utilities procured from outside sources other than services covered by paragraph 3.1(h); and
  - (ii) Use and service of equipment and facilities furnished by the Operator as provided in subsection 5.5 of this Appendix I.
- (g) Damage and Losses to Joint Property:
- All costs necessary for the repair or replacement of Assets made necessary because of damages or losses by fire, flood, storms, theft, accident or other cause. The Operator shall furnish each Participant with written particulars of the damages or losses incurred as soon as practicable after the damage or loss has been discovered. The proceeds, if any, received on claims against any policies of insurance in respect of those damages or losses shall be credited to the Joint Account.
- (h) Legal Expense:
- All costs of handling, investigating and settling litigation or recovering the Assets, including, without limiting the generality of the foregoing, attorney's fees, court costs, costs of investigation or procuring evidence and amounts paid in settlement or satisfaction of any litigation or claims; provided, however, that, unless otherwise approved in advance by the Management Committee, no charge shall

be made for the services of the Operator's legal staff or the fees and expenses of outside solicitors.

(i) Taxes:

All taxes, duties or assessments of every kind and nature (except income taxes) assessed or levied upon or in connection with the Property, the Mining Operations thereon, or the production therefrom, which have been paid by the Operator for the benefit of the parties.

(j) Insurance:

Net premiums paid for:

- (i) such policies of insurance on or in connection with Mining Operations as may be required to be carried in accordance with applicable laws; and
- (ii) such other policies of insurance as the Operator may carry for the protection of the parties in accordance with the Agreement; and

the applicable deductibles in event of an insured loss.

(k) Royalties:

Fees and other similar charges required to be paid for acquiring, recording and maintaining permits, mineral claims and mining leases and royalties which are paid as a consequence of the Mining Operations.

(l) Permits:

Permit costs, fees and other similar charges which are assessed by various governmental agencies.

(m) Shipping Fees:

All costs relating to the shipping of Minerals to the point of sale.

(n) Operator's Fees:

Operator's fees as set out in article 7 of the Agreement.

(o) Marketing and Representation Fees

All fees and charges related to marketing and sale of Minerals (or concentrates derived therefrom).

(p) Banking and Financing Charges

All costs related to banking and financing charges

(q) Other Expenditures:

Such other costs and expenses which are not covered or dealt with in the foregoing provisions of this subsection 3.1 of this Appendix I as are incurred with the approval of the Management Committee for Mining Operations or as may be contemplated in the Agreement.

**4. EXCLUDED CHARGES**

- 4.1 For greater certainty, the Operator shall not charge each Participant for any Costs or expenses incurred by the Operator which are solely related to general overhead and administrative expenses of the Operator (other than the Operator's fees as set out in article 7 of the Agreement) including bonuses, salaries, auditor's fees, legal fees, consulting fees, insurance and rent.

**5. PURCHASE OF MATERIAL**

- 5.1 Subject to subsection 5.4 of this Appendix I, the Operator shall purchase all Material and procure all services required in the Mining Operations.
- 5.2 Materials purchased and services procured by the Operator directly for the Mining Operations shall be charged to the Joint Account at the price paid by the Operator less all discounts actually received.
- 5.3 So far as it is reasonably practical and consistent with efficient and economical operations, the Operator shall purchase, furnish or otherwise acquire only such Material and Assets as may be required for immediate use. The Operator shall attempt to optimize the accumulation of surplus stocks of Material.
- 5.4 Any Participant may sell Material or services required in the Mining Operations to the Operator for such price and upon such terms and conditions as the Management Committee may approve.
- 5.5 Notwithstanding the foregoing provisions of this section 5, the Operator shall be entitled to supply for use in connection with the Mining Operations equipment and facilities which are owned by the Operator and to charge the Joint Account with such reasonable costs as are commensurate with the ownership and use thereof.

**6. DISPOSAL OF MATERIAL**

- 6.1 The Operator, with the approval of the Management Committee may, from time to time, sell any Material which has become surplus to the foreseeable needs of the Mining Operations for the best price and upon the most favourable terms and conditions available.
- 6.2 Any Participant may purchase from the Operator any Material which may from time to time become surplus to the foreseeable need of the Mining Operations for such price and upon such terms and conditions as the Management Committee may approve.

- 6.3 Upon termination of the Agreement, the Management Committee, acting reasonably, may approve the division of any Material held by the Operator at that date which may be taken by the Participant in lieu of a portion of its Proportionate Share of the net revenues received from the disposal of the Assets and Property. The division of any Material for such purposes shall be for such price and on such terms and conditions as the Management Committee, acting reasonably, may approve.
- 6.4 The net revenues received from the sale of any Material to third parties or to a Participant shall be credited to the Joint Account.

## 7. INVENTORIES

- 7.1 The Operator shall maintain records of Material in reasonable detail.
- 7.2 The Operator shall perform Counts from time to time at reasonable intervals and in connection therewith shall give notice of its intention to perform a Count to each Participant at least thirty (30) days in advance of the date set for performing the Count. Each Participant shall be entitled to be represented at the performance of a Count upon giving notice thereof to the Operator within twenty (20) days of the Operator's notice. A Participant who is not represented at the performance of a Count shall be deemed to have approved the Count as taken.
- 7.3 Forthwith after performing a Count, the Operator shall reconcile the inventory with the Joint Account and provide each Participant with a statement listing the overages and shortages. The Operator shall not be held accountable for any shortages of inventory except such shortages as may have arisen due to a lack of diligence on the part of the Operator.

## 8. ADJUSTMENTS

- 8.1 Payment of any invoice or receipt of any Distribution by a Participant shall not prejudice the right of that Participant to protest the correctness of the statement supporting the payment; provided, however, that all invoices and statements presented to each Participant by the Operator during any operating year shall conclusively be presumed to be true and correct upon the expiration of twelve (12) months following the end of the operating year to which the invoice or statements relates, unless within that twelve (12) month period, that Participant gives notice to the Operator protesting the correctness of the invoice or statement and requesting an adjustment of same.
- 8.2 The Operator shall not adjust any invoice or statement in favour of itself after the expiration of twelve (12) months following the end of the operating year to which the invoice or statement relates.
- 8.3 Notwithstanding subsections 8.1 and 8.2 of this Appendix I, the Operator may make adjustments to an invoice or statement which arises out of a physical inventory of Material or Assets.

- 8.4 A Participant shall be entitled upon notice to the Operator to request that the independent external auditor of the Operator provide that Participant with its opinion that any invoice or statement delivered pursuant to the Agreement in respect of the period referred to in subsection 8.1 of this Appendix I has been prepared in accordance with this Agreement.
- 8.5 The time for giving the audit opinion contemplated in subsection 8.4 of this Appendix I shall not extend the time for the taking of exception to and making claims on the Operator for adjustment as provided in subsection 8.1 of this Appendix I.
- 8.6 The cost of the auditor's opinion referred to in subsection 8.4 of this Appendix I shall be solely for the account of the Participant requesting the auditor's opinion, unless the audit disclosed a material error adverse to that Participant, in which case the cost shall be solely for the account of the Operator.

APPENDIX II

PROPERTY

**Leases**

ML246 Caribou Mining Lease – Exp. October 27, 2008  
ML255 Restigouche Mining Lease – Exp. July 17, 2017  
SIML2473 Restigouche Industrial Surface Mining Lease – Exp. June 30, 2017  
SIML2271 Woodside Brook Industrial Surface Mining Lease (Tailings Area) – Exp.  
May 31, 2026

**Mining Claims**

Restigouche Property (Surrounding Mining Lease) – Exp. July 26, 2006

331904 – 331910  
331915 – 331921  
331942 – 331948  
331964 – 331966  
331969 – 331970  
331988 – 331990  
331993 – 331994  
335612 – 335614  
335617 – 335618  
335636 – 335642

Woodside Brook Property (Tailings Area) – Exp. June 15, 2007

334950 – 334969  
334972 – 334977  
334980 – 334986

Armstrong Property – Exp. July 29, 2007

335452 – 335469  
335471 – 335473  
335475 – 335497

Carroll Armstrong Property – Exp. July 29, 2007

362338 – 362339  
363049  
367917 – 367918  
367923 – 367927

McMaster Property – Exp. July 27, 2006

333600 – 333614

335436 – 335444

Orvan Brook Property – Exp. July 27, 2006

329142 – 329151

335445 – 335451

**Real Estate**

All that certain lot, piece and parcel of land and premises owned by the Vendor and situate, lying and being in the County of Restigouche, Province of New Brunswick identified as PID 50072032, being 509 hectares, more or less, together with all other real property owned or controlled by the Vendor and used in connection with the Mine.

### APPENDIX III

#### NET SMELTER ROYALTY

1. Interpretation

1.1 **Definitions:** Where used herein:

“**Agreement**” means the Agreement to which this Net Smelter Royalty is attached as Appendix III.

“**Asset Purchase Agreement**” shall mean the asset purchase agreement dated August 1, 2006, 2006 between CanZinco Ltd. and Blue Note.

“**Blue Note**” shall mean Blue Note Mining Inc.

“**Caribou Mine**” shall mean the Caribou mine site in New Brunswick as more particularly described in the Asset Purchase Agreement.

“**Debenture**” shall mean the subordinated convertible debenture dated August 1, 2006 issued by Blue Note to Breakwater Resources Ltd.

“**Net Smelter Return**” shall mean the actual market value received, from time to time, for lead, zinc and copper concentrates or other Products recovered from the ore extracted from the Caribou Mine and the Restigouche Mine by the Operator from any independent smelter, or other purchaser or user, less:

- (a) all actual charges and costs, including insurance premiums, for transportation of Products from the processing facilities on or near the Caribou Mine and the Restigouche Mine to the place of sale, or other disposition, whether transported by the Operator or a third party;
- (b) all actual charges and costs for marketing the Products;
- (c) all actual charges, costs, deductions, and penalties for the treatment, tolling, or smelting of the Products and all costs and charges associated therewith, such as costs and charges with respect to handling, weighing, sampling, assaying and marketing, as well as presentation charges, referee's fees and expenses, after said Products leave the processing facility on or near the Caribou Mine and the Restigouche Mine; and
- (d) severance, production, *ad valorem*, excise, sales, and any other similar taxes or fees (excluding income taxes) paid to any lawful taxing authority on Products mined from the Property.

If Products are transported, processed or smelted by the Operator or an affiliate thereof, all charges, costs, penalties, and deductions referred to above and used for calculating Net Smelter Return shall be equivalent to the prevailing competitive rates charged by a

person who is not an affiliate in an arm's length transaction for transportation or smelting of a like quantity and quality of such Products.

"**Net Smelter Return Royalty**" shall mean two percent (2%) of the Net Smelter Return.

"**Owner**" shall mean the owner of the Net Smelter Return Royalty.

"**Products**" shall mean all ores, minerals, metals and concentrates and any other mineral resources produced from the Caribou Mine and the Restigouche Mine.

"**Property**" shall mean the Caribou Mine and the Restigouche Mine.

"**Restigouche Mine**" shall mean the Restigouche mine site in New Brunswick as more particularly described in the asset purchase agreement dated August 1, 2006 between CanZinco and Blue Note.

1.2 **Interpretation:** Where used herein:

- (a) all other defined terms used in this Appendix which are not defined herein have the meanings ascribed thereto in the Agreement;
- (b) unless something in the subject matter or context is inconsistent therewith, words and expressions importing the singular numbers shall include the plural and *vice versa*, and words and expressions importing the use or any gender shall include the masculine, feminine and neuter genders;
- (c) reference to "Articles" refer to articles herein; references to "Sections" and "subsections" refer to sections and subsections herein; references to "paragraphs" and "subparagraphs" refer to paragraphs and subparagraphs herein; and
- (d) the division of this Appendix into Articles, Sections, subsections, paragraphs, subparagraphs and other portions and the insertion of headings are for convenience only and shall not affect or be taken into account in construing or interpreting anything herein.

1.3 **Currency:** All dollar amounts referred to herein are in Canadian dollars unless specifically stated to be otherwise, for example, as US\$.

2. **Calculation of Net Smelter Return Royalty:** An estimate of quarterly Net Smelter Return Royalty shall be calculated by the Operator at the end of each calendar quarter, and the Net Smelter Return Royalty shall be calculated by the Operator at the end of each calendar year. The estimate of the quarterly Net Smelter Return Royalty and a statement containing the Operator's calculation of the annual Net Smelter Return Royalty shall be transmitted to the Owner, together with payments of Net Smelter Return Royalty, if any, within 60 days of the end of the first three quarters of each calendar year and within ninety (90) days of the end of each calendar year, respectively.

3. **Verification and Disputing of Net Smelter Return Royalty:** The Owner may verify and contest the Operator's calculation of Net Smelter Return Royalty during a period of sixty days (60) following receipt of the annual statement of Net Smelter Return Royalty. The Operator shall maintain adequate records, which shall be made available to the Owner during said six (6) month period to enable the Owner to verify the correctness of the Operator's calculation of the Net Smelter Return Royalty. If the Owner disputes, in writing, the correctness of the Operator's determination of Net Smelter Return Royalty, the determination of whether an entry has been properly categorized or calculated shall be finally made by an independent auditor to be appointed by the Operator. If the Owner does not dispute, in writing, the correctness of the Operator's determination of Net Smelter Return Royalty within six (6) months following the delivery of an annual statement, such annual statement shall be deemed to be correct and the Owner shall waive all of its right to challenge said annual statement.
  
4. **Assignment:** The Net Smelter Return Royalty is a right running with the Caribou Mine and the Restigouche Mine. The Owner shall have no right, title or interest in the Caribou Mine or the Restigouche Mine other than the rights granted herein. The Owner may file or register notice of this Net Smelter Royalty or notice thereof as it deems fit, including with the Mining Recorder in New Brunswick. The Net Smelter Royalty shall be binding on any successor to the Operator and on any assignee or purchaser of the Caribou Mine or the Restigouche Mine. The Owner may not assign its rights under this Net Smelter Royalty to any person without the prior written approval of Blue Note Metals Inc., which approval shall not be unreasonably withheld.

Cause No.: S/C/684/08  
Numéro de Cause:

IN THE COURT OF QUEEN'S BENCH OF  
NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

B E T W E E N:

**BREAKWATER RESOURCES LTD.**

Plaintiff

- and -

**BLUE NOTE MINING INC. and BLUE  
NOTE CARIBOU MINES INC.**

Defendants

COUR DU BANC DE LA REINE DU  
NOUVEAU-BRUNSWICK

DIVISION DE PREMIERE INSTANCE

CIRCONSCRIPTION JUDICIAIRE DE

E N T R E:

demandeur(s)

- et -

défendeur(s)

**NOTICE OF ACTION WITH  
STATEMENT OF CLAIM ATTACHED  
(FORM 16A)**

**AVIS DE POURSUITE  
ACCOMPAGNÉ D'UN EXPOSÉ DE  
LA DEMANDE  
(FORMULE 16A)**

TO: Blue Note Mining Inc.  
1 Place Ville Marie, Suite 2125  
Montreal, PQ H3B 2C6

À:

TO: Blue Note Caribou Mines Inc.  
9361 Route 180, P.O. Box/C.P. 26  
Bathurst, NB E2A 3Z1

LEGAL PROCEEDINGS HAVE BEEN  
COMMENCED AGAINST YOU BY  
FILING THIS NOTICE OF ACTION WITH  
STATEMENT OF CLAIM ATTACHED

PAR LE DÉPÔT DU PRÉSENT AVIS DE  
POURSUIITE ACCOMPAGNÉ D'UN  
EXPOSÉ DE LA DEMANDE, UNE  
POURSUIITE JUDICIAIRE A ÉTÉ  
ENGAGÉE CONTRE VOUS.

If you wish to defend these  
proceedings, either you or a New Brunswick  
lawyer acting on your behalf must prepare  
your Statement of Defence in the form

Si vous désirez présenter une  
défense dans cette instance, vous-même ou  
un avocat du Nouveau-Brunswick chargé  
de vous représenter devrez rédiger un

prescribed by the Rules of Court and serve it on the plaintiff or the plaintiff's lawyer at the address shown below and, with proof of such service, file it in this Court Office together with the filing fee of \$50,

- (a) if you are served in New Brunswick, WITHIN 20 DAYS after service on you of this Notice of Action With Statement of Claim Attached, or
- (b) if you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service, or
- (c) if you are served anywhere else, WITHIN 60 DAYS after such service.

If you fail to do so, you may be deemed to have admitted any claim made against you, and without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

You are advised that:

- (a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;
- (b) the Plaintiff intends to proceed in the English language; and

exposé de votre défense en la forme prescrite par les Règles de procédure, le signifier au demandeur ou à son avocat à l'adresse indiquée ci-dessous et le déposer au greffe de cette Cour avec un droit de dépôt de \$50 et une preuve de sa signification:

- (a) DANS LES 20 JOURS de la signification qui vous sera faite du présent avis de poursuite accompagné d'un exposé de la demande, si elle vous est faite au Nouveau-Brunswick ou
- (b) DANS LES 40 JOURS de la signification, si elle vous est faite dans une autre région du Canada ou dans les États-Unis d'Amérique ou
- (c) DANS LES 60 JOURS de la signification, si elle vous est faite ailleurs.

Si vous omettez de le faire, vous pourrez être réputé avoir admis toute demande formulée contre vous et, sans autre avis, JUGEMENT POURRA ETRE RENDU CONTRE VOUS EN VOTRE ABSENCE.

Sachez que:

- (a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;
- (b) le demandeur a l'intention d'utiliser la langue et

(c) your Statement of Defence must indicate the language in which you intend to proceed.

(c) l'exposé de votre défense doit indiquer la langue que vous avez l'intention d'utiliser.

If you pay to the plaintiff or the plaintiff's lawyer the amount of the plaintiff's claim, together with the sum of \$100 for the plaintiff's costs, within the time you are required to serve and file your Statement of Defence, further proceedings will be stayed or you may apply to the court to have the action dismissed.

Si, dans le délai accordé pour la signification et le dépôt de l'exposé de votre défense, vous payez au demandeur ou à son avocat le montant qu'il réclame, plus \$100 pour couvrir ses frais, il y aura suspension de l'instance ou vous pourrez demander à la cour de rejeter l'action.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by George Theriault, Clerk of the Court at Saint John, New Brunswick the 9th day of December,

CET AVIS est signé et scellé au nom de la Cour au Banc de la Reine par \_\_\_\_\_, greffier de la Cour à \_\_\_\_\_, ce \_\_\_\_\_ de \_\_\_\_\_, 200\_\_.



