

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF  
COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
**FRASER PAPERS INC. / PAPIERS FRASER INC.**, FPS  
CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER  
TIMBER LIMITED, FRASER PAPERS LIMITED and FRASER  
N.H. LLC (THE "APPLICANTS")

Applicants

**MOTION RECORD  
(Supplemental Meeting Order)  
(returnable on February 1, 2011)**

January 28, 2011

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# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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IN THE MATTER OF THE *COMPANIES' CREDITORS  
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Applicants

**NOTICE OF MOTION  
(Supplemental Meeting Order)**

The Applicants will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on Tuesday, February 1, 2011 at 10:00 o'clock in the morning or as soon thereafter as this motion can be heard at 330 University Avenue, in the City of Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. an Order substantially in the form of the Order attached hereto as Schedule "A" (the **"Supplemental Meeting Order"**),

- (a) abridging the time for service of this Notice of Motion and the Applicants' Motion Record herein, and directing that any further service of the Notice of Motion and Motion Record has been dispensed with;
  - (b) accepting the filing of the Amended Consolidated Plan of Compromise or Arrangement concerning, affecting and involving the Applicants dated January 27, 2011 (the "**Amended Plan**"), a copy of which is attached as Schedule "A" to the Supplemental Meeting Order;
  - (c) authorizing and directing the Applicants to call, hold and conduct a further meeting of their creditors (the "**Affected Creditors**") to consider and vote on the Amended Plan (the "**February Meeting**");
  - (d) establishing the procedures as to the calling and conduct of the February Meeting and approving the February Meeting Materials (as defined herein);
  - (e) setting a date for the hearing of the Applicants' motion seeking an Order sanctioning the Amended Plan (the "**Plan Sanction Hearing**"); and
2. such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

- 1. capitalized terms used but not otherwise defined in this Notice of Motion shall have the meanings ascribed to them in the Amended Plan;
- 2. pursuant to the Order of the Honourable Mr. Justice Morawetz dated June 18, 2009, as amended (the "**Initial Order**"), the Applicants filed for and obtained protection from

their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), and PricewaterhouseCoopers Inc. was appointed as monitor (the "**Monitor**");

3. the Applicants sought and obtained recognition of these proceedings as foreign main proceedings pursuant to Chapter 15 of the *U.S. Bankruptcy Code* in the United States Bankruptcy Court for the District of Delaware;
4. the Applicants, in consultation with the Monitor, determined early in the CCAA proceeding that the Applicants would be unable to continue their operations over the long term in their then present form. As such, with the Monitor's assistance, the Applicants entered into separate asset purchase agreements whereby the Applicants sold substantially all of their assets;
5. each of the asset purchase agreements was approved by Order of this Honourable Court;
6. pursuant to the Order of this Honourable Court dated November 3, 2010, the Applicants were authorized and directed to proceed with the preparation of a plan of compromise and arrangement on the basis of the substantive consolidation of all of the Applicants;
7. pursuant to the Order of this Honourable Court dated December 3, 2010, as amended by the Amending Meeting Order dated December 17, 2010 (collectively, the "**Meeting Order**"), the Applicants filed a Consolidated Plan of Compromise or Arrangement dated November 29, 2010 (the "**Original Plan**") and were, *inter alia*, authorized and directed to conduct a meeting of their Affected Creditors to consider and vote on the Original Plan;

8. the Applicants held a meeting of Affected Creditors on January 10, 2011 (the “**Meeting**”) and the required majority by dollar value of Affected Creditors required to approve the Original Plan was not obtained and the Original Plan was therefore not approved;
9. the Applicants advised this Honourable Court of the results of the Meeting on January 12, 2011. In particular, although 94.8% of all Affected Creditors by number in attendance at the Meeting voted in favour of the Original Plan, certain large claims in respect of Canadian pension plans voted to reject the Original Plan;
10. the Applicants, with the Monitor’s assistance and the cooperation of the Plan Sponsor (as defined below), continued discussions with Morneau Shepell Inc. (formerly Morneau Sobeco Inc.) (“**Morneau**”), the administrator of the Applicants’ New Brunswick pension plans, the new Brunswick Superintendant of Pensions (the “**NB Superintendant**”), the Communications, Energy and Paperworkers Union of Canada (the “**CEP**”) and the New Brunswick Regional Council of Carpenters, Milwright and Allied Workers (the “**CMAW**”) to try and address the concerns they had that led to the rejection of the Original Plan;
11. Morneau’s concerns have been satisfied resulting in the Applicants being prepared to proceed to file the Amended Plan with the support of Morneau, the NB Superintendant and the CMAW;
12. the terms of the Amended Plan are substantially similar to the Original Plan and any amendments are discussed in the Affidavit of Glen McMillan sworn on January 28, 2011 (the “**McMillan Affidavit**”) in support of this motion;