*George Theriault*

CLERK

Clerk of the Court of  
Queen's Bench  
Provincial Building  
110 Charlotte Street, P.O. Box 5001  
Saint John, NB E2L 4Y9

GREFFIER

## STATEMENT OF CLAIM

1. The Plaintiff, Breakwater Resources Ltd., ("Breakwater") is a corporation incorporated pursuant to the laws of Canada, having its executive offices in the city of Toronto, Province of Ontario. Breakwater is a publicly traded company whose shares trade on the TSX. Breakwater carries on business in mineral exploration, development and mining.
2. The Defendant, Blue Note Mining Inc. ("Blue Note") (formerly known as Blue Note Metals Inc.) is a corporation incorporated pursuant to the laws of Canada, having its head office in the city of Montreal, Province of Quebec. Blue Note is a publicly traded company whose shares trade on the TSX. Blue Note carries on business in mineral exploration, development and mining.
3. The Defendant, Blue Note Caribou Mines Inc. ("Blue Note Caribou") is a wholly-owned subsidiary of Blue Note. It is a corporation incorporated pursuant to the laws of Canada, having its head office in the town of Bathurst, Province of New Brunswick. Blue Note Caribou carries on business in mineral exploration, development and mining.
4. CanZinco Ltd. ("CanZinco") is a wholly owned subsidiary of Breakwater. CanZinco is the previous owner of the Caribou Mine, an underground mining and mineral processing property located fifty kilometres west of Bathurst, New Brunswick, and the Restigouche Mine, an open-pit mining property located in the county of Restigouche (collectively, the "Mines"). CanZinco carries on business in mineral exploration, development and mining.
5. In 2004, CanZinco entered into negotiations for the sale of the Mines to Forest Gate Resources Inc., a predecessor company of Blue Note. On July 26, 2006, Blue Note entered into an asset purchase agreement with CanZinco to acquire the Mines (the "Asset Purchase Agreement"). Part of the consideration given by Blue Note for the Mines was the issuance to Breakwater (at CanZinco's direction) of an Unsecured Subordinated Convertible Debenture dated August 1, 2006, in the amount of \$15,000,000.00 CDN, (the "Debenture").
6. A further part of the consideration given by Blue Note for the Mines was Blue Note's entering into the following agreements with Breakwater:
  - (a) a Net Smelter Royalty Agreement dated August 1, 2006 between Blue Note and Breakwater (the "NSR Agreement"); and;
  - (b) a Marketing Agency Agreement dated August 1, 2006 between Blue Note and Breakwater (the "Marketing Agreement").
7. Following the acquisition of the Mines, and after a period of rehabilitation and commissioning, Blue Note began producing zinc and lead concentrates at the Mines.

### **The Debenture**

8. Breakwater pleads and relies on the terms and conditions of the Debenture as if the same were set out herein in its entirety. Within the terms and conditions of the Debenture,

Breakwater is referred to as the "Holder", and Blue Note is referred to as the "Corporation".

9. Pursuant to Article 3 of the Debenture, Breakwater may, at its option, convert the Debenture in exchange for a twenty percent (20%) interest in the Mines by, *inter alia*, providing Notice of Exercise of Property Conversion Option (the "Notice of Conversion") to Blue Note. As promptly as practicable following receipt of the Notice of Conversion, Blue Note is to cause title to the Mines to be recorded in Breakwater's name in proportion to Breakwater's interest. Further, the surrender of the Debenture accompanied by the Notice of Conversion is deemed to constitute a contract between Breakwater and Blue Note whereby they shall enter into a joint venture agreement, substantially in the form attached to the Debenture as Exhibit B (the "Joint Venture Agreement"). Accordingly, Blue Note is bound by and obliged to act in accordance with the terms of the Joint Venture Agreement, upon receipt of the Notice of Conversion and surrendered Debenture.
10. Article 3 of the Debenture provides as follows:

### **ARTICLE 3**

#### ***RIGHT OF CONVERSION INTO PROPERTY INTEREST***

##### ***3.1 Conversion Privilege into Property Interest***

(a) ***Conversion Privilege into Property Interest.*** Subject to and upon compliance with the provisions of this Article, the Holder may, at its option (the "***Property Interest Conversion Option***"), at any time up to the Redemption Date, convert this Debenture in exchange for a twenty percent (20%) interest in the Properties (the "***Holder's Interest***").

(b) ***Extension.*** If, by the Redemption Date, the Corporation has not met the Exploration Cost Minimum in connection with the Properties, the Holder shall be granted an extension on its Property Interest Conversion Option until such time that the Corporation has met the Exploration Cost Minimum.

##### ***3.2 Exercise of Conversion Privilege into Property Interest***

(a) ***Notice.*** In order to exercise the Property Interest Conversion Option set out in this Article 3, the Holder shall surrender this Debenture to the Corporation at its office set out on the face page hereof, accompanied by written notice substantially in the form of Exhibit A attached hereto signed by the Holder stating that it elects to exercise its Property Interest Conversion Option.

(b) ***Contract between the Holder and the Corporation.*** The surrender of this Debenture accompanied by notice given pursuant

to Subsection 3.2(a) shall be deemed to constitute a contract between the Holder and the Corporation whereby: (I) the Holder and the Corporation shall enter into a joint venture agreement, substantially in the form of the joint venture agreement attached hereto at Exhibit B (the "**Joint Venture Agreement**"), which joint venture agreement shall govern the parties' common interests in the Properties; and (II) the Holder releases the Corporation from all liability under this Debenture.

(c) **Date of Conversion.** The date of receipt by the Corporation of this Debenture and the notice referred to in Subsection 3.2(a) is herein referred to as the "**Date of Property Interest Conversion**" of this Debenture. Such conversion shall be deemed to have been effected immediately prior to the close of business of the Date of Property Interest Conversion and at such time the rights of the Holder under this Debenture as a holder shall cease and the Holder shall be deemed to have become on such date the holder of the Holder's Interest.

(d) **Title.** As promptly as practicable after the Date of Property Interest Conversion, the Corporation shall cause title to the Properties to be recorded in the Holder's name in proportion to the Holder's Interest.

11. On August 29, 2008, Breakwater exercised its Property Interest Conversion Option pursuant to Article 3.2 (a) of the Debenture. August 29, 2008, is the Date of Property Interest Conversion, as stipulated in Article 3.2 (c) of the Debenture.
12. Article 8.3 of the Debenture provides as follows:

### **8.3 Restrictive Covenants**

*The Corporation hereby covenants and agrees with the Holder that, until all obligations under this Debenture have been terminated and unless the Holder has otherwise consented to in writing:*

(a) **Encumbrances.** *The Corporation shall not enter into or grant, create, assume or suffer to exist any Lien affecting any of its property, assets or undertaking, save and except only for the Permitted Liens.*

(b) **Indebtedness.** *The Corporation shall not incur or permit or suffer to exist any Indebtedness other than the Permitted Indebtedness.*

## The Transfer Agreement

13. On February 28, 2008, Breakwater received written notice that Blue Note had transferred the Mines to Blue Note Caribou via an Agreement For Transfer of Caribou and Restigouche Mines dated June 29, 2007 (the "Transfer Agreement").
14. Under Article 3 of the Transfer Agreement, Blue Note purported to unilaterally transfer or release its obligations under the Joint Venture Agreement. Article 3 of the Transfer Agreement provides as follows:

3. **JV Agreement.** *BN Caribou and Blue Note hereby agree that in the event that Breakwater exercises its Property Interest Conversion Option, the JV Agreement will be entered into between BN Caribou and Breakwater and all references in the JV Agreement to Blue Note shall be references to BN Caribou.*

*Article 11 of the Debenture provides as follows:*

### ARTICLE 11

#### TRANSFER OF PROPERTY INTEREST

##### 11.1 Transfer of Property Interest

*Notwithstanding anything herein contained, the Corporation may sell, assign or otherwise dispose of all of its interest in the Properties, or part thereof (the "Corporation's Interest"), to an Affiliate of the Corporation (the "Corporation Affiliate") without the consent of the Holder provided that, in any such event, the Corporation Affiliate shall deliver to the Holder an agreement between the Corporation Affiliate and the Holder under which such Corporation Affiliate:*

- (a) acknowledges the Holder's Property Interest Conversion option rights under this Debenture;*
- (b) covenants to provide the Holder with the Holder's Interest in the Properties in the event the Holder exercises its Property Interest Conversion Option pursuant to Subsection 3.1(a) hereof; and*
- (c) agrees to retransfer the Corporation's Interest to the Corporation in the event that the Corporation Affiliate ceases to be an Affiliate of the Corporation.*

15. Article 11.1 of the Debenture does not provide for a transfer of Blue Note's obligations pursuant to the Joint Venture Agreement. Article 3 of the Transfer Agreement is not authorized by the Debenture. Breakwater was not a party to the Transfer Agreement and did not agree to the purported unilateral transfer of obligations under the Joint Venture Agreement from Blue Note to Blue Note Caribou. Accordingly, to the extent that Article

3 of the Transfer Agreement purports to affect Breakwater's rights and Blue Note's obligations under the Joint Venture Agreement, it is of no force and effect.

16. Pursuant to Article 3 of the Debenture, Blue Note is bound by and obligated to act in accordance with the terms of the Joint Venture Agreement, including, without limiting the generality of the foregoing, the Rights, Duties and Status of the Operator as set out therein.

### **The Joint Venture Agreement**

17. Article 5 of the Joint Venture Agreement provides that, following the Operative Date, being the date upon which Breakwater exercises its Property Interest Conversion Option, Blue Note shall continue to Act as Operator of the Mines under the Joint Venture Agreement until, *inter alia*, it resigns pursuant to Article 5.2. The selection of a replacement Operator is within the discretion of the Management Committee to be appointed pursuant to the Joint Venture Agreement.

18. "Operative Date" is defined at Article 1.1 (y) of the Joint Venture Agreement as follows:

*(y) "Operative Date" means the date upon which Breakwater exercises its Property Interest Conversion Option in accordance with the Blue Note Debenture.*

19. As previously stated, the Date of Property Interest Conversion pursuant to Article 3.2(a) and 3.2 (c) of the Debenture is August 29, 2008. Therefore, the Operative Date pursuant to the Joint Venture Agreement is August 29, 2008.

20. Articles 5.1 and 5.2 of the Joint Venture Agreement provide as follows:

*5.1 Following the Operative Date, but subject to paragraph 5.2, Blue Note shall continue to act as the Operator under this Agreement and as such, subject to the discretion and control of the Management Committee, shall have full right, power and authority to do everything necessary or desirable to carry out the purposes of the parties in connection with this Agreement.*

*5.2 The party acting as Operator may resign as Operator on at least ninety (90) days' notice to all the parties and the parties shall, within ninety (90) days after receipt of such notice, convene a meeting of the Management Committee which shall appoint a party who consents to act as Operator, and determine its terms of engagement.*

21. Article 6 of the Joint Venture Agreement sets out the Rights, Duties and Status of Blue Note, as Operator. Articles 6.4 and 6.4(b) and (c) of the Joint Venture Agreement provide as follows:

*6.4 The Operator shall have the sole and exclusive right and authority to manage and carry out all Mining Operations and to*

*incur the Costs required for that purpose, including but not limited to the cost of retaining such subcontractors as it deems fit. In doing so the Operator shall:*

...

*(b) pay all Costs properly incurred promptly as and when due;*

*(c) keep the Property and Assets free of all liens and encumbrances (other than those, if any, in effect on the Operative Date, those the creation of which are permitted pursuant to this Agreement, or builder's or mechanic's liens) arising out of the Mining Operations and, in the event of any lien being filed as aforesaid, proceed with diligence to contest or discharge same;*

...

22. Costs is defined in paragraph 1.1(k) of the Joint Venture Agreement as:

*(k) "Costs" means, except as to Prior Production Costs, all items of outlay and expense whatsoever, direct or indirect, with respect to Mining Operations, recorded by the Operator in accordance with this Agreement. Without limiting the generality of the foregoing, the following categories of Costs shall have the following meanings:*

*(i) "Production Program Costs" means, for any period prior to the Completion Date, all Costs incurred directly or indirectly in connection with Production Program for purposes of bringing into Commercial Production any Mineral deposit on the Property, including, without limitation:*

*(I) all monies expended to develop or construct the Mine, as contemplated in the Production Program, including all costs related to banking and financing charges;*

*(II) working capital required for the initial four (4) months of operation of the Property or part thereof as a Mine or for such longer period as may be reasonably justified in the circumstances.*

*(ii) "Operating Costs" means, for any period after the Completion Date, all Costs incurred or chargeable, directly or indirectly, by the Operator in connection with the Operating Plan, which Costs include, without limiting the generality of the foregoing, the following:*

- (I) *all costs of or related to operating employee facilities, including housing;*
- (II) *all duties, charges, levies, royalties, taxes (excluding taxes levied on the income of the parties) and other payments imposed by any government or municipality or department or agency thereof upon or in connection with operating the Property as a Mine;*
- (III) *all costs of maintaining the Property in good standing, including any required vendor's or royalty payments;*
- (IV) *all reasonable costs of the Operator for providing technical, management and/or supervisory services;*
- (V) *all reasonable costs of consulting, legal, accounting, insurance and other services;*
- (VI) *all exploration expenditures incurred after the Completion Date;*
- (VII) *all capital costs of operating the Property as a Mine including all costs of construction, equipment and mine development and including maintenance, repairs and replacements, and any capital expenditures relating to an improvement, expansion, modernization or replacement of the facilities located at the Mine;*
- (VIII) *a reasonable amount of funds set aside to cover reclamation costs and other costs associated with a permanent shut-down of the Mine;*
- (IX) *any costs or expenses incurred or to be incurred relating to a temporary or permanent shut-down of the Mine;*
- (X) *all reasonable costs of supplies and services purchased for the day to day operation of the Property as a Mine;*
- (XI) *all costs relating to banking and financing charges; and*
- (XII) *all costs relating to the shipping of Minerals to the point of sale,*

*and, except where specific provision is made otherwise, all Operating costs shall be determined in accordance with generally accepted accounting principles applied consistently from year to year provided however that such costs shall not include any amount in respect of amortization of expenditures or Production Program Costs, depletion or depreciation. For greater certainty, Operating Costs shall not include any Costs or expenses incurred by the Operator which are solely related to general overhead and administrative expenses of the Operator including bonuses, salaries, auditor's fees, legal fees, consulting fees, insurance and rent; and*

(iii) *"Prior Production Costs" means all exploration, production and operating Costs incurred by Blue Note prior to the Operative Date and as deemed by the parties under paragraph 3.4, and for greater certainty, shall not include the Reclamation Deposit, the Environmental Protection Deposit, any Additional Reclamation Deposits and any Additional Environmental Protection Deposits made by Blue Note prior to the Operative Date.*

23. Article 3 of the Joint Venture Agreement provides that the respective interests of Blue Note and Breakwater in the Mines shall be eighty percent (80%) to Blue Note and twenty percent (20%) to Breakwater, so long as both parties continue to contribute their respective proportionate share of production costs as set out in the Joint Venture Agreement. Article 3.3 of the Joint Venture Agreement provides as follows:

*3.3 The respective Interests of the parties shall be as set out in paragraph 3.1 so long as they contribute their respective Proportionate Share of Production Program Costs and Operating Costs, as applicable, as set out in this Agreement. At any time and from time to time if a party fails to contribute to such Costs, its respective Interest shall be reduced in accordance with the formula set out in paragraph 3.2. If, as a result of such calculation, the Interest of any party is reduced to or below 5% its Interest shall be deemed to be converted (the "Deemed Conversion") to a 2% Net Smelter Royalty as more particularly described in Appendix III and thereafter such party shall have no further rights, interests, obligation, or liabilities in respect of the Assets or under this Agreement, save and except (a) such Net Smelter Royalty and (b) any liabilities or obligations incurred hereunder from the Operative Date to the date of the Deemed Conversion.*

#### The NSR Agreement

24. Breakwater pleads and relies on the terms and conditions of the NSR Agreement as if the same were set out herein in its entirety.

25. Breakwater is entitled to a Net Smelter Return Royalty, pursuant to Article 2 of the NSR Agreement, which provides as follows:

*Net Smelter Return Royalty: Breakwater, shall be entitled to, and is hereby granted by Blue Note, the Net Smelter Return Royalty.*

26. The Net Smelter Return Royalty is to be calculated pursuant to the formula provided in Article 1 of the NSR Agreement, as follows:

*"Net Smelter Return Royalty" means*

*(i) one percent (1%) of the Net Smelter Return when the average price for zinc on the London Metal Exchange ("LME") for a quarter for which the calculation is made under section 3 is US \$0.65 to US \$0.70 inclusive per pound; and*

*(ii) two percent (2%) of the Net Smelter Return when the average price for zinc on the LME is greater than US \$0.70 per pound for a quarter for which the calculation is made under section 3. No royalty shall be paid when the average price for zinc on the LME is less than US \$0.65 per pound for a quarter for which the calculation is made under section 3. If the LME ceases to publish a price for zinc, the price quoted by an equivalent market shall be use.*

*Net Smelter Return is also defined in Article 1 of the NSR Agreement, as follows:*

*Net Smelter Return shall mean the actual market value received, from time to time, for lead, zinc and copper concentrates or other Products recovered from the ore extracted from the Caribou Mine and the Restigouche Mine by Blue Note from any independent smelter, or other purchaser or user, less:*

*(a) all actual charges and costs, including insurance premiums, for transportation of Products from the processing facilities on or near the Caribou Mine and the Restigouche Mine to the place of sale, or other disposition, whether transported by Blue Note or a third party;*

*(b) all actual charges and costs for marketing the Products;*

*(c) all actual charges, costs, deductions, and penalties for the treatment, tolling, or smelting of the Products and all costs and charges associated therewith, such as costs and charges with respect to handling, weighing, sampling, assaying and marketing, as well as presentation charges, referee's fees and expenses, after said Products leave the processing facility on or near the Caribou Mine and the Restigouche Mine; and*

*(d) severance, production, ad valorem, excise, sales, and any other similar taxes or fees (excluding income taxes) paid to any lawful taxing authority on Products mined from the Property.*

*If Products are transported, processed or smelted by Blue Note or an affiliate thereof, all charges, costs, penalties and deductions referred to above and used for calculating Net Smelter Return shall be equivalent to the prevailing competitive rates charged by a person who is not an affiliate in an arm's length transaction for transportation or smelting of a like quantity and quality of such Product.*

27. Products is defined at Article 1 of the NSR Agreement as follows:

*"Products" means all ores, minerals, metals and concentrates and any other mineral resources produced from the Caribou Mine and the Restigouche Mine during the term of this Agreement.*

28. At all material times, throughout the second and third quarters of 2008 and up to and including the Date of Property Interest Conversion, the price of zinc was greater than \$0.70 per pound.

29. Blue Note is to calculate the amount of the Net Smelter Return Royalty at the conclusion of each quarter and transmit payment to Breakwater. Article 3 of the NSR Agreement provides as follows:

*Calculation of Net Smelter Return Royalty: An estimate of the quarterly Net Smelter Return Royalty shall be calculated by Blue Note at the end of each calendar quarter, and the Net Smelter Return Royalty shall be calculated by Blue Note at the end of each calendar year. The estimate of the quarterly Net Smelter Return Royalty and a statement containing Blue Note's calculation of the annual Net Smelter Return Royalty shall be transmitted to Breakwater together with payments of Net Smelter Return Royalty, if any, within 60 days of the end of the first three quarters of each calendar year and within ninety (90) days of the end of each calendar year, respectively.*

30. Article 5 of the NSR Agreement provides as follows:

*5. Assignment: The Net Smelter Return Royalty is a right running with the Caribou Mine and the Restigouche Mine. Breakwater shall have no right, title or interest in the Caribou Mine or the Restigouche Mine other than the rights granted in this Agreement. Breakwater may file or register notice of this Agreement or notice thereof as it deems fit, including with the Mining Recorder in New Brunswick. This Agreement shall be binding on any successor to Blue Note and on any assignee or purchaser of the Caribou Mine or the Restigouche Mine.*

*Breakwater may not assign its rights under this Agreement to any person without the prior written approval of Blue Note, which approval shall not be unreasonably withheld.*

31. Pursuant to Article 5 of the NSR Agreement, the Net Smelter Return Royalty is a right running with the Mines, and the NSR Agreement is binding on any successor to Blue Note and on any assignee or purchaser of the Mines, including Blue Note Caribou.
32. The NSR Agreement does not provide that Blue Note is released from its obligations under the NSR Agreement, including payment of the NSR Royalty, upon any sale or transfer of the Mines.
33. Blue Note and Blue Note Caribou are liable, jointly and severally to Breakwater with respect to payment of the NSR Royalty under the NSR Agreement.
34. According to Blue Note and Blue Note Caribou, the Mines began commercial production, as contemplated by the NSR Agreement, on September 1, 2007.
35. On May 15, 2008, Breakwater received payment from Blue Note Caribou in the amount of \$452,730.05, representing the amount of the Net Smelter Return Royalty for September 1, 2007 until December 31, 2007 (i.e., a portion of the third quarter, and the entire fourth quarter of 2007).
36. On June 6, 2008, Breakwater received payment from Blue Note Caribou in the amount of \$404,005.31, representing the amount of the Net Smelter Return Royalty for the first quarter of 2008 (i.e., January 1, 2008 until March 31, 2008).
37. Breakwater is entitled to continue to receive payments under the NSR Agreement up to and including the Date of Property Interest Conversion (August 29, 2008).

### **The Marketing Agreement**

38. Breakwater pleads and relies on the terms and conditions of the Marketing Agreement as if the same were set out herein in its entirety.
39. Breakwater is entitled to fees, pursuant to Article 5.1, 5.4 and 5.5 of the Marketing Agreement (the "Marketing Fees"), which provided as follows:

#### **5. FEES**

*5.1 Blue Note shall pay to Breakwater CDN. \$1.00 (one dollar) per wet metric tonne of all sales of Concentrate produced at the Mine (the "Rate"), up to a maximum aggregate annual (based on 365 day periods commencing on the date of this Agreement) amount of CDN. \$150,000 (one hundred and fifty thousand dollars) (the "Maximum Fee").*

*5.4 Subject to section 5.5, the fees based on the Rate payable pursuant to Section 5.1, shall be fully earned and due and payable*

*by Blue Note to Breakwater upon Blue Note's receipt of first provisional payment basis loaded weights.*

*5.5 Upon the execution of this Agreement by the parties, Blue Note shall pay Breakwater \$7,500 per month (the "Monthly Fee") payable on the 15<sup>th</sup> day of the month following the month in which the services were performed. The payment of this Monthly Fee shall terminate on the date of the initial shipment of the Concentrate.*

40. The Marketing Agreement defines concentrates as the lead, copper and zinc concentrates mined and produced by Blue Note at the Mines.
41. Article 6.1 of the Marketing Agreement provides for a term of 3 years following the date of the initial shipment of Concentrate (the "Term"), subject to early termination by Blue Note (Article 6.2), extension of the Term by mutual and written consent (Article 6.3) and termination by Breakwater in the event of default by Blue Notes (Article 6.1);
42. Following the execution of the Marketing Agreement, Breakwater began submitting invoices to Blue Note with respect to the Monthly Fee owing under Article 5.5 of the Marketing Agreement. On December 12, 2006 Blue Note instructed Breakwater to change its billing address to:  
  
Blue Note Caribou Mines Inc.  
P.O. Box 26  
Bathurst, NB E2A 3Z1  
  
(the "Change in Billing Address Notice").
43. Notwithstanding the Change of Billing Address Notice, Blue Note has not advised Breakwater of any assignment of the Marketing Agreement by Blue Note to its affiliate, Blue Note Caribou.
44. Pursuant to Article 16 of the Marketing Agreement, the assignment of the Marketing Agreement by Blue Note to its affiliate, Blue Note Caribou, would not release Blue Note from its obligations under the Marketing Agreement. In the event of any assignment to Blue Note Caribou, Blue Note and Blue Note Caribou would be jointly and severally liable to Breakwater with respect to payment of the Fees under the Marketing Agreement.
45. Following receipt of the Change of Billing Address Notice, Breakwater submitted invoices for Fees owing pursuant to Article 5.1 and 5.4 of the Marketing Agreement pursuant to the instruction contained in the Change of Billing Address Notice. As of November 5, 2008, Breakwater re-issued all outstanding invoices and sent them to Blue Note.

#### **Blue Note's Breach of its Contractual Obligations to Breakwater**

46. The combined effect of the Debenture and the Joint Venture Agreement is that Blue Note was obliged to pay all Costs (pursuant to the Joint Venture Agreement) incurred promptly

as and when due, and keep the Mines free of all liens and indebtedness (except Permitted Liens and Permitted Indebtedness, pursuant to the Debenture), up to and including the recording of Breakwater as an owner on the title to the Mines and the execution of the Joint Venture Agreement by Blue Note and Breakwater. Further, prior to the execution of the Joint Venture Agreement, Blue Note is not released from its obligations under the Debenture.

47. The records of the New Brunswick Land Titles Office reveal that, as of the present date, Breakwater has not been recorded as an owner on the title to the Mines.
48. The records of the New Brunswick Land Titles Office reveal that, as of the present date, the following mechanic's lien claims have been registered in respect of the Mines (the "Mechanics Liens") (PID No. 50072032, PID No. 50237924, and PID No. 50252766, except where otherwise indicated):
  - (a) \$442,571.73 plus interest filed by Sunny Corner Enterprises Inc. on September 16, 2008 against PID 50072032 as document no. 26168741 and against PIDs 50237924 and 50252766 as document no. 26168717;
  - (b) \$90,609.05 plus interest filed by Eastern Reinforcing Ltd. on September 17, 2008 against PID 50072032 as document no. 26174293 and against PID 50237924 as document no. 2174418;
  - (c) \$970,528.58 plus interest filed by Hachey Construction & Fabrication Ltd. on September 19, 2008 against PID 50072032 as document no. 26186099 and against PIDs 50237924 and 50252766 as document no. 26186081;
  - (d) \$3,088,178.18 plus interest filed by Rockwood Transportation Co. Ltd. on September 19, 2008 against PID 50072032 as document no. 2686412 and against PIDs 50237924 and 50252766 as document no. 26186446;
  - (e) \$234,046.02 plus interest filed by Guillevin International Co. on September 22, 2008 against PID 50072032 as document no. 26194808;
  - (f) \$195,493.00 plus interest filed by Jacques Whitford Limited on September 23, 2008 against PID 50072032 as document no. 262025524 and against PIDs 50237924 and 50252766 as document no. 26202557;
  - (g) \$98,082.26 plus interest filed by K & M Utility Lines Ltd. on September 26, 2008 against PID 50072032 as document no. 26221375 and against PIDs 50237924 and 50252766 as document no. 26221300;
  - (h) \$175,141.75 plus interest filed by Godin Electrique Ltee -- Godin's Electric Ltd. on September 26, 2008 against PID 50072032 as document no. 26222175 and against PIDs 50237924 and 50252766 as document no. 26222217;
  - (i) \$120,407.41 plus interest filed by Hewitt Rentals Inc. on September 30, 2008 against PID 50072032 as document no. 26235953 and against PIDs 50237924 and 50252766 as document no. 26236274;

- (j) \$76,321.14 plus interest filed by Atlantic Tractors & Equipment Limited on September 30, 2008 against PID 50072032 as document no. 26236324 and against PIDs 50237924 and 50252766 as document no. 26236373;
- (k) \$680,431.03 plus interest filed by Longyear Canada, ULC and Boart Longyear Alberta Limited on October 1, 2008 against PID 50072032 as document no. 26244864 and against PIDs 50237924 and 50252766 as document no. 26244948;
- (l) \$2,558,081.66 plus interest filed by J.S. Redpath Limited on October 1, 2008 against PID 50072032 as document no. 26245077 and against PIDs 50237924 and 50252766 as document no. 26245127;
- (m) \$328,236.54 plus interest filed by Corepro Drilling Inc. on October 2, 2008 against PID 50072032 as document no. 26253105 and against PIDs 50237924 and 50252766 as document no. 26253139;
- (n) \$134,921.94 plus interest filed by Eddy Group Limited on October 7, 2008 against PID 50072032 as document no. 26280520 and against PIDs 50237924 and 50252766 as document no. 26280421;
- (o) \$30,326.65 plus interest filed by United Rentals of Canada, Inc. on October 14, 2008 against PID 50072032 as document no. 26303538 and against PID 50237924 as document no. 26303587;
- (p) \$61,984.49 plus interest filed by ADI Limited on October 15, 2008 against PID 50072032 as document no. and against PIDs 50237924 and 50252766 as document no. 26310004;
- (q) \$1,170,494.71 plus interest filed by Bradley Jenks Excavation Ltd. on October 17, 2008 against PID 50072032 as document no. 26323650 and against PIDs 50237924 and 50252766 as document no. 26323742;
- (r) \$609,709.76 plus interest filed by Consbec Inc. on October 20, 2008 against PID 50072032 as document no. 26332164 and against PIDs 50237924 and 50252766 as document no. 26332172;
- (s) \$16,907.99 plus interest filed by Source Atlantic, A Division of Universal Sales Limited on October 20, 2008 against PID 50072032 as document no. 26332180 and against PID 50237924 as document no. 26332255;
- (t) \$79,593.66 plus interest filed by Modern Pump & Metal Ltd. on October 30, 2008 against PID 50072032 as document no. 26387838 and against PIDs 50237924 and 50252766 as document no. 26387903;
- (u) \$38,727.69 plus interest filed by Atlantic Reproduction Co. Ltd. on October 30, 2008 against PID 50072032 as document no. 26388273 and against PIDs 50237924 and 50252766 as document no. 26388224; and

- (v) \$292,015.70 plus interest filed by Dyno Nobel Canada Inc. on November 3, 2008 against PID 50072032 as document no. 26406125 and against PIDs 50237924 and 50252766 as document no. 26406463.
- (w) \$89,160.88 plus interest filed by OME Engineering Inc. on November 12, 2008 against PID 50072032 as document no. 26452210 and against PIDs 50237924 and 50252766 as document no. 26452277.
- (x) \$28,279.38 plus interest filed by Power Precision Inc. on November 12, 2008 against PID 50072032 as document no. 26452293 and against PIDs 50237924 and 50252766 as document no. 26452335.
- (y) \$292,015.70 plus interest filed by Dyno Nobel Canada Inc. on November 1, 2008 against PID 50072032 as document no. 26406125 and against PIDs 50237924 and 50252766 as document no. 26406463.
- (z) \$569,921.16 plus interest filed by Chaleur Shotcrete Inc. on November 12, 2008 against PID 50072032 as document no. 26452368 and against PIDs 50237924 and 50252766 as document no. 26452376.

The total amount of the Mechanics Liens is \$11,984,679.40

- 49. The Mechanics Liens are not Permitted Liens under Article 8.3 of the Debenture. The Mechanics Liens will encumber Breakwater's interest in the Mines (if and when Breakwater's interest is registered and or recorded) if they are not discharged and/or vacated. Blue Note has not taken steps to contest or discharge the Mechanics Liens as required by Article 6.4 of the Joint Venture Agreement.
- 50. Blue Note, in breach of its obligations under the Debenture:
  - (a) failed to cause title to the Mines to be recorded in Breakwater's name in proportion to Breakwater's interest as promptly as practicable after the Date of the Property Interest Conversion, constituting a violation of Article 3.2(d) of the Debenture; and
  - (b) delayed entering into the Joint Venture Agreement until October 17, 2008, notwithstanding that the effective date of Breakwater's exercise of the Property Interest Conversion was August 29, 2008, constituting a violation of Article 3.2(b) of the Debenture.
- 51. Blue Note, in breach of its obligations to Breakwater under the Debenture and the Joint Venture Agreement:
  - (a) suffered to exist the Mechanics Liens, constituting a violation of Article 8.3(a) of the Debenture;
  - (b) suffered to exist extensive Indebtedness, other than the Permitted Indebtedness, constituting a violation of Article 8.3(b) of the Debenture;

- (c) failed to proceed with diligence to contest or discharge the Mechanics Liens contrary to Article 6.4(c) of the Joint Venture Agreement; and
  - (d) failed to pay all Costs, promptly as and when due contrary to Article 6.4(b) of the Joint Venture Agreement.
52. As a result of Blue Note's breach of its obligations under the Debenture:
- (a) Breakwater's twenty percent (20%) interest in the Mines was not recorded and/or registered as promptly as practicable and remains unrecorded and/or unregistered as of the date hereof;
  - (b) the Mechanics Liens have been registered and remain on record against the Mines and are encumbering the title to the Mines;
  - (c) until such time as the Mechanics Liens are discharged and/or vacated, if Breakwater's interest is registered and/or recorded subsequent to the Mechanics Liens, Breakwater's interest in the Mines will be encumbered by the Mechanics Liens and Breakwater will not have received the 20% interest in the Mines as contemplated by the Debenture; and
  - (d) there is extensive indebtedness and/or outstanding Costs in relation to the Mines.
53. On September 10, 2008, Bill Heath, Executive Vice-President of Breakwater and President of CanZinco ("Mr. Heath"), met with representatives of Blue Note (the "September 10<sup>th</sup> Meeting"), including; *inter alia*, Mike Judson, President and Chief Executive Officer of Blue Note ("Mr. Judson"), John Martin, Chief Operating Officer of Blue Note and President of Blue Note Caribou ("Mr. Martin") and Jean Mayer, Vice President, Legal and Corporate Affairs of Blue Note ("Mr. Mayer"). The September 10<sup>th</sup> Meeting was convened to discuss the terms of the Joint Venture Agreement. However, on commencement of the September 10<sup>th</sup> Meeting, Mr. Judson advised Breakwater of the following:
- (a) that the completion of the Joint Venture Agreement was unlikely to be necessary as it was unlikely that Blue Note would continue to have an interest in, or be involved at, the Mines much longer;
  - (b) that Blue Note would no longer be sending any funding to Blue Note Caribou for the operation of the Mines and that the operation was going to have to be completely self-sustaining; and
  - (c) that Blue Note Caribou had entered into a "voluntary reorganization" and had commenced discussions with its creditors.
54. At the September 10<sup>th</sup> Meeting, Mr. Mayer advised Breakwater that Blue Note and Blue Note Caribou denied liability for any further payments under the NSR Agreement beyond the first quarter of 2007, and that Blue Note and Blue Note Caribou would not be making any further payments of the Net Smelter Return Royalty under the NSR Agreement.

55. On September 12, 2008, Breakwater demanded, in writing, payment of the Net Smelter Return Royalty for the second quarter of 2008 on or before September 19, 2008. Payment of the Net Smelter Return Royalty was not received.
56. On September 24, 2008, Blue Note advised Breakwater, in writing, that it was under no obligation to make payment of Net Smelter Return Royalty because, in exercising its Property Conversion Option, effective August 29, 2008, Breakwater had:
  - (a) waived payment of the Net Smelter Return Royalty for the second quarter of 2008, and
  - (b) thereby had caused the NSR Agreement to terminate, ending any obligation on the part of Blue Note to make such payment.
57. At no time did Breakwater waive payment of the Net Smelter Return Royalty for the second quarter of 2008 or the portion of the third quarter of 2008, up to and including the Date of Property Interest Conversion, nor did it cause the NSR Agreement to terminate prior to the Date of Property Interest Conversion.
58. Blue Note and/or Blue Note Caribou have calculated the amount of the Net Smelter Return Royalty due and owing for the second quarter of 2008 (i.e., from April 1, 2008 until June 30, 2008) as being \$442,865.74, but they have not paid this, or any, amount.
59. Breakwater estimates the amount of the Net Smelter Return Royalty due and owing to Breakwater for the portion of the third quarter of 2008, ending on the Date of Property Interest Conversion, (i.e., from July 1, 2008 until August 28, 2008) is approximately \$300,000.00.
60. The exact amounts due and owing to Breakwater under the terms of the NSR Agreement, for the period of April 1, 2008 until August 28, 2008 are presently unascertained but will be proven at trial.
61. On October 10, 2008, Breakwater provided Blue Note with written notice of its failure to comply with the convertible Debenture and the Joint Venture Agreement and its default in payment of Royalty Payments owing under the NSR Agreement.
62. On November 5, 2008 Breakwater provided Blue Note with written Notice of its default in payment of Marketing Fees owing under the Marketing Agreement.
63. As of November 5, 2008, the following invoices, which had been issued by Breakwater and sent to Blue Note Caribou pursuant to the Change of Billing Address Notice, remained outstanding with respect to Marketing Fees due and owing to Breakwater under the Marketing Agreement (the "Outstanding Marketing Fee Invoices"):

<u>INVOICE NUMBER</u>	<u>DATE OF INVOICE</u>	<u>FEE DUE AND PAYABLE</u>
Debit Note No. 288002	August 26, 2008	\$18,859.04

Debit Note No. 298002	September 23, 2008	\$16,920.50
Debit Note No. 308002	October 27, 2008	<u>\$12,674.31</u>
<b>Total Outstanding Marketing Fee Invoices</b>		<b><u>\$48,453.85</u></b>

64. On November 5, 2008 Breakwater sent re-issued copies of the Outstanding Marketing Fee Invoices to Blue Note and demanded payment of same forthwith.
65. As of the date hereof, the Marketing Fees in the amount of \$48,453.85 are due and owing to Breakwater by Blue Note and Blue Note Caribou, together with interest accruing thereon (the "Outstanding Marketing Fees").
66. In addition to the Outstanding Marketing Fees, Blue Note and Blue Note Caribou remain responsible to make payment to Breakwater with respect to Marketing Fees relating to sales of concentrate which have not yet been invoiced by Breakwater, as delivery of the concentrate with respect to such sales to purchasers is not yet complete (the "Marketing Fees Accruing Due"). Breakwater estimates that the total amount of Marketing Fees Accruing Due is approximately \$22,000.00.