13. the Plan incorporates the Transaction Agreement whereby, *inter alia*, the Plan Sponsor will purchase the FPHI Shares, which includes the ownership of the companies that own lumber mills located in Ashland and Masardis, Maine (the “**Maine Mills**”). The Transaction Agreement requires that all Included Property be transferred to the relevant Purchased Companies free and clear of all Encumbrances except Permitted Encumbrances and that the FPHI Shares purchased by the Plan Sponsor be free and clear of all claims and Encumbrances;
14. pursuant to the Plan, upon the closing of the Transaction Agreement, the Applicants anticipate that they will have sufficient cash to make an Implementation Payment to their Affected Creditors with Proven Distribution Claims. In addition, the Applicants will make available for distribution to their Affected Creditors with Proven Distribution Claims their Pro Rata Share of the Promissory Notes and Common Shares of Twin Rivers Papers Company Inc. which shall be held in each of the NB Hourly Trust, the NB Salaried Trust, the Creditor Trust and the U.S. Creditor Trust for the benefit of the respective trust beneficiaries in accordance with the terms of the Promissory Notes, the Common Shares and the NB Hourly Trust Agreement, the NB Salaried Trust Agreement, the NB Salaried Trust Agreement and creditor trust agreements, respectively;
15. the Supplemental Meeting Order sought by the Applicants requires the Monitor to post on its website and send by email the following documents (the “**February Meeting Materials**”) to each party on the Service List in this CCAA proceeding:
  - (i) the Amended Plan (in English and French) with the Schedules to the Amended Plan including the Transaction Agreement (in English only);

- (ii) a blacklined document comparing the Original Plan to the Amended Plan without Schedules (in English and French);
  - (iii) the form of proxy updated to provide information with respect to the February Meeting (the “**Form of Proxy**”) (in English and French), substantially in the form attached to the Supplemental Meeting Order as Schedule “B”;
  - (iv) a notice to the Applicants’ creditors in respect of the Amended Plan, the February Meeting and the Sanction Hearing (the “**New Notice to Creditors**”) (in English and French), substantially in the form attached to the Supplemental Meeting Order as Schedule “C”;
  - (v) the Monitor’s Seventeenth Report (in English only); and
  - (vi) a copy of the Supplemental Meeting Order (in English only);
16. the Supplemental Meeting Order also requires the Monitor to send by email to each Affected Creditor for which the Monitor has an email address the Form of Proxy, the New Notice to Creditors and a link to the Monitor’s website where the February Meeting Materials are posted;
17. the Supplemental Meeting Order requires the Monitor to send to each Affected Creditor that voted, in person or by proxy, at the Meeting and for which the Monitor does not have an email address, the February Meeting Materials by courier to the contact address listed on the Proof of Claim submitted by such Affected Creditor or to such other address as may have been subsequently provided to the Monitor by such Affected Creditor;

18. pursuant to the Supplemental Meeting Order, if an Affected Creditor filed a Proxy to vote at the Meeting, then the previously filed Proxy will be counted at the February Meeting and the Affected Creditor is not required to file a new Proxy to vote at the February Meeting unless such Affected Creditor wants to change or revoke its vote in accordance with the procedures set out in the instructions to the Proxy;
19. the Monitor will file a report with the Court by no later than noon (EST) on February 9, 2011, or within two (2) business days after the February Meeting if the February Meeting has been adjourned, advising of the results of the vote on the Amended Plan;
20. if the Required Majority of Affected Creditors vote to approve the Amended Plan at the February Meeting, the Applicants are requesting that the Plan Sanction Hearing take place on February 10, 2011;
21. the Monitor and the DIP Lender support the relief sought by the Applicants;
22. paragraph 45 of the Meeting Order;
23. section 4 of the CCAA;
24. Rules 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1994, Reg. 194, as amended; and
25. such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this Motion:

1. the Affidavits of Glen McMillan sworn on November 29, 2010 and on January 11, 2011, both previously filed;
2. the McMillan Affidavit;
3. the Sixteenth Report of the Monitor dated January 11, 2011, previously filed;
4. the Seventeenth Report of the Monitor, to be filed separately; and
5. such further and other materials as counsel may advise and this Honourable Court may permit.

January 28, 2011

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Lawyers for the Applicants

**TO: THIS HONOURABLE COURT**  
**AND TO: THE SERVICE LIST ATTACHED AS SCHEDULE "B"**  
**AND TO: THE PARTIES LISTED ON THE ATTACHED SCHEDULE "C"**

# **SCHEDULE “A”**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

THE HONOURABLE MR. ) **TUESDAY, THE 1<sup>ST</sup> DAY**  
 )  
JUSTICE MORAWETZ ) **OF FEBRUARY, 2011**

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
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Applicants

**SUPPLEMENTAL MEETING ORDER**

**THIS MOTION**, brought by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an Order supplementing the Meeting Order dated December 3, 2010 , as amended by the Amending Meeting Order dated December 17, 2010 (collectively, the "**Meeting Order**") by, among other things, (a) accepting the filing of the Amended Consolidated Plan of Compromise and Arrangement dated January 27, 2011 (the "**Amended Plan**") attached hereto as Schedule "A", (b) authorizing the Applicants to establish one class of Affected Creditors for the purposes of considering and voting on the Amended Plan, (c) authorizing the Applicants to call, hold and conduct a further meeting of their Affected Creditors (the "**February Meeting**") to consider and vote on a resolution to approve

the Amended Plan, (d) approving the procedures to be followed with respect to the calling and conduct of the February Meeting, and (e) setting the date for the hearing of the Applicants' motion seeking an Order sanctioning the Amended Plan (the "**Plan Sanction Hearing**"), was heard this day at 330 University Avenue, in the City of Toronto, Ontario.

**ON READING** the affidavit of Glen McMillan sworn on November 29, 2010, the affidavit of Glen McMillan sworn on January 11, 2011, each previously filed, the affidavit of Glen McMillan sworn on January 27, 2011, the Sixteenth Report (the "**Sixteenth Report**") of PricewaterhouseCoopers Inc., in its capacity as court-appointed monitor of the Applicants (the "**Monitor**"), previously filed