**Blue Note's Invoices For Joint Venture Costs**

67. On October 9, 2008 Blue Note Caribou forwarded an invoice to Breakwater by email which purported to invoice Breakwater for the first 2 months joint venture costs (the "Joint Venture Funding Invoice"). At that time, Blue Note had not complied with its obligations pursuant to Article 3 of the Debenture, and in particular, had not caused title to the mines to be recorded in Breakwater's name in accordance with Breakwater's interest and had not entered into the Joint Venture Agreement.
68. Until such time as Blue Note has complied with its obligations under Articles 3 and 8.3 of the Debenture (as alleged in paragraphs 10 and 12 hereof), Breakwater states that it is not obligated to make payments to Blue Note under the Joint Venture Agreement. Breakwater claims a right of set-off against any funds payable to Blue Note under the Joint Venture Agreement equal to all amounts outstanding and owing to Breakwater by Blue Note under the Joint Venture Agreement, the NSR Agreement and the Marketing Agreement.
69. The Joint Venture Funding Invoice was also contrary to the terms of the Joint Venture Agreement as it:
  - (a) did not provide the required detail of all charges and credit (as contemplated by section 2.2 of the Appendix 1 of the Joint Venture Agreement); and
  - (b) purported to invoice for the estimated cash flow deficit for October, when the Joint Venture Agreement does not contemplate invoicing for estimates, but rather,

provides for invoicing by the 15<sup>th</sup> of each month based on the calculation of the Net Cash Flow Deficit on Surplus for the prior month.

### **Blue Note's Suspension of Mining Operations**

70. On October 17, 2008, Blue Note issued a press release announcing that it would be initiating a temporary care and maintenance program at the Mines (the "Press Release"). The effect of initiating a care and maintenance program would be to suspend or terminate mining operations at the Mines. The Press Release did not identify the effective date of its suspension or termination of mining operations at the Mines. Blue Note did not provide Breakwater with the required notice of its intention to suspend or terminate mining operations at the Mines and did not consult with Breakwater prior to the issuance of the Press Release.
71. On October 17, 2008, subsequent to the issuance of the Press Release, Blue Note forwarded a package of documents to Breakwater by telecopy and courier. The package of documents included correspondence attaching the Press Release and a copy of the Joint Venture Agreement that had been executed by Blue Note. The correspondence notified Breakwater that the suspension or termination of mining operations at the Mines would take effect November 28, 2008. Blue Note did not consult with Breakwater with respect to the effective date of the suspension or termination of mining operations at the Mines.
72. On October 22, 2008, Mr. Heath of Breakwater contacted Mr. Martin of Blue Note to request a meeting with representatives of Blue Note to discuss the many issues that had arisen. At that time, Mr. Martin advised Mr. Heath of the following:
- (i) notwithstanding the Press Release and its previously stated intention to suspend or terminate mining operations at the Mines effective November 28, 2008, Blue Note would in fact be shutting down mining operations later that same day or the following day;
  - (ii) Blue Note would be providing notice of lay-off/termination to employees pursuant to the Employment Standards Act; and
  - (iii) Blue Note was looking to sell assets and return leased assets, including underground equipment used at the Mines.
73. On October 22, 2008, following Mr. Heath's discussion with Mr. Martin, Blue Note provided Breakwater with a letter delivered by telecopy and courier which stated Blue Note's intention to "shut down operations" at the Mines on Friday, October 24, 2008. The letter also stated that following:
- Provided you are inclined to keep operations going at the Mines and that you are willing to provide the funds necessary to maintain such operations, you may contact us prior to the close of business this Friday, October 24, 2008 and we shall provide you with the financial requirements to keep operations going.*

74. Blue Note's unilateral initiation of a care and maintenance program at the Mines constitutes the suspension or termination of Mining Operations under the Joint Venture Agreement. In acting unilaterally to initiate the care and maintenance program and the suspension or termination of mining operations at the Mines, Blue Note breached its obligations as operator of the Mines pursuant to the Joint Venture Agreement. Pursuant to Article 16 of the Joint Venture Agreement, Blue Note was not permitted to act unilaterally to suspend or terminate mining operations at the Mines without notice to and consultation with Breakwater.
75. Article 16 of the Joint Venture Agreement provides as follows:

**16. TERMINATION OF MINING OPERATIONS**

*16.1 The Operator may, at any time subsequent to the Completion Date, on at least thirty (30) days notice to all Participants, recommend that the Management Committee approve that the Mining Operations be suspended. The Operator's recommendation shall include a plan and budget (in this article 16 called the "Mine Maintenance Plan"), in reasonable detail, of the activities to be performed to maintain the Assets and Property during the period of suspension and the Costs to be incurred. The Management Committee may, at any time subsequent to the Completion Date, cause the Operator to suspend Mining Operations in accordance with the Operator's recommendation with such changes to the Mine Maintenance Plan as the Management Committee deems necessary. The Participants shall be committed to contribute their Proportionate Share of the Costs incurred in connection with the Mine Maintenance Plan. The Management Committee may cause Mining Operations to be resumed at any time.*

*16.2 The Operator may, at any time following a period of at least ninety (90) days during which Mining Operations have been suspended, upon at least thirty (30) days notice to all Participants, or in the events described in paragraph 16.1, recommend that the Management Committee approve the permanent termination of Mining Operations. The Operator's recommendation shall include a plan and budget (in this article 16 called the "Mine Closure Plan"), in reasonable detail, of the activities to be performed to close the Mine and reclaim the Property. The Management Committee may approve the Operator's recommendation with such changes to the Mine Closure Plan as the Management Committee deems necessary.*

*16.3 If the Management Committee approves the Operator's recommendation as aforesaid, it shall cause the Operator to:*

(a) *implement the Mine Closure Plan, whereupon the Participants shall be committed to pay, in proportion to their respective Interest, such Costs as may be required to implement the Mine Closure Plan;*

(b) *remove, sell and dispose of such Assets as may reasonably be removed and disposed of profitably and such other Assets as the Operator may be required to remove pursuant to applicable environmental and mining laws; and*

(c) *sell, abandon or otherwise dispose of the Property.*

*The disposal price for the Assets and the Property shall be the best price obtainable and the net revenues, if any, from the removal and sale shall be credited to the Participants in proportion to their respective Interests.*

*16.4 If the Management Committee does not approve the Operator's recommendation contemplated in paragraph 16.2, the Operator shall maintain Mining Operations in accordance with the Mine Maintenance Plan.*

76. On October 28, 2008, representatives of Breakwater (Mr. Heath and Torben Jensen, Vice-President Engineering of Breakwater) met with representatives of Blue Note (Mr. Judson and Mr. Martin). At the meeting, Blue Note advised Breakwater of *inter alia*, the following:

- (a) there was no need for a joint venture agreement;
- (b) Blue Note wanted to sell Blue Note Caribou;
- (c) Blue Note would proceed without delay with the registration of Breakwater's interest in the Mines; and
- (d) Blue Note was not in a position to do anything with the Mechanics Liens that had been registered against the Mines as it did not have the funds to deal with its creditors.

77. Blue Note has recently offered to arrange for the registration and/or recording of Breakwater's interest in the Mines, but has refused to vacate and/or discharge the Mechanics Liens. As such, Blue Note intends to register and/or record Breakwater's interest in the Mines subsequent to the Mechanics Liens and such interest would be encumbered by the Mechanics Liens and would not constitute the 20% interest in the Mines as required by the Debenture.

78. Breakwater states that any registration of its interest in the Mines subsequent to the registration of the Mechanics Liens and while the Mechanics Liens have not been vacated and/or discharged would be contrary to Blue Note's obligations under the Debenture.

### Relief Sought

79. Breakwater seeks the following relief, jointly and severally, against Blue Note and Blue Note Caribou:
- (a) an injunction or mandatory order that Blue Note and Blue Note Caribou proceed with diligence to contest and discharge or vacate the Mechanics Liens and all other liens, (other than Permitted Liens) against the Mines;
  - (b) a mandatory order that Blue Note and Blue Note Caribou shall take all steps necessary and proceed with diligence to cause title to the Mines to be recorded in the name of Breakwater or its nominee, in proportion to Breakwater's interest, free and clear of the Mechanics Liens and all other liens (other than Permitted Liens) and thereafter, that Blue Note comply with Article 6.4 (b) and (c) of the Joint Venture Agreement;
  - (c) a declaration that Breakwater is not required to make any payments to Blue Note under the Joint Venture Agreement until Blue Note has fully complied with subparagraph (b) hereof;
  - (d) a declaration that Breakwater may set-off all amounts outstanding and owing to Breakwater under the Joint Venture Agreement, the NSR Agreement and the Marketing Agreement against any amounts that may now or in the future be owing by Breakwater to Blue Note under the Joint Venture Agreement;
  - (e) damages in the full amount that Blue Note and/or Blue Note Caribou are obligated to pay to Breakwater for outstanding NSR Royalty due and owing under the terms of the NSR Agreement, for the period of April 1, 2008 until August 31, 2008, plus pre-judgment interest;
  - (f) damages in the full amount that Blue Note and/or Blue Note Caribou are obligated to pay to Breakwater for Outstanding Marketing Fees and Marketing Fees Accruing Due under the terms of the Marketing Agreement, as of the date of trial, plus pre-trial judgment interest;
  - (g) the costs of this action on a solicitor and client basis, plus harmonized sales tax; and
  - (h) such further and other relief as to this Honourable Court may deem just.
80. The within claims against Blue Note and Blue Note Caribou fall within the provisions of Rule 19.01(a), (c), (f), and (j) of the New Brunswick *Rules of Court*, permitting service outside of New Brunswick without leave, in that the claims are:
- (a) in respect of real property situate in New Brunswick;
  - (b) for the construction of a contract or obligation affecting real property situate in New Brunswick;

- (c) in respect of a mortgage, charge or lien on real property situate in New Brunswick; and
- (d) for an injunction ordering such party to do, or refrain from doing, anything in New Brunswick, or affecting real property situate in New Brunswick.

Dated at Saint John, New Brunswick this 9th day of December, 2008.

**STEWART McKELVEY**  
Solicitors for the Plaintiff,  
~~Breakwater Resources Ltd.~~



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Stephen J. Hutchison

Stewart McKelvey  
Barristers and Solicitors  
44 Chipman Hill  
Saint John, New Brunswick E2L 4S6

Telephone No. 506.632.1970  
Facsimile No. 506.652.1989



the Mines were transferred from Blue Note to Blue Note Caribou. As is set out in more detail below, the obligations of Blue Note under the Debenture, the NSR Agreement and the Marketing Agreement were transferred to Blue Note Caribou. The Defendants plead and rely on the terms of the APA, the Debenture, the NSR Agreement and the Marketing Agreement.

5. With respect to the allegations contained in paragraph 9 of the Statement of Claim, the Defendants admit that the Debenture provided that Breakwater could, at its option, convert the Debenture into a 20% interest in Mines.
6. Further with respect to paragraph 9 of the Statement of Claim, the Defendants admit that, pursuant to the Debenture, upon conversion by Breakwater, Breakwater and Blue Note Caribou were obliged to enter into a joint venture agreement, in substantially the form attached as Exhibit "B" to the Debenture (the "Joint Venture Agreement"). The Defendants plead and rely upon the terms of the Joint Venture Agreement.
7. Upon conversion, Breakwater became bound by the terms of the Joint Venture Agreement, including terms relating to payments under the Joint Venture Agreement. Among other things, Breakwater is obliged to assume 20% of the costs of operating and developing the Mines.
8. With respect to the allegations contained in paragraphs 14 and 15 of the Statement of Claim, the Defendants deny that Blue Note attempted to unilaterally transfer its obligations under the Joint Venture Agreement to Blue Note Caribou. In fact, such obligations were transferred with the consent of Breakwater (either implicitly or explicitly). The transfer was effected with the knowledge and concurrence of Breakwater and had been contemplated by the parties from and after August, 2006.
9. In the alternative, if Breakwater did not consent to the transfer, including transfer of the Joint Venture Agreement (which is not admitted but expressly denied), then Breakwater acquiesced in and ratified the transfer and is now estopped from denying such acquiescence and ratification.
10. With respect to the allegations contained in paragraph 16 of the Statement of Claim, Blue Note Caribou admits that both Blue Note and Breakwater are obliged to act in accordance with the terms of the Joint Venture Agreement.
11. With respect to the allegations contained in paragraphs 17 to 23 of the Statement of Claim, the Defendants deny that either of them has failed to abide by any obligations upon them pursuant to the Joint Venture Agreement. The obligations under the Joint Venture Agreement have been complied with, in

full, by Blue Note Caribou. In fact, as soon as was practicable following conversion, Blue Note Caribou caused transfer documentation to be delivered, in draft form, for approval by Breakwater. While Breakwater provided, through counsel, comments upon the draft documentation, Breakwater has failed or refused to execute the transfer documentation, alleging that the presence of mechanics' liens registered against certain of the assets relating to the Mines permits Breakwater to refuse to execute the transfer documentation. The liens relate to allegations by suppliers of labour and materials that they are unpaid by Blue Note Caribou.

12. Further with respect to the allegations contained in paragraph 17 to 23 of the Statement of Claim, the presence of mechanics' liens in no way entitles Breakwater to fail or refuse to execute the transfer documentation and the Joint Venture Agreement. Blue Note Caribou is actively contesting the validity of all mechanics' liens registered against the assets associated with the Mines. All mechanics' liens were filed following the date of conversion by Breakwater.
13. By the terms of the Debenture, Blue Note Caribou is obliged to actively contest all mechanics' liens. It has done so. None of the liens had been filed prior to the date of conversion by Breakwater. Having converted its interest from that of a debenture holder to an equity owner, Breakwater knowingly and voluntarily assumed the risk that its ownership interest might be impaired by the claims of suppliers of labour and materials. Blue Note Caribou and Breakwater, as joint venturers, share the burden of the costs of operation and development, according to the terms of the Joint Venture Agreement and their respective interests in the joint venture. While the claims of suppliers of labour and materials, if valid and eligible to claim the rights of a lien holder (which is not admitted but expressly denied), burdens the equity of the owners of the Mines, such burden does not fall to a greater degree upon Breakwater. In the event that the liens are valid, Breakwater, as an equity owner, shares the burden of the claims in accordance with its interest in the Mines. The same is true regardless of whether the ownership interest of Breakwater was registered before or after the registration of the mechanics' liens.
14. With respect to the allegations contained in paragraphs 24 to 37 of the Statement of Claim, the Defendants state that all amounts owing pursuant to the NSR Agreement have been paid, in full, to Breakwater. In the alternative, if any amounts are owing to Breakwater, the Defendants plead set-off in respect of all amounts owing by Breakwater to Blue Note Caribou with respect to the Joint Venture Agreement.

15. With respect to the allegations contained in paragraphs 46 to 52 of the Statement of Claim, the Defendants state that Blue Note Caribou has actively contested all mechanics' liens and repeats and relies upon the allegations set forth in paragraphs 11 to 13 of the within Statement of Defence.
16. With respect to the allegations contained in paragraphs 53 and 54 of the Statement of Claim, the Defendants deny the position attributed to them with respect to the meetings referred to therein. Further, the Defendants state that the meetings referred to were held on a without prejudice basis with a view to settling or compromising contemplated litigation and are as such privileged and confidential.
17. With respect to the allegations contained in paragraphs 55 to 66 of the Statement of Claim, the Defendants deny that there is any balance owing with respect to the NSR Agreement or any other agreement. In the alternative, the Defendants plead set-off against amounts owing by Breakwater to Blue Note Caribou in respect of the Joint Venture Agreement.
18. With respect to the allegations contained in paragraphs 67 to 69 of the Statement of Claim, Breakwater has consistently refused to meet its financial obligations pursuant to the Joint Venture Agreement. Such obligations arise upon conversion under the Debenture and are governed by the Joint Venture Agreement. Breakwater's refusal to honour its payment obligations under the Joint Venture Agreement, together with its refusal to execute the transfer documentation in order to register its interest in and to the Mines, amounts to repudiation by Breakwater of the Joint Venture Agreement.
19. With respect to the allegations contained in paragraphs 70 to 78 of the Statement of Claim, the Defendants admit that, as of October, 2008, Blue Note Caribou scaled back operations at the Mines and placed the Mines on a care and maintenance program. Breakwater has consistently failed and refused to meet its financial obligations with respect to the care and maintenance program, pursuant to the Joint Venture Agreement.
20. The Defendants respectfully submit that the within action should be dismissed as against them with costs.
21. The Defendants intend to proceed in the English language.

COUNTERCLAIM

22. The Defendants repeat and rely upon the allegations set forth in their Statement of Defence herein.
23. Blue Note Caribou claims as against Breakwater damages in an amount to be specified prior to trial for breach of the Joint Venture Agreement.
24. In the alternative, Blue Note Caribou claims as against Breakwater damages in an amount to be specified prior to trial for repudiation of the Joint Venture Agreement.
25. Blue Note Caribou further claims as against Breakwater the following:
  - a. interest until payment;
  - b. costs of this action, together with applicable Harmonized Sales Tax; and
  - c. such further and other relief as this Honourable Court deems just and expedient.

Dated at Moncton, New Brunswick, this 15<sup>th</sup> day of January, 2009

**COX & PALMER**



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GEORGE L. COOPER  
Solicitor for the Defendants

COX & PALMER  
644 Main Street, Suite 500  
Moncton, NB E1C 1E2

Tel: (506) 856-9800  
Fax: (506) 856-8150

Email: [gcooper@coxandpalmer.com](mailto:gcooper@coxandpalmer.com)

Cause No.: S/C/684/08  
Numéro de Cause:

IN THE COURT OF QUEEN'S BENCH OF  
NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

B E T W E E N:

**BREAKWATER RESOURCES LTD.**

Plaintiff

- and -

**BLUE NOTE MINING INC. and BLUE  
NOTE CARIBOU MINES INC.**

Defendants

COUR DU BANC DE LA REINE DU  
NOUVEAU-BRUNSWICK

DIVISION DE PREMIERE INSTANCE

CIRCONSCRIPTION JUDICIAIRE DE

E N T R E:

demandeur(s)

- et -

défendeur(s)

**AMENDED NOTICE OF ACTION  
WITH STATEMENT OF CLAIM  
ATTACHED  
(FORM 16A)**

TO: Blue Note Mining Inc.  
1 Place Ville Marie, Suite 2125  
Montreal, PQ H3B 2C6

TO: Blue Note Caribou Mines Inc.  
9361 Route 180, P.O. Box/C.P. 26  
Bathurst, NB E2A 3Z1

**AVIS DE POURSUITE  
ACCOMPAGNÉ D'UN EXPOSÉ DE  
LA DEMANDE  
(FORMULE 16A)**

À:

LEGAL PROCEEDINGS HAVE BEEN  
COMMENCED AGAINST YOU BY  
FILING THIS NOTICE OF ACTION WITH  
STATEMENT OF CLAIM ATTACHED

If you wish to defend these  
proceedings, either you or a New Brunswick  
lawyer acting on your behalf must prepare  
your Statement of Defence in the form

PAR LE DÉPÔT DU PRÉSENT AVIS DE  
POURSUIITE ACCOMPAGNÉ D'UN  
EXPOSÉ DE LA DEMANDE, UNE  
POURSUIITE JUDICIAIRE A ÉTÉ  
ENGAGÉE CONTRE VOUS.

Si vous désirez présenter une  
défense dans cette instance, vous-même ou  
un avocat du Nouveau-Brunswick chargé  
de vous représenter devrez rédiger un

prescribed by the Rules of Court and serve it on the plaintiff or the plaintiff's lawyer at the address shown below and, with proof of such service, file it in this Court Office together with the filing fee of \$50,

- (a) if you are served in New Brunswick, WITHIN 20 DAYS after service on you of this Notice of Action With Statement of Claim Attached, or
- (b) if you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service, or
- (c) if you are served anywhere else, WITHIN 60 DAYS after such service.

If you fail to do so, you may be deemed to have admitted any claim made against you, and without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

You are advised that:

- (a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;
- (b) the Plaintiff intends to proceed in the English language; and

exposé de votre défense en la forme prescrite par les Règles de procédure, le signifier au demandeur ou à son avocat à l'adresse indiquée ci-dessous et le déposer au greffe de cette Cour avec un droit de dépôt de \$50 et une preuve de sa signification:

- (a) DANS LES 20 JOURS de la signification qui vous sera faite du présent avis de poursuite accompagné d'un exposé de la demande, si elle vous est faite au Nouveau-Brunswick ou
- (b) DANS LES 40 JOURS de la signification, si elle vous est faite dans une autre région du Canada ou dans les États-Unis d'Amérique ou
- (c) DANS LES 60 JOURS de la signification, si elle vous est faite ailleurs.

Si vous omettez de le faire, vous pourrez être réputé avoir admis toute demande formulée contre vous et, sans autre avis, JUGEMENT POURRA ETRE RENDU CONTRE VOUS EN VOTRE ABSENCE.

Sachez que:

- (a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;
- (b) le demandeur a l'intention d'utiliser la langue et

(c) your Statement of Defence must indicate the language in which you intend to proceed.

(c) l'exposé de votre défense doit indiquer la langue que vous avez l'intention d'utiliser.

If you pay to the plaintiff or the plaintiff's lawyer the amount of the plaintiff's claim, together with the sum of \$100 for the plaintiff's costs, within the time you are required to serve and file your Statement of Defence, further proceedings will be stayed or you may apply to the court to have the action dismissed.

Si, dans le délai accordé pour la signification et le dépôt de l'exposé de votre défense; vous payez au demandeur ou à son avocat le montant qu'il réclame, plus \$100 pour couvrir ses frais, il y aura suspension de l'instance ou vous pourrez demander à la cour de rejeter l'action.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by George Theriault, Clerk of the Court at Saint John, New Brunswick the 30th day of ~~December~~, 2008; January, 2009

CET AVIS est signé et scellé au nom de la Cour au Banc de la Reine par \_\_\_\_\_, greffier de la Cour à \_\_\_\_\_, ce \_\_\_\_\_ de \_\_\_\_\_, 200\_\_.



*George Theriault*  
CLERK

Clerk of the Court of  
Queen's Bench  
Provincial Building  
110 Charlotte Street, P.O. Box 5001  
Saint John, NB E2L 4Y9

\_\_\_\_\_  
GREFFIER

### STATEMENT OF CLAIM

1. The Plaintiff, Breakwater Resources Ltd., ("Breakwater") is a corporation incorporated pursuant to the laws of Canada, having its executive offices in the city of Toronto, Province of Ontario. Breakwater is a publicly traded company whose shares trade on the TSX. Breakwater carries on business in mineral exploration, development and mining.
2. The Defendant, Blue Note Mining Inc. ("Blue Note") (formerly known as Blue Note Metals Inc.) is a corporation incorporated pursuant to the laws of Canada, having its head office in the city of Montreal, Province of Quebec. Blue Note is a publicly traded company whose shares trade on the TSX. Blue Note carries on business in mineral exploration, development and mining.
3. The Defendant, Blue Note Caribou Mines Inc. ("Blue Note Caribou") is a wholly-owned subsidiary of Blue Note. It is a corporation incorporated pursuant to the laws of Canada, having its head office in the town of Bathurst, Province of New Brunswick. Blue Note Caribou carries on business in mineral exploration, development and mining.
4. CanZinco Ltd. ("CanZinco") is a wholly owned subsidiary of Breakwater. CanZinco is the previous owner of the Caribou Mine, an underground mining and mineral processing property located fifty kilometres west of Bathurst, New Brunswick, and the Restigouche Mine, an open-pit mining property located in the county of Restigouche (collectively, the "Mines"), as more particularly described in Schedule "A" (land titles property) and Schedules "B" and "C" (registry properties) attached hereto. Can Zinco carries on business in mineral exploration, development and mining.
5. In 2004, CanZinco entered into negotiations for the sale of the Mines to Forest Gate Resources Inc., a predecessor company of Blue Note. On July 26, 2006, Blue Note entered into an asset purchase agreement with CanZinco to acquire the Mines (the "Asset Purchase Agreement"). Part of the consideration given by Blue Note for the Mines was the issuance to Breakwater (at CanZinco's direction) of an Unsecured Subordinated Convertible Debenture dated August 1, 2006, in the amount of \$15,000,000.00 CDN, (the "Debenture").
6. A further part of the consideration given by Blue Note for the Mines was Blue Note's entering into the following agreements with Breakwater:
  - (a) a Net Smelter Royalty Agreement dated August 1, 2006 between Blue Note and Breakwater (the "NSR Agreement"); and;
  - (b) a Marketing Agency Agreement dated August 1, 2006 between Blue Note and Breakwater (the "Marketing Agreement").
7. Following the acquisition of the Mines, and after a period of rehabilitation and commissioning, Blue Note began producing zinc and lead concentrates at the Mines.

## The Debenture

8. Breakwater pleads and relies on the terms and conditions of the Debenture as if the same were set out herein in its entirety. Within the terms and conditions of the Debenture, Breakwater is referred to as the "Holder", and Blue Note is referred to as the "Corporation".
9. Pursuant to Article 3 of the Debenture, Breakwater may, at its option, convert the Debenture in exchange for a twenty percent (20%) interest in the Mines by, *inter alia*, providing Notice of Exercise of Property Conversion Option (the "Notice of Conversion") to Blue Note. As promptly as practicable following receipt of the Notice of Conversion, Blue Note is to cause title to the Mines to be recorded in Breakwater's name in proportion to Breakwater's interest. Further, the surrender of the Debenture accompanied by the Notice of Conversion is deemed to constitute a contract between Breakwater and Blue Note whereby they shall enter into a joint venture agreement, substantially in the form attached to the Debenture as Exhibit B (the "Joint Venture Agreement"). Accordingly, Blue Note is bound by and obliged to act in accordance with the terms of the Joint Venture Agreement, upon receipt of the Notice of Conversion and surrendered Debenture.
10. Article 3 of the Debenture provides as follows:

### ARTICLE 3

#### **RIGHT OF CONVERSION INTO PROPERTY INTEREST**

##### **3.1 Conversion Privilege into Property Interest**

(a) **Conversion Privilege into Property Interest.** *Subject to and upon compliance with the provisions of this Article, the Holder may, at its option (the "Property Interest Conversion Option"), at any time up to the Redemption Date, convert this Debenture in exchange for a twenty percent (20%) interest in the Properties (the "Holder's Interest").*

(b) **Extension.** *If, by the Redemption Date, the Corporation has not met the Exploration Cost Minimum in connection with the Properties, the Holder shall be granted an extension on its Property Interest Conversion Option until such time that the Corporation has met the Exploration Cost Minimum.*

##### **3.2 Exercise of Conversion Privilege into Property Interest**

(a) **Notice.** *In order to exercise the Property Interest Conversion Option set out in this Article 3, the Holder shall surrender this Debenture to the Corporation at its office set out on the face page hereof, accompanied by written notice substantially in the form of Exhibit A attached hereto signed by the Holder*

stating that it elects to exercise its Property Interest Conversion Option.

(b) **Contract between the Holder and the Corporation.** The surrender of this Debenture accompanied by notice given pursuant to Subsection 3.2(a) shall be deemed to constitute a contract between the Holder and the Corporation whereby: (I) the Holder and the Corporation shall enter into a joint venture agreement, substantially in the form of the joint venture agreement attached hereto at Exhibit B (the "Joint Venture Agreement"), which joint venture agreement shall govern the parties' common interests in the Properties; and (II) the Holder releases the Corporation from all liability under this Debenture.

(c) **Date of Conversion.** The date of receipt by the Corporation of this Debenture and the notice referred to in Subsection 3.2(a) is herein referred to as the "Date of Property Interest Conversion" of this Debenture. Such conversion shall be deemed to have been effected immediately prior to the close of business of the Date of Property Interest Conversion and at such time the rights of the Holder under this Debenture as a holder shall cease and the Holder shall be deemed to have become on such date the holder of the Holder's Interest.

(d) **Title.** As promptly as practicable after the Date of Property Interest Conversion, the Corporation shall cause title to the Properties to be recorded in the Holder's name in proportion to the Holder's Interest.

11. On August 29, 2008, Breakwater exercised its Property Interest Conversion Option pursuant to Article 3.2 (a) of the Debenture. August 29, 2008, is the Date of Property Interest Conversion, as stipulated in Article 3.2 (c) of the Debenture.
12. Article 8.3 of the Debenture provides as follows:

### 8.3 Restrictive Covenants

The Corporation hereby covenants and agrees with the Holder that, until all obligations under this Debenture have been terminated and unless the Holder has otherwise consented to in writing:

(a) **Encumbrances.** The Corporation shall not enter into or grant, create, assume or suffer to exist any Lien affecting any of its property, assets or undertaking, save and except only for the Permitted Liens.

(b) *Indebtedness.* The Corporation shall not incur or permit or suffer to exist any Indebtedness other than the Permitted Indebtedness.

### **The Transfer Agreement**

13. On February 28, 2008, Breakwater received written notice that Blue Note had transferred the Mines to Blue Note Caribou via an Agreement For Transfer of Caribou and Restigouche Mines dated June 29, 2007 (the "Transfer Agreement").
14. Under Article 3 of the Transfer Agreement, Blue Note purported to unilaterally transfer or release its obligations under the Joint Venture Agreement. Article 3 of the Transfer Agreement provides as follows:

3. *JV Agreement.* *BN Caribou and Blue Note hereby agree that in the event that Breakwater exercises its Property Interest Conversion Option, the JV Agreement will be entered into between BN Caribou and Breakwater and all references in the JV Agreement to Blue Note shall be references to BN Caribou.*

*Article 11 of the Debenture provides as follows:*

#### **ARTICLE 11**

#### **TRANSFER OF PROPERTY INTEREST**

##### **11.1 Transfer of Property Interest**

*Notwithstanding anything herein contained, the Corporation may sell, assign or otherwise dispose of all of its interest in the Properties, or part thereof (the "Corporation's Interest"), to an Affiliate of the Corporation (the "Corporation Affiliate") without the consent of the Holder provided that, in any such event, the Corporation Affiliate shall deliver to the Holder an agreement between the Corporation Affiliate and the Holder under which such Corporation Affiliate:*

(a) *acknowledges the Holder's Property Interest Conversion option rights under this Debenture;*

(b) *covenants to provide the Holder with the Holder's Interest in the Properties in the event the Holder exercises its Property Interest Conversion Option pursuant to Subsection 3.1(a) hereof; and*

(c) *agrees to retransfer the Corporation's Interest to the Corporation in the event that the Corporation Affiliate ceases to be an Affiliate of the Corporation.*

15. Article 11.1 of the Debenture does not provide for a transfer of Blue Note's obligations pursuant to the Joint Venture Agreement. Article 3 of the Transfer Agreement is not

authorized by the Debenture. Breakwater was not a party to the Transfer Agreement and did not agree to the purported unilateral transfer of obligations under the Joint Venture Agreement from Blue Note to Blue Note Caribou. Accordingly, to the extent that Article 3 of the Transfer Agreement purports to affect Breakwater's rights and Blue Note's obligations under the Joint Venture Agreement, it is of no force and effect.

16. Pursuant to Article 3 of the Debenture, Blue Note is bound by and obligated to act in accordance with the terms of the Joint Venture Agreement, including, without limiting the generality of the foregoing, the Rights, Duties and Status of the Operator as set out therein.

### **The Joint Venture Agreement**

17. Article 5 of the Joint Venture Agreement provides that, following the Operative Date, being the date upon which Breakwater exercises its Property Interest Conversion Option, Blue Note shall continue to Act as Operator of the Mines under the Joint Venture Agreement until, *inter alia*, it resigns pursuant to Article 5.2. The selection of a replacement Operator is within the discretion of the Management Committee to be appointed pursuant to the Joint Venture Agreement.

18. "Operative Date" is defined at Article 1.1 (y) of the Joint Venture Agreement as follows:

*(y) "Operative Date" means the date upon which Breakwater exercises its Property Interest Conversion Option in accordance with the Blue Note Debenture.*

19. As previously stated, the Date of Property Interest Conversion pursuant to Article 3.2(a) and 3.2 (c) of the Debenture is August 29, 2008. Therefore, the Operative Date pursuant to the Joint Venture Agreement is August 29, 2008.

20. Articles 5.1 and 5.2 of the Joint Venture Agreement provide as follows:

*5.1 Following the Operative Date, but subject to paragraph 5.2, Blue Note shall continue to act as the Operator under this Agreement and as such, subject to the discretion and control of the Management Committee, shall have full right, power and authority to do everything necessary or desirable to carry out the purposes of the parties in connection with this Agreement.*

*5.2 The party acting as Operator may resign as Operator on at least ninety (90) days' notice to all the parties and the parties shall, within ninety (90) days after receipt of such notice, convene a meeting of the Management Committee which shall appoint a party who consents to act as Operator, and determine its terms of engagement.*

21. Article 6 of the Joint Venture Agreement sets out the Rights, Duties and Status of Blue Note, as Operator. Articles 6.4 and 6.4(b) and (c) of the Joint Venture Agreement provide as follows:

*6.4 The Operator shall have the sole and exclusive right and authority to manage and carry out all Mining Operations and to incur the Costs required for that purpose, including but not limited to the cost of retaining such subcontractors as it deems fit. In doing so the Operator shall:*

...

*(b) pay all Costs properly incurred promptly as and when due;*

*(c) keep the Property and Assets free of all liens and encumbrances (other than those, if any, in effect on the Operative Date, those the creation of which are permitted pursuant to this Agreement, or builder's or mechanic's liens) arising out of the Mining Operations and, in the event of any lien being filed as aforesaid, proceed with diligence to contest or discharge same;*

...

22. Costs is defined in paragraph 1.1(k) of the Joint Venture Agreement as:

*(k) "Costs" means, except as to Prior Production Costs, all items of outlay and expense whatsoever, direct or indirect, with respect to Mining Operations, recorded by the Operator in accordance with this Agreement. Without limiting the generality of the foregoing, the following categories of Costs shall have the following meanings:*

*(i) "Production Program Costs" means, for any period prior to the Completion Date, all Costs incurred directly or indirectly in connection with Production Program for purposes of bringing into Commercial Production any Mineral deposit on the Property, including, without limitation:*

*(I) all monies expended to develop or construct the Mine, as contemplated in the Production Program, including all costs related to banking and financing charges;*

*(II) working capital required for the initial four (4) months of operation of the Property or part thereof as a Mine or for such longer period as may be reasonably justified in the circumstances.*

- (ii) "Operating Costs" means, for any period after the Completion Date, all Costs incurred or chargeable, directly or indirectly, by the Operator in connection with the Operating Plan, which Costs include, without limiting the generality of the foregoing, the following:
- (I) all costs of or related to operating employee facilities, including housing;
  - (II) all duties, charges, levies, royalties, taxes (excluding taxes levied on the income of the parties) and other payments imposed by any government or municipality or department or agency thereof upon or in connection with operating the Property as a Mine;
  - (III) all costs of maintaining the Property in good standing, including any required vendor's or royalty payments;
  - (IV) all reasonable costs of the Operator for providing technical, management and/or supervisory services;
  - (V) all reasonable costs of consulting, legal, accounting, insurance and other services;
  - (VI) all exploration expenditures incurred after the Completion Date;
  - (VII) all capital costs of operating the Property as a Mine including all costs of construction, equipment and mine development and including maintenance, repairs and replacements, and any capital expenditures relating to an improvement, expansion, modernization or replacement of the facilities located at the Mine;
  - (VIII) a reasonable amount of funds set aside to cover reclamation costs and other costs associated with a permanent shut-down of the Mine;
  - (IX) any costs or expenses incurred or to be incurred relating to a temporary or permanent shut-down of the Mine;
  - (X) all reasonable costs of supplies and services purchased for the day to day operation of the Property as a Mine;

(XI) all costs relating to banking and financing charges;  
and

(XII) all costs relating to the shipping of Minerals to the  
point of sale,

and, except where specific provision is made otherwise, all Operating costs shall be determined in accordance with generally accepted accounting principles applied consistently from year to year provided however that such costs shall not include any amount in respect of amortization of expenditures or Production Program Costs, depletion or depreciation. For greater certainty, Operating Costs shall not include any Costs or expenses incurred by the Operator which are solely related to general overhead and administrative expenses of the Operator including bonuses, salaries, auditor's fees, legal fees, consulting fees, insurance and rent; and

(iii) "Prior Production Costs" means all exploration, production and operating Costs incurred by Blue Note prior to the Operative Date and as deemed by the parties under paragraph 3.4, and for greater certainty, shall not include the Reclamation Deposit, the Environmental Protection Deposit, any Additional Reclamation Deposits and any Additional Environmental Protection Deposits made by Blue Note prior to the Operative Date.

23. Article 3 of the Joint Venture Agreement provides that the respective interests of Blue Note and Breakwater in the Mines shall be eighty percent (80%) to Blue Note and twenty percent (20%) to Breakwater, so long as both parties continue to contribute their respective proportionate share of production costs as set out in the Joint Venture Agreement. Article 3.3 of the Joint Venture Agreement provides as follows:

*3.3 The respective Interests of the parties shall be as set out in paragraph 3.1 so long as they contribute their respective Proportionate Share of Production Program Costs and Operating Costs, as applicable, as set out in this Agreement. At any time and from time to time if a party fails to contribute to such Costs, its respective Interest shall be reduced in accordance with the formula set out in paragraph 3.2. If, as a result of such calculation, the Interest of any party is reduced to or below 5% its Interest shall be deemed to be converted (the "Deemed Conversion") to a 2% Net Smelter Royalty as more particularly described in Appendix III and thereafter such party shall have no further rights, interests, obligation, or liabilities in respect of the Assets or under this Agreement, save and except (a) such Net Smelter Royalty and (b) any liabilities or obligations incurred*

hereunder from the Operative Date to the date of the Deemed Conversion.

**The NSR Agreement**

24. Breakwater pleads and relies on the terms and conditions of the NSR Agreement as if the same were set out herein in its entirety.
25. Breakwater is entitled to a Net Smelter Return Royalty, pursuant to Article 2 of the NSR Agreement, which provides as follows:

*Net Smelter Return Royalty: Breakwater, shall be entitled to, and is hereby granted by Blue Note, the Net Smelter Return Royalty.*

26. The Net Smelter Return Royalty is to be calculated pursuant to the formula provided in Article 1 of the NSR Agreement, as follows:

*"Net Smelter Return Royalty" means*

*(i) one percent (1%) of the Net Smelter Return when the average price for zinc on the London Metal Exchange ("LME") for a quarter for which the calculation is made under section 3 is US \$0.65 to US \$0.70 inclusive per pound; and*

*(ii) two percent (2%) of the Net Smelter Return when the average price for zinc on the LME is greater than US \$0.70 per pound for a quarter for which the calculation is made under section 3. No royalty shall be paid when the average price for zinc on the LME is less than US \$0.65 per pound for a quarter for which the calculation is made under section 3. If the LME ceases to publish a price for zinc, the price quoted by an equivalent market shall be use.*

*Net Smelter Return is also defined in Article 1 of the NSR Agreement, as follows:*

*Net Smelter Return shall mean the actual market value received, from time to time, for lead, zinc and copper concentrates or other Products recovered from the ore extracted from the Caribou Mine and the Restigouche Mine by Blue Note from any independent smelter, or other purchaser or user, less:*

*(a) all actual charges and costs, including insurance premiums, for transportation of Products from the processing facilities on or near the Caribou Mine and the Restigouche Mine to the place of sale, or other disposition, whether transported by Blue Note or a third party;*

*(b) all actual charges and costs for marketing the Products;*

(c) all actual charges, costs, deductions, and penalties for the treatment, tolling, or smelting of the Products and all costs and charges associated therewith, such as costs and charges with respect to handling, weighing, sampling, assaying and marketing, as well as presentation charges, referee's fees and expenses, after said Products leave the processing facility on or near the Caribou Mine and the Restigouche Mine; and

(d) severance, production, ad valorem, excise, sales, and any other similar taxes or fees (excluding income taxes) paid to any lawful taxing authority on Products mined from the Property.

If Products are transported, processed or smelted by Blue Note or an affiliate thereof, all charges, costs, penalties and deductions referred to above and used for calculating Net Smelter Return shall be equivalent to the prevailing competitive rates charged by a person who is not an affiliate in an arm's length transaction for transportation or smelting of a like quantity and quality of such Product.

27. Products is defined at Article 1 of the NSR Agreement as follows:

*"Products" means all ores, minerals, metals and concentrates and any other mineral resources produced from the Caribou Mine and the Restigouche Mine during the term of this Agreement.*

28. At all material times, throughout the second and third quarters of 2008 and up to and including the Date of Property Interest Conversion, the price of zinc was greater than \$0.70 per pound.

29. Blue Note is to calculate the amount of the Net Smelter Return Royalty at the conclusion of each quarter and transmit payment to Breakwater. Article 3 of the NSR Agreement provides as follows:

*Calculation of Net Smelter Return Royalty: An estimate of the quarterly Net Smelter Return Royalty shall be calculated by Blue Note at the end of each calendar quarter, and the Net Smelter Return Royalty shall be calculated by Blue Note at the end of each calendar year. The estimate of the quarterly Net Smelter Return Royalty and a statement containing Blue Note's calculation of the annual Net Smelter Return Royalty shall be transmitted to Breakwater together with payments of Net Smelter Return Royalty, if any, within 60 days of the end of the first three quarters of each calendar year and within ninety (90) days of the end of each calendar year, respectively.*

30. Article 5 of the NSR Agreement provides as follows:

5. *Assignment: The Net Smelter Return Royalty is a right running with the Caribou Mine and the Restigouche Mine. Breakwater shall have no right, title or interest in the Caribou Mine or the Restigouche Mine other than the rights granted in this Agreement. Breakwater may file or register notice of this Agreement or notice thereof as it deems fit, including with the Mining Recorder in New Brunswick. This Agreement shall be binding on any successor to Blue Note and on any assignee or purchaser of the Caribou Mine or the Restigouche Mine. Breakwater may not assign its rights under this Agreement to any person without the prior written approval of Blue Note, which approval shall not be unreasonably withheld.*

31. Pursuant to Article 5 of the NSR Agreement, the Net Smelter Return Royalty is a right running with the Mines, and the NSR Agreement is binding on any successor to Blue Note and on any assignee or purchaser of the Mines, including Blue Note Caribou.
32. The NSR Agreement does not provide that Blue Note is released from its obligations under the NSR Agreement, including payment of the NSR Royalty, upon any sale or transfer of the Mines.
33. Blue Note and Blue Note Caribou are liable, jointly and severally to Breakwater with respect to payment of the NSR Royalty under the NSR Agreement.
34. According to Blue Note and Blue Note Caribou, the Mines began commercial production, as contemplated by the NSR Agreement, on September 1, 2007.
35. On May 15, 2008, Breakwater received payment from Blue Note Caribou in the amount of \$452,730.05, representing the amount of the Net Smelter Return Royalty for September 1, 2007 until December 31, 2007 (i.e., a portion of the third quarter, and the entire fourth quarter of 2007).
36. On June 6, 2008, Breakwater received payment from Blue Note Caribou in the amount of \$404,005.31, representing the amount of the Net Smelter Return Royalty for the first quarter of 2008 (i.e., January 1, 2008 until March 31, 2008).
37. Breakwater is entitled to continue to receive payments under the NSR Agreement up to and including the Date of Property Interest Conversion (August 29, 2008).

#### **The Marketing Agreement**

38. Breakwater pleads and relies on the terms and conditions of the Marketing Agreement as if the same were set out herein in its entirety.
39. Breakwater is entitled to fees, pursuant to Article 5.1, 5.4 and 5.5 of the Marketing Agreement (the "Marketing Fees"), which provided as follows:

##### 5. FEES

5.1 *Blue Note shall pay to Breakwater CDN. \$1.00 (one dollar) per wet metric tonne of all sales of Concentrate produced at the Mine (the "Rate"), up to a maximum aggregate annual (based on 365 day periods commencing on the date of this Agreement) amount of CDN. \$150,000 (one hundred and fifty thousand dollars) (the "Maximum Fee").*

5.4 *Subject to section 5.5, the fees based on the Rate payable pursuant to Section 5.1, shall be fully earned and due and payable by Blue Note to Breakwater upon Blue Note's receipt of first provisional payment basis loaded weights.*

5.5 *Upon the execution of this Agreement by the parties, Blue Note shall pay Breakwater \$7,500 per month (the "Monthly Fee") payable on the 15<sup>th</sup> day of the month following the month in which the services were performed. The payment of this Monthly Fee shall terminate on the date of the initial shipment of the Concentrate.*

40. The Marketing Agreement defines concentrates as the lead, copper and zinc concentrates mined and produced by Blue Note at the Mines.
41. Article 6.1 of the Marketing Agreement provides for a term of 3 years following the date of the initial shipment of Concentrate (the "Term"), subject to early termination by Blue Note (Article 6.2), extension of the Term by mutual and written consent (Article 6.3) and termination by Breakwater in the event of default by Blue Notes (Article 6.1);
42. Following the execution of the Marketing Agreement, Breakwater began submitting invoices to Blue Note with respect to the Monthly Fee owing under Article 5.5 of the Marketing Agreement. On December 12, 2006 Blue Note instructed Breakwater to change its billing address to:

Blue Note Caribou Mines Inc.  
P.O. Box 26  
Bathurst, NB E2A 3Z1

(the "Change in Billing Address Notice").

43. Notwithstanding the Change of Billing Address Notice, Blue Note has not advised Breakwater of any assignment of the Marketing Agreement by Blue Note to its affiliate, Blue Note Caribou.
44. Pursuant to Article 16 of the Marketing Agreement, the assignment of the Marketing Agreement by Blue Note to its affiliate, Blue Note Caribou, would not release Blue Note from its obligations under the Marketing Agreement. In the event of any assignment to Blue Note Caribou, Blue Note and Blue Note Caribou would be jointly and severally liable to Breakwater with respect to payment of the Fees under the Marketing Agreement.

45. Following receipt of the Change of Billing Address Notice, Breakwater submitted invoices for Fees owing pursuant to Article 5.1 and 5.4 of the Marketing Agreement pursuant to the instruction contained in the Change of Billing Address Notice. As of November 5, 2008, Breakwater re-issued all outstanding invoices and sent them to Blue Note.

**Blue Note's Breach of its Contractual Obligations to Breakwater**

46. The combined effect of the Debenture and the Joint Venture Agreement is that Blue Note was obliged to pay all Costs (pursuant to the Joint Venture Agreement) incurred promptly as and when due, and keep the Mines free of all liens and indebtedness (except Permitted Liens and Permitted Indebtedness, pursuant to the Debenture), up to and including the recording of Breakwater as an owner on the title to the Mines and the execution of the Joint Venture Agreement by Blue Note and Breakwater. Further, prior to the execution of the Joint Venture Agreement, Blue Note is not released from its obligations under the Debenture.
47. The records of the New Brunswick Land Titles Office reveal that, as of the present date, Breakwater has not been recorded as an owner on the title to the Mines.
48. The records of the New Brunswick Land Titles Office reveal that, as of the present date, the following mechanic's lien claims have been registered in respect of the Mines (the "Mechanics Liens") (PID No. 50072032, PID No. 50237924, and PID No. 50252766, except where otherwise indicated):
- (a) \$442,571.73 plus interest filed by Sunny Corner Enterprises Inc. on September 16, 2008 against PID 50072032 as document no. 26168741 and against PIDs 50237924 and 50252766 as document no. 26168717;
  - (b) \$90,609.05 plus interest filed by Eastern Reinforcing Ltd. on September 17, 2008 against PID 50072032 as document no. 26174293 and against PID 50237924 as document no. 2174418;
  - (c) \$970,528.58 plus interest filed by Hachey Construction & Fabrication Ltd. on September 19, 2008 against PID 50072032 as document no. 26186099 and against PIDs 50237924 and 50252766 as document no. 26186081;
  - (d) \$3,088,178.18 plus interest filed by Rockwood Transportation Co. Ltd. on September 19, 2008 against PID 50072032 as document no. 2686412 and against PIDs 50237924 and 50252766 as document no. 26186446;
  - (e) \$234,046.02 plus interest filed by Guillevin International Co. on September 22, 2008 against PID 50072032 as document no. 26194808;
  - (f) \$195,493.00 plus interest filed by Jacques Whitford Limited on September 23, 2008 against PID 50072032 as document no. 262025524 and against PIDs 50237924 and 50252766 as document no. 26202557;

- (g) \$98,082.26 plus interest filed by K & M Utility Lines Ltd. on September 26, 2008 against PID 50072032 as document no. 26221375 and against PIDs 50237924 and 50252766 as document no. 26221300;
- (h) \$175,141.75 plus interest filed by Godin Electrique Ltee – Godin’s Electric Ltd. on September 26, 2008 against PID 50072032 as document no. 26222175 and against PIDs 50237924 and 50252766 as document no. 26222217;
- (i) \$120,407.41 plus interest filed by Hewitt Rentals Inc. on September 30, 2008 against PID 50072032 as document no. 26235953 and against PIDs 50237924 and 50252766 as document no. 26236274;
- (j) \$76,321.14 plus interest filed by Atlantic Tractors & Equipment Limited on September 30, 2008 against PID 50072032 as document no. 26236324 and against PIDs 50237924 and 50252766 as document no. 26236373;
- (k) \$680,431.03 plus interest filed by Longyear Canada, ULC and Boart Longyear Alberta Limited on October 1, 2008 against PID 50072032 as document no. 26244864 and against PIDs 50237924 and 50252766 as document no. 26244948;
- (l) \$2,558,081.66 plus interest filed by J.S. Redpath Limited on October 1, 2008 against PID 50072032 as document no. 26245077 and against PIDs 50237924 and 50252766 as document no. 26245127;
- (m) \$328,236.54 plus interest filed by Corepro Drilling Inc. on October 2, 2008 against PID 50072032 as document no. 26253105 and against PIDs 50237924 and 50252766 as document no. 26253139;
- (n) \$134,921.94 plus interest filed by Eddy Group Limited on October 7, 2008 against PID 50072032 as document no. 26280520 and against PIDs 50237924 and 50252766 as document no. 26280421;
- (o) \$30,326.65 plus interest filed by United Rentals of Canada, Inc. on October 14, 2008 against PID 50072032 as document no. 26303538 and against PID 50237924 as document no. 26303587;
- (p) \$61,984.49 plus interest filed by ADI Limited on October 15, 2008 against PID 50072032 as document no. and against PIDs 50237924 and 50252766 as document no. 26310004;
- (q) \$1,170,494.71 plus interest filed by Bradley Jenks Excavation Ltd. on October 17, 2008 against PID 50072032 as document no. 26323650 and against PIDs 50237924 and 50252766 as document no. 26323742;
- (r) \$609,709.76 plus interest filed by Consbec Inc. on October 20, 2008 against PID 50072032 as document no. 26332164 and against PIDs 50237924 and 50252766 as document no. 26332172;

- (s) \$16,907.99 plus interest filed by Source Atlantic, A Division of Universal Sales Limited on October 20, 2008 against PID 50072032 as document no. 26332180 and against PID 50237924 as document no. 26332255;
- (t) \$79,593.66 plus interest filed by Modern Pump & Metal Ltd. on October 30, 2008 against PID 50072032 as document no. 26387838 and against PIDs 50237924 and 50252766 as document no. 26387903;
- (u) \$38,727.69 plus interest filed by Atlantic Reproduction Co. Ltd. on October 30, 2008 against PID 50072032 as document no. 26388273 and against PIDs 50237924 and 50252766 as document no. 26388224; and
- (v) \$292,015.70 plus interest filed by Dyno Nobel Canada Inc. on November 3, 2008 against PID 50072032 as document no. 26406125 and against PIDs 50237924 and 50252766 as document no. 26406463.
- (w) \$89,160.88 plus interest filed by OME Engineering Inc. on November 12, 2008 against PID 50072032 as document no. 26452210 and against PIDs 50237924 and 50252766 as document no. 26452277.
- (x) \$28,279.38 plus interest filed by Power Precision Inc. on November 12, 2008 against PID 50072032 as document no. 26452293 and against PIDs 50237924 and 50252766 as document no. 26452335.
- (y) \$292,015.70 plus interest filed by Dyno Nobel Canada Inc. on November 1, 2008 against PID 50072032 as document no. 26406125 and against PIDs 50237924 and 50252766 as document no. 26406463.
- (z) \$569,921.16 plus interest filed by Chaleur Shotcrete Inc. on November 12, 2008 against PID 50072032 as document no. 26452368 and against PIDs 50237924 and 50252766 as document no. 26452376.

The total amount of the Mechanics Liens is \$11,984,679.40

- 49. The Mechanics Liens are not Permitted Liens under Article 8.3 of the Debenture. The Mechanics Liens will encumber Breakwater's interest in the Mines (if and when Breakwater's interest is registered and or recorded) if they are not discharged and/or vacated. Blue Note has not taken steps to contest or discharge the Mechanics Liens as required by Article 6.4 of the Joint Venture Agreement.
- 50. Blue Note, in breach of its obligations under the Debenture:
  - (a) failed to cause title to the Mines to be recorded in Breakwater's name in proportion to Breakwater's interest as promptly as practicable after the Date of the Property Interest Conversion, constituting a violation of Article 3.2(d) of the Debenture; and
  - (b) delayed entering into the Joint Venture Agreement until October 17, 2008, notwithstanding that the effective date of Breakwater's exercise of the Property

Interest Conversion was August 29, 2008, constituting a violation of Article 3.2(b) of the Debenture.

51. Blue Note, in breach of its obligations to Breakwater under the Debenture and the Joint Venture Agreement:
- (a) suffered to exist the Mechanics Liens, constituting a violation of Article 8.3(a) of the Debenture;
  - (b) suffered to exist extensive Indebtedness, other than the Permitted Indebtedness, constituting a violation of Article 8.3(b) of the Debenture;
  - (c) failed to proceed with diligence to contest or discharge the Mechanics Liens contrary to Article 6.4(c) of the Joint Venture Agreement; and
  - (d) failed to pay all Costs, promptly as and when due contrary to Article 6.4(b) of the Joint Venture Agreement.
52. As a result of Blue Note's breach of its obligations under the Debenture:
- (a) Breakwater's twenty percent (20%) interest in the Mines was not recorded and/or registered as promptly as practicable and remains unrecorded and/or unregistered as of the date hereof;
  - (b) the Mechanics Liens have been registered and remain on record against the Mines and are encumbering the title to the Mines;
  - (c) until such time as the Mechanics Liens are discharged and/or vacated, if Breakwater's interest is registered and/or recorded subsequent to the Mechanics Liens, Breakwater's interest in the Mines will be encumbered by the Mechanics Liens and Breakwater will not have received the 20% interest in the Mines as contemplated by the Debenture; and
  - (d) there is extensive indebtedness and/or outstanding Costs in relation to the Mines.
53. On September 10, 2008, Bill Heath, Executive Vice-President of Breakwater and President of CanZinco ("Mr. Heath"), met with representatives of Blue Note (the "September 10<sup>th</sup> Meeting"), including; *inter alia*, Mike Judson, President and Chief Executive Officer of Blue Note ("Mr. Judson"), John Martin, Chief Operating Officer of Blue Note and President of Blue Note Caribou ("Mr. Martin") and Jean Mayer, Vice President, Legal and Corporate Affairs of Blue Note ("Mr. Mayer"). The September 10<sup>th</sup> Meeting was convened to discuss the terms of the Joint Venture Agreement. However, on commencement of the September 10<sup>th</sup> Meeting, Mr. Judson advised Breakwater of the following:
- (a) that the completion of the Joint Venture Agreement was unlikely to be necessary as it was unlikely that Blue Note would continue to have an interest in, or be involved at, the Mines much longer;

- (b) that Blue Note would no longer be sending any funding to Blue Note Caribou for the operation of the Mines and that the operation was going to have to be completely self-sustaining; and
  - (c) that Blue Note Caribou had entered into a "voluntary reorganization" and had commenced discussions with its creditors.
54. At the September 10<sup>th</sup> Meeting, Mr. Mayer advised Breakwater that Blue Note and Blue Note Caribou denied liability for any further payments under the NSR Agreement beyond the first quarter of 2007, and that Blue Note and Blue Note Caribou would not be making any further payments of the Net Smelter Return Royalty under the NSR Agreement.
55. On September 12, 2008, Breakwater demanded, in writing, payment of the Net Smelter Return Royalty for the second quarter of 2008 on or before September 19, 2008. Payment of the Net Smelter Return Royalty was not received.
56. On September 24, 2008, Blue Note advised Breakwater, in writing, that it was under no obligation to make payment of Net Smelter Return Royalty because, in exercising its Property Conversion Option, effective August 29, 2008, Breakwater had:
- (a) waived payment of the Net Smelter Return Royalty for the second quarter of 2008, and
  - (b) thereby had caused the NSR Agreement to terminate, ending any obligation on the part of Blue Note to make such payment.
57. At no time did Breakwater waive payment of the Net Smelter Return Royalty for the second quarter of 2008 or the portion of the third quarter of 2008, up to and including the Date of Property Interest Conversion, nor did it cause the NSR Agreement to terminate prior to the Date of Property Interest Conversion.
58. Blue Note and/or Blue Note Caribou have calculated the amount of the Net Smelter Return Royalty due and owing for the second quarter of 2008 (i.e., from April 1, 2008 until June 30, 2008) as being \$442,865.74, but they have not paid this, or any, amount.
59. Breakwater estimates the amount of the Net Smelter Return Royalty due and owing to Breakwater for the portion of the third quarter of 2008, ending on the Date of Property Interest Conversion, (i.e., from July 1, 2008 until August 28, 2008) is approximately \$300,000.00.
60. The exact amounts due and owing to Breakwater under the terms of the NSR Agreement, for the period of April 1, 2008 until August 28, 2008 are presently unascertained but will be proven at trial.
61. On October 10, 2008, Breakwater provided Blue Note with written notice of its failure to comply with the convertible Debenture and the Joint Venture Agreement and its default in payment of Royalty Payments owing under the NSR Agreement.

62. On November 5, 2008 Breakwater provided Blue Note with written Notice of its default in payment of Marketing Fees owing under the Marketing Agreement.
63. As of November 5, 2008, the following invoices, which had been issued by Breakwater and sent to Blue Note Caribou pursuant to the Change of Billing Address Notice, remained outstanding with respect to Marketing Fees due and owing to Breakwater under the Marketing Agreement (the "Outstanding Marketing Fee Invoices"):

<u>INVOICE NUMBER</u>	<u>DATE OF INVOICE</u>	<u>FEE DUE AND PAYABLE</u>
Debit Note No. 288002	August 26, 2008	\$18,859.04
Debit Note No. 298002	September 23, 2008	\$16,920.50
Debit Note No. 308002	October 27, 2008	<u>\$12,674.31</u>
<b>Total Outstanding Marketing Fee Invoices</b>		<b><u>\$48,453.85</u></b>

64. On November 5, 2008 Breakwater sent re-issued copies of the Outstanding Marketing Fee Invoices to Blue Note and demanded payment of same forthwith.
65. As of the date hereof, the Marketing Fees in the amount of \$48,453.85 are due and owing to Breakwater by Blue Note and Blue Note Caribou, together with interest accruing thereon (the "Outstanding Marketing Fees").
66. In addition to the Outstanding Marketing Fees, Blue Note and Blue Note Caribou remain responsible to make payment to Breakwater with respect to Marketing Fees relating to sales of concentrate which have not yet been invoiced by Breakwater, as delivery of the concentrate with respect to such sales to purchasers is not yet complete (the "Marketing Fees Accruing Due"). Breakwater estimates that the total amount of Marketing Fees Accruing Due is approximately \$22,000.00.

#### **Blue Note's Invoices For Joint Venture Costs**

67. On October 9, 2008 Blue Note Caribou forwarded an invoice to Breakwater by email which purported to invoice Breakwater for the first 2 months joint venture costs (the "Joint Venture Funding Invoice"). At that time, Blue Note had not complied with its obligations pursuant to Article 3 of the Debenture, and in particular, had not caused title to the mines to be recorded in Breakwater's name in accordance with Breakwater's interest and had not entered into the Joint Venture Agreement.
68. Until such time as Blue Note has complied with its obligations under Articles 3 and 8.3 of the Debenture (as alleged in paragraphs 10 and 12 hereof), Breakwater states that it is not obligated to make payments to Blue Note under the Joint Venture Agreement.

Breakwater claims a right of set-off against any funds payable to Blue Note under the Joint Venture Agreement equal to all amounts outstanding and owing to Breakwater by Blue Note under the Joint Venture Agreement, the NSR Agreement and the Marketing Agreement.

69. The Joint Venture Funding Invoice was also contrary to the terms of the Joint Venture Agreement as it:
- (a) did not provide the required detail of all charges and credit (as contemplated by section 2.2 of the Appendix 1 of the Joint Venture Agreement); and
  - (b) purported to invoice for the estimated cash flow deficit for October, when the Joint Venture Agreement does not contemplate invoicing for estimates, but rather, provides for invoicing by the 15<sup>th</sup> of each month based on the calculation of the Net Cash Flow Deficit on Surplus for the prior month.

#### **Blue Note's Suspension of Mining Operations**

70. On October 17, 2008, Blue Note issued a press release announcing that it would be initiating a temporary care and maintenance program at the Mines (the "Press Release"). The effect of initiating a care and maintenance program would be to suspend or terminate mining operations at the Mines. The Press Release did not identify the effective date of its suspension or termination of mining operations at the Mines. Blue Note did not provide Breakwater with the required notice of its intention to suspend or terminate mining operations at the Mines and did not consult with Breakwater prior to the issuance of the Press Release.
71. On October 17, 2008, subsequent to the issuance of the Press Release, Blue Note forwarded a package of documents to Breakwater by telecopy and courier. The package of documents included correspondence attaching the Press Release and a copy of the Joint Venture Agreement that had been executed by Blue Note. The correspondence notified Breakwater that the suspension or termination of mining operations at the Mines would take effect November 28, 2008. Blue Note did not consult with Breakwater with respect to the effective date of the suspension or termination of mining operations at the Mines.
72. On October 22, 2008, Mr. Heath of Breakwater contacted Mr. Martin of Blue Note to request a meeting with representatives of Blue Note to discuss the many issues that had arisen. At that time, Mr. Martin advised Mr. Heath of the following:
- (i) notwithstanding the Press Release and its previously stated intention to suspend or terminate mining operations at the Mines effective November 28, 2008, Blue Note would in fact be shutting down mining operations later that same day or the following day;
  - (ii) Blue Note would be providing notice of lay-off/termination to employees pursuant to the Employment Standards Act; and

- (iii) Blue Note was looking to sell assets and return leased assets, including underground equipment used at the Mines.

73. On October 22, 2008, following Mr. Heath's discussion with Mr. Martin, Blue Note provided Breakwater with a letter delivered by telecopy and courier which stated Blue Note's intention to "shut down operations" at the Mines on Friday, October 24, 2008. The letter also stated that following:

*Provided you are inclined to keep operations going at the Mines and that you are willing to provide the funds necessary to maintain such operations, you may contact us prior to the close of business this Friday, October 24, 2008 and we shall provide you with the financial requirements to keep operations going.*

74. Blue Note's unilateral initiation of a care and maintenance program at the Mines constitutes the suspension or termination of Mining Operations under the Joint Venture Agreement. In acting unilaterally to initiate the care and maintenance program and the suspension or termination of mining operations at the Mines, Blue Note breached its obligations as operator of the Mines pursuant to the Joint Venture Agreement. Pursuant to Article 16 of the Joint Venture Agreement, Blue Note was not permitted to act unilaterally to suspend or terminate mining operations at the Mines without notice to and consultation with Breakwater.

75. Article 16 of the Joint Venture Agreement provides as follows:

#### **16. TERMINATION OF MINING OPERATIONS**

*16.1 The Operator may, at any time subsequent to the Completion Date, on at least thirty (30) days notice to all Participants, recommend that the Management Committee approve that the Mining Operations be suspended. The Operator's recommendation shall include a plan and budget (in this article 16 called the "Mine Maintenance Plan"), in reasonable detail, of the activities to be performed to maintain the Assets and Property during the period of suspension and the Costs to be incurred. The Management Committee may, at any time subsequent to the Completion Date, cause the Operator to suspend Mining Operations in accordance with the Operator's recommendation with such changes to the Mine Maintenance Plan as the Management Committee deems necessary. The Participants shall be committed to contribute their Proportionate Share of the Costs incurred in connection with the Mine Maintenance Plan. The Management Committee may cause Mining Operations to be resumed at any time.*

*16.2 The Operator may, at any time following a period of at least ninety (90) days during which Mining Operations have been suspended, upon at least thirty (30) days notice to all Participants, or in the events described in paragraph 16.1, recommend that the*

*Management Committee approve the permanent termination of Mining Operations. The Operator's recommendation shall include a plan and budget (in this article 16 called the "Mine Closure Plan"), in reasonable detail, of the activities to be performed to close the Mine and reclaim the Property. The Management Committee may approve the Operator's recommendation with such changes to the Mine Closure Plan as the Management Committee deems necessary.*

*16.3 If the Management Committee approves the Operator's recommendation as aforesaid, it shall cause the Operator to:*

*(a) implement the Mine Closure Plan, whereupon the Participants shall be committed to pay, in proportion to their respective Interest, such Costs as may be required to implement the Mine Closure Plan;*

*(b) remove, sell and dispose of such Assets as may reasonably be removed and disposed of profitably and such other Assets as the Operator may be required to remove pursuant to applicable environmental and mining laws; and*

*(c) sell, abandon or otherwise dispose of the Property.*

*The disposal price for the Assets and the Property shall be the best price obtainable and the net revenues, if any, from the removal and sale shall be credited to the Participants in proportion to their respective Interests.*

*16.4 If the Management Committee does not approve the Operator's recommendation contemplated in paragraph 16.2, the Operator shall maintain Mining Operations in accordance with the Mine Maintenance Plan.*

76. On October 28, 2008, representatives of Breakwater (Mr. Heath and Torben Jensen, Vice-President Engineering of Breakwater) met with representatives of Blue Note (Mr. Judson and Mr. Martin). At the meeting, Blue Note advised Breakwater of *inter alia*, the following:

- (a) there was no need for a joint venture agreement;
- (b) Blue Note wanted to sell Blue Note Caribou;
- (c) Blue Note would proceed without delay with the registration of Breakwater's interest in the Mines; and
- (d) Blue Note was not in a position to do anything with the Mechanics Liens that had been registered against the Mines as it did not have the funds to deal with its creditors.

77. Blue Note has recently offered to arrange for the registration and/or recording of Breakwater's interest in the Mines, but has refused to vacate and/or discharge the Mechanics Liens. As such, Blue Note intends to register and/or record Breakwater's interest in the Mines subsequent to the Mechanics Liens and such interest would be encumbered by the Mechanics Liens and would not constitute the 20% interest in the Mines as required by the Debenture.
78. Breakwater states that any registration of its interest in the Mines subsequent to the registration of the Mechanics Liens and while the Mechanics Liens have not been vacated and/or discharged would be contrary to Blue Note's obligations under the Debenture.

#### Relief Sought

79. Breakwater seeks the following relief, jointly and severally, against Blue Note and Blue Note Caribou:
- (a) Certificates of Pending Litigation pursuant to Rule 42.01 of the New Brunswick Rules of Court with respect to the Mines, as more particularly described in Schedules "A", "B" and "C" attached hereto;
  - (b) an injunction or mandatory order that Blue Note and Blue Note Caribou proceed with diligence to contest and discharge or vacate the Mechanics Liens and all other liens, (other than Permitted Liens) against the Mines;
  - (c) a mandatory order that Blue Note and Blue Note Caribou shall take all steps necessary and proceed with diligence to cause title to the Mines to be recorded in the name of Breakwater or its nominee, in proportion to Breakwater's interest, free and clear of the Mechanics Liens and all other liens (other than Permitted Liens) and thereafter, that Blue Note comply with Article 6.4 (b) and (c) of the Joint Venture Agreement;
  - (d) a declaration that Breakwater is not required to make any payments to Blue Note under the Joint Venture Agreement until Blue Note has fully complied with subparagraph (b) hereof;
  - (e) a declaration that Breakwater may set-off all amounts outstanding and owing to Breakwater under the Joint Venture Agreement, the NSR Agreement and the Marketing Agreement against any amounts that may now or in the future be owing by Breakwater to Blue Note under the Joint Venture Agreement;
  - (f) damages in the full amount that Blue Note and/or Blue Note Caribou are obligated to pay to Breakwater for outstanding NSR Royalty due and owing under the terms of the NSR Agreement, for the period of April 1, 2008 until August 31, 2008, plus pre-judgment interest;
  - (g) damages in the full amount that Blue Note and/or Blue Note Caribou are obligated to pay to Breakwater for Outstanding Marketing Fees and Marketing Fees

Accruing Due under the terms of the Marketing Agreement, as of the date of trial, plus pre-trial judgment interest;

(h) the costs of this action on a solicitor and client basis, plus harmonized sales tax; and

(i) such further and other relief as to this Honourable Court may deem just.

80. The within claims against Blue Note and Blue Note Caribou fall within the provisions of Rule 19.01(a), (c), (f), and (j) of the New Brunswick *Rules of Court*, permitting service outside of New Brunswick without leave, in that the claims are:

(a) in respect of real property situate in New Brunswick;

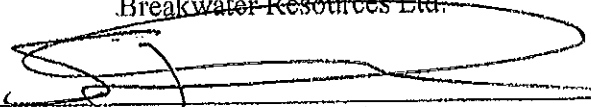
(b) for the construction of a contract or obligation affecting real property situate in New Brunswick;

(c) in respect of a mortgage, charge or lien on real property situate in New Brunswick; and

(d) for an injunction ordering such party to do, or refrain from doing, anything in New Brunswick, or affecting real property situate in New Brunswick.

Dated at Saint John, New Brunswick this 30<sup>th</sup> day of January, 2009.

STEWART McKELVEY  
Solicitors for the Plaintiff,  
~~Breakwater Resources Ltd.~~

  
Stephen J. Hutchison

Stewart McKelvey  
Barristers and Solicitors  
44 Chipman Hill  
Saint John, New Brunswick E2L 4S6

Telephone No. 506.632.1970  
Facsimile No. 506.652.1989

**SCHEDULE "A"**

Property identified by **PID 50072032**

## SCHEDULE "B"

PID: 50237924

All that certain lot, piece or parcel of land situate, lying and being in the Parish of Colborne, County of Restigouche, Province of New Brunswick, lying East of Caribou Lake and being more particularly described as follows:

### NOTE:

Azimuths stated are referenced to the New Brunswick Provincial Co-ordinate System, with control derived from scaled map points from Map 210/09S.

Beginning at a standard survey marker set in concrete and shown as point 270 on a subdivision Plan titled "Department of Natural Resources and Energy Subdivision 93-7" as prepared by David Green, N.B.L.S., dated September 10th, 1990 and filed in the Restigouche County Registry Office on November 24th, 1993 under Number 3255, said marker located near the southerly end of the dam creating Caribou Lake;

thence, in a northerly direction following along the upstream face of said dam and its prolongation to intersect with a yellow painted blazed line extended on an azimuth of 238° 40' 31" from a Survey Marker shown as point 321 on said filed plan;

thence, 58° 40' 31" to said Survey Marker (321);

thence, 341° 23' 23" a distance of 345.701 metres to a Survey Marker;

thence, 67° 41' 15" a distance of 102.271 metres to a Survey Marker set in concrete (332);

thence, 65° 37' 41" a distance of 863.048 metres to a Survey Marker set in concrete (360);

thence, 68° 45' 50" a distance of 133.715 metres to a Survey Marker;

thence, 142° 35' 16" a distance of 132.526 metres to a Survey Marker;

thence, 120° 26' 44" a distance of 328.463 metres to a Survey Marker;

thence, 143° 46' 20" a distance of 208.736 metres to a Survey Marker;

thence 136° 09' 20" a distance of 64.873 metres to a Survey Marker;

thence, 117° 29' 02" a distance of 39.667 metres to a Survey Marker (80);

thence 98° 32' 12" a distance of 42.634 metres to a Survey Marker;

thence, 86° 31' 42" a distance of 88.264 metres to a Survey Marker;

thence, 104° 21' 14" a distance of 250.151 metres to a Survey Marker;

thence, 131° 22' 35" a distance of 450.830 metres to a Survey Marker;

thence, 177° 34' 42" a distance of 172.762 metres to a Survey Marker;

thence, 176° 42' 48" a distance of 222.553 metres to a Survey Marker;

thence, 162° 18' 46" a distance of 248.426 metres to a Survey Marker (150);

thence, 161° 57' 28" a distance of 151.984 metres to a Survey Marker;

thence, 235° 13' 59" a distance of 359.964 metres to a Survey Marker;

thence, 254° 56' 19" a distance of 280.232 metres to a Survey Marker;

thence, 349° 17' 27" a distance of 261.035 metres to a Survey Marker;

thence, 329° 37' 30" a distance of 121.666 metres to a Survey Marker(200);

thence, 309° 55' 57" a distance of 90.787 metres to a Survey Marker;

thence, 80° 2' 41" a distance of 162.094 metres to a Survey Marker;

thence, 294° 02' 46" a distance of 194.630 metres to a Survey Marker;

thence, 266° 54' 49" a distance of 55.734 metres to a Survey Marker;

thence, 259° 48' 41" a distance of 500.044 metres to a Survey Marker (250);

thence, 245° 15' 29" a distance of 683.676 metres to a Survey Marker;  
thence, 341° 23' 45" a distance of 229.739 metres to the Place of Beginning.

The hereinbefore described parcel of land is estimated to contain an area of 254.260 hectares, more or less. The said plan also filed in the records of the Minister of Natural Resources and Energy on October 28, 1993 as Number 293-1.

SCHEDULE "C"

PID: 50252766

All that certain lot, piece or parcel of land situate, lying and being in the Parish of Balmoral, Restigouche County and Province of New Brunswick, and being a portion of Crown Land situate at Portage Lakes, said lot being more particularly described as follows:

being all that lot as shown on a Return of Survey prepared by David G. Green, N.B.L.S., dated September 18, 1996, said Return of Survey accepted and filed in the records of the Minister of Natural Resources and Energy on May 20, 1997 under number 347-1;

the above described lot containing 128 ha. in area, be it slightly more or less; and

saving and excepting any timber roads with the above described lands.

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF SAINT JOHN

This is Exhibit "I" to the Affidavit of David Langille sworn to on the 8<sup>th</sup> day of December 2009.

BETWEEN:

**BREAKWATER RESOURCES LTD.**

COURT OF QUEEN'S BENCH  
CLERK / SAINT JOHN

**Plaintiff**

FILED  
FEB 6 2009  
SAINT JOHN

- and -

**BLUE NOTE MINING INC. and BLUE NOTE  
CARIBOU MINES INC.**

COUR DU BANC DE LA REINE  
GREFFIER / SAINT-JEAN

**Defendants**

**REPLY AND DEFENCE TO COUNTER-CLAIM**  
(Forms 27B and 27D)

**REPLY**  
(Form 27B)

1. The Plaintiff admits the allegations contained in paragraphs 1, 5 and 10 of the Statement of Defence.
2. The Plaintiff denies all other paragraphs of the Statement of Defence except to the extent detailed herein.
3. As to the whole of the Statement of Defence, the Plaintiff refers to the allegations set out in its Amended Statement of Claim and utilizing the defined terms as set out in its Amended Statement of Claim, states as follows:

(A) The Alleged Transfer of Obligations under the Debenture, the Marketing Agreement and the Joint Venture Agreement from Blue Note to Blue Note Caribou

- (i) Breakwater denies that the obligations of Blue Note under the Debenture, the Marketing Agreement and the Joint Venture Agreement were transferred to Blue Note Caribou and states that the Transfer Agreement between Blue Note and Blue Note Caribou did not effect a transfer of the obligations of Blue Note to Blue Note Caribou under these agreements;
- (ii) Breakwater repeats the allegations contained in paragraph 13-16 of its Amended Statement of Claim and states that the Transfer Agreement did

not effect a transfer of the obligations of Blue Note to Blue Note Caribou under the Joint Venture Agreement;

- (iii) Breakwater pleads and relies upon Article 10.1 of the Debenture and states that any transfer of assignment of Blue Note's rights and obligations under the Debenture required the prior written consent of Breakwater. At no time has Breakwater consented to the transfer or assignment of Blue Note's rights and obligations under the Debenture; and
- (iv) Breakwater pleads and relies upon Article 16 of the Marketing Agreement and states that Blue Note was not permitted to assign the Marketing Agreement without the written consent of Breakwater, except to a successor corporation acquiring all or substantially all of Blue Note's assets or to an affiliate, which later assignment shall not release Blue Note from its obligations under the Marketing Agreement. Accordingly, Breakwater states that Blue Note remains subject to and bound by its obligations under the Marketing Agreement.

(B) Mechanics' Liens

- (i) Breakwater denies that the Defendants, are actively contesting the Mechanics' Liens and states that neither of the Defendants have taken any steps to contest the Mechanics' Liens;
- (ii) Breakwater states that it exercised its property interest conversion option in reliance upon Article 8.3 of the Debenture which prohibited Blue Note from suffering to exist the Mechanics' Liens. As of date of property interest conversion, Blue Note had suffered to exist Mechanics' Liens valued in excess of \$1,490,000.00 which liens had arisen on or before the date of property interest conversion;
- (iii) Breakwater states that by permitting Mechanics' Liens to be filed prior to causing title to the Mines to be recorded in the name of Breakwater or its nominee, in proportion to Breakwater's interests, Blue Note has permitted the Mechanics' Liens to take priority over Breakwater's interest in the Mines by virtue of sub-section 9(1) of the *Mechanics' Lien Act* R.S.N.B. 1973, cM-6; and
- (iv) Breakwater states that by delaying entering into the Joint Venture Agreement until October 17, 2008, notwithstanding that the effective date of Breakwater's exercise of the property interest conversion was August 29, 2008, Blue Note denied Breakwater the opportunity to exercise its rights under the Joint Venture Agreement with respect to the management and operation of the Mines and as a result, Breakwater had no opportunity to influence the management and operation of the Mines so as to ensure that Blue Note, as operator acted in accordance with its obligations thereunder.

(C) Amounts Owing to Breakwater under the NSR Agreement

- (i) with respect to the allegations contained in the Statement of Defence relating to the NSR Agreement, (including paragraphs 1, 4, 14 and 17 of the Statement of Defence), Breakwater states that the balance owing to Breakwater under the NSR Agreement for the period of April 1, 2008 to June 30, 2008 is \$442,865.74 (together to interest accruing thereon) and the amount estimated to be owing by Blue Note to Breakwater for the period July 1, 2008 to August 28, 2008 is approximately \$300,000.00 (together to interest accruing thereon); and
- (ii) Breakwater states that the Statement of Defence does not raise valid defence with respect to the amounts owing to Breakwater under the NSR Agreement and Breakwater will move on or before the trial of this action for summary judgment with respect to the amounts owing to Breakwater under the NSR Agreement.

(D) Amounts Owing to Breakwater under the Marketing Agreement

- (i) with respect to the allegations contained in the Statement of Defence relating to the Marketing Agreement, including paragraphs 1, 4, and 17 of the Statement of Defence, Breakwater states that the balance owing to Breakwater under the Marketing Agreement for the period of August 26, 2008 to December 9, 2008 is \$48,453.85 (together to interest accruing thereon) and the amount estimated to be owing by Blue Note to Breakwater for the period of December 10, 2008 to the present date, is approximately \$22,000.00 (together to interest accruing thereon); and
- (ii) Breakwater states that the Statement of Defence does not raise valid defence with respect to the amounts owing to Breakwater under the Marketing Agreement and Breakwater will move on or before the trial of this action for summary judgment with respect to the amounts owing to Breakwater under the Marketing Agreement.

(E) The September 10th Meeting

- (i) Breakwater denies the allegations contained in paragraph 16 of the Statement of Defence and states that the September 10 meeting was not held on a without prejudice basis.

**DEFENCE TO COUNTER-CLAIM**  
**(Form 27D)**


4. With respect to paragraphs 22-25 of the Counterclaim, Breakwater repeats the allegations contained in the paragraphs 14-23, 46-52, 61 and 67-77 of its Amended Statement of Claim and paragraphs 3(A) and 3(B) of its Reply and states as follows:

- (i) Blue Note Caribou is not a party to the Joint Venture Agreement and has no right or status thereunder;
- (ii) Blue Note Caribou has no entitlement to damages for any alleged breach and/or repudiation of the Joint Venture Agreement by Breakwater, which alleged breach and/or repudiation are strictly denied by Breakwater.
- (iii) Breakwater has not breached the Joint Venture Agreement and has not repudiated the Joint Venture Agreement;
- (iv) Blue Note has breached and/or repudiated the Joint Venture Agreement; and
- (v) Breakwater requests that the Counterclaim be dismissed with costs.

DATED at Saint John, New Brunswick, this 6<sup>th</sup> day of February, 2009

STEWART McKELVEY  
Solicitors for the Plaintiff

Per

  
Stephen J. Hutchison

Stewart McKelvey  
Barristers & Solicitors  
44 Chipman Hill, Suite 1000  
P.O. Box 7289 Station "A"  
Saint John, N.B. E2L 2A9

Telephone : (506) 632-1970  
Facsimile: (506) 652-1989

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- 2 FEV. 2009

9:56.

Court File No.: S/C/684/08

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF SAINT JOHN  
BETWEEN:

This is Exhibit "J" to the Affidavit of David Langille sworn to on the 8<sup>th</sup> day of December 2009.

**BREAKWATER RESOURCES LTD.**

Plaintiff

- and -

**BLUE NOTE MINING INC. and BLUE NOTE  
CARIBOU MINES INC.**

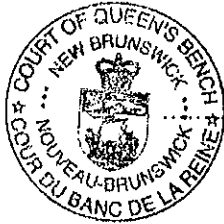
Defendants

**CERTIFICATE OF PENDING LITIGATION  
(FORM 42A)**

I certify that, in this proceeding, some title or interest in the following land is questioned:

Property identified by Parcel Identifier Number (PID) 50252766, which property is more particularly described in Schedule "A" hereto.

Dated at Saint John, New Brunswick this 20<sup>th</sup> day of January, 2009



*J. Berthelot*

**Deputy CLERK**  
Clerk of the Court of Queen's Bench  
of New Brunswick  
Saint John Provincial Building  
110 Charlotte Street  
Saint John, New Brunswick, E2L 1J3

*I certify that this instrument  
is registered or filed in the  
Restigouche County Registry  
Office, New Brunswick  
- 2 FEV. 2009*

*J'atteste que cet instrument est  
enregistré ou déposé au bureau  
d'enregistrement du comté de  
Restigouche, Nouveau-Brunswick*

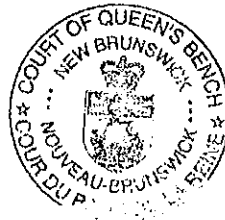
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Number - numéro 26778978  
*Luzelane Benoit*  
Deputy Registrar - Conservateur Adjoint

## SCHEDULE "A"

All that certain lot, piece or parcel of land situate, lying and being in the Parish of Balmoral, Restigouche County and Province of New Brunswick, and being a portion of Crown Land situate at Portage Lakes, said lot being more particularly described as follows:

- (a) being all that lot as shown on a Return of Survey prepared by David G. Green, N.B.L.S., dated September 18, 1996, said Return of Survey accepted and filed in the records of the Minister of Natural Resources and Energy on May 20, 1997 under number 347-1;
- (b) the above described lot containing 128 ha. in area, be it slightly more or less; and
- (c) saving and excepting any timber roads with the above described lands.



**CERTIFICATE OF LEGAL EFFECT**

Parcel Identifier: 50252766

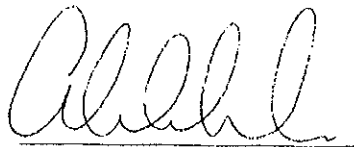
THIS IS TO CERTIFY that the intended effect of the registration of the attached Certificate of Lis Pendens on the current Certificate of Registered Ownership for the specified parcel is as follows:

2. To add encumbrances:

**Breakwater Resources Ltd.**  
Certificate of Pending Litigation  
Restigouche County

Date: February 2, 2009

Subscriber:



Alanna D. Waberski  
Stewart McKelvey  
Barristers and Solicitors  
P.O. Box 7289, Station "A"  
Saint John, N. B., E2L 4S6  
Registrant No. 19201

Our File No.: SM1105-5

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- 2 FEV. 2009  
9:55

Court File No.: S/C/684/08

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK TRIAL DIVISION  
JUDICIAL DISTRICT OF SAINT JOHN

This is Exhibit "K" to the Affidavit of David Langille sworn to on the 8<sup>th</sup> day of December 2009.

BETWEEN:

**BREAKWATER RESOURCES LTD.**

Plaintiff

- and -

**BLUE NOTE MINING INC. and BLUE NOTE CARIBOU MINES INC.**

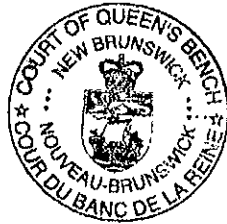
Defendants

**CERTIFICATE OF PENDING LITIGATION  
(FORM 42A)**

I certify that, in this proceeding, some title or interest in the following land is questioned:

Property identified by Parcel Identifier Number (PID) 50237924, which property is more particularly described in Schedule "A" hereto.

Dated at Saint John, New Brunswick this 30<sup>th</sup> day of January, 2009



*J. Reid*  
Deputy / CLERK  
Clerk of the Court of Queen's Bench  
of New Brunswick  
Saint John Provincial Building  
110 Charlotte Street  
Saint John, New Brunswick, E2L 1J3

*I certify that this instrument  
is registered or filed in the  
Restigouche County Registry  
Office, New Brunswick*

*J'atteste que cet instrument est  
enregistré ou déposé au bureau  
d'enregistrement de comté de  
Restigouche, Nouveau-Brunswick*

**2 FEV. 2009**

**9:55**

date

time-heure

**26778945**

Number - numéro

*Amélie Benoit*

Deputy Registrar - Conservateur Adjoint

## SCHEDULE "A"

All that certain lot, piece or parcel of land situate, lying and being in the Parish of Colborne, County of Restigouche, Province of New Brunswick, lying East of Caribou Lake and being more particularly described as follows:

### NOTE:

Azimuths stated are referenced to the New Brunswick Provincial Co-ordinate System, with control derived from scaled map points from Map 210/09S.

Beginning at a standard survey marker set in concrete and shown as point 270 on a subdivision Plan titled "Department of Natural Resources and Energy Subdivision 93-7" as prepared by David Green, N.B.L.S., dated September 10th, 1990 and filed in the Restigouche County Registry Office on November 24th, 1993 under Number 3255, said marker located near the southerly end of the dam creating Caribou Lake;

thence, in a northerly direction following along the upstream face of said dam and its prolongation to intersect with a yellow painted blazed line extended on an azimuth of 238° 40' 31" from a Survey Marker shown as point 321 on said filed plan;

thence, 58° 40' 31" to said Survey Marker (321);

thence, 341° 23' 23" a distance of 345.701 metres to a Survey Marker;

thence, 67° 41' 15" a distance of 102.271 metres to a Survey Marker set in concrete (332);

thence, 65° 37' 41" a distance of 863.048 metres to a Survey Marker set in concrete (360);

thence, 68° 45' 50" a distance of 133.715 metres to a Survey Marker;

thence, 142° 35' 16" a distance of 132.526 metres to a Survey Marker;

thence, 120° 26' 44" a distance of 328.463 metres to a Survey Marker;

thence, 143° 46' 20" a distance of 208.736 metres to a Survey Marker;

thence, 136° 09' 20" a distance of 64.873 metres to a Survey Marker;

thence, 117° 29' 02" a distance of 39.667 metres to a Survey Marker (80);

thence, 98° 32' 12" a distance of 42.634 metres to a Survey Marker;

thence, 86° 31' 42" a distance of 88.264 metres to a Survey Marker;

thence, 104° 21' 14" a distance of 250.151 metres to a Survey Marker;

thence, 131° 22' 35" a distance of 450.830 metres to a Survey Marker;

thence, 177° 34' 42" a distance of 172.762 metres to a Survey Marker;

thence, 176° 42' 48" a distance of 222.553 metres to a Survey Marker;

thence, 162° 18' 46" a distance of 248.426 metres to a Survey Marker (150);

thence, 161° 57' 28" a distance of 151.984 metres to a Survey Marker;

thence, 235° 13' 59" a distance of 359.964 metres to a Survey Marker;

thence, 254° 56' 19" a distance of 280.232 metres to a Survey Marker;

thence, 349° 17' 27" a distance of 261.035 metres to a Survey Marker;

thence, 329° 37' 30" a distance of 121.666 metres to a Survey Marker (200);

thence, 309° 55' 57" a distance of 90.787 metres to a Survey Marker;

thence, 80° 2' 41" a distance of 162.094 metres to a Survey Marker;

thence, 294° 02' 46" a distance of 194.630 metres to a Survey Marker;

thence, 266° 54' 49" a distance of 55.734 metres to a Survey Marker;

thence, 259° 48' 41" a distance of 500.044 metres to a Survey Marker (250);

thence, 245° 15' 29" a distance of 683.676 metres to a Survey Marker;

thence, 341° 23' 45" a distance of 229.739 metres to the Place of Beginning.

The hereinbefore described parcel of land is estimated to contain an area of 254.260 hectares, more or less. The said plan also filed in the records of the Minister of Natural Resources and Energy on October 28, 1993 as Number 293-1.



**CERTIFICATE OF LEGAL EFFECT**

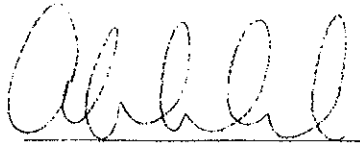
Parcel Identifier: 50237924

THIS IS TO CERTIFY that the intended effect of the registration of the attached Certificate of Lis Pendens on the current Certificate of Registered Ownership for the specified parcel is as follows:

3. To add encumbrances:

**Breakwater Resources Ltd.**  
Certificate of Pending Litigation  
Restigouche County

Date: February 2, 2009



Subscriber:

Alanna D. Waberski  
Stewart McKelvey  
Barristers and Solicitors  
P.O. Box 7289, Station "A"  
Saint John, N. B., E2L 4S6  
Registrant No. 19201

Our File No.: SM1105-5

26778903

- 2 FEB. 2009

9:53

This is Exhibit "L" to the Affidavit of David Langille sworn to on the 8<sup>th</sup> day of December 2009.

**CERTIFICATE OF PENDING LITIGATION**

**FORM 33**

(*Land Titles Act*, S.N.B. 1981, c. L-1.1, s. 38)

**Parcel Identifier:** 50072032  
**Court:** Court of Queen's Bench of New Brunswick  
Trial Division, Judicial District of Saint John  
**Court File Number:** S/C/684/08  
**Style of Proceeding:** Breakwater Resources Ltd. v. Blue Note Mining Inc. and  
Blue Note Caribou Mines Inc.

I certify that, in this proceeding, some title or interest in the specified parcel is questioned.

Dated at Saint John, New Brunswick this 30<sup>th</sup> day of January, 2009



*J. S. [Signature]*

Deputy CLERK  
Clerk of the Court of Queen's Bench  
of New Brunswick  
Saint John Provincial Building  
110 Charlotte Street  
Saint John, New Brunswick E2L 1J3

**CERTIFICATE OF LEGAL EFFECT**

Parcel Identifier: 50072032

THIS IS TO CERTIFY that the intended effect of the registration of the attached Certificate of Lis Pendens on the current Certificate of Registered Ownership for the specified parcel is as follows:

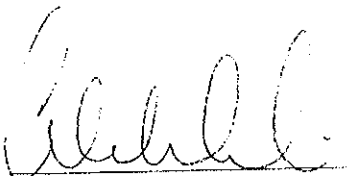
1. To add encumbrances:

**Breakwater Resources Ltd.**  
Certificate of Pending Litigation  
Restigouche County

*950-95 Wellington Street, West  
Toronto, Ontario  
M5J 2N9*

Date: February 2, 2009

Subscriber:



Alanna D. Waberski  
Stewart McKelvey  
Barristers and Solicitors  
P.O. Box 7289, Station "A"  
Saint John, N. B., E2L 4S6  
Registrant No. 19201

Our File No.: SM1105-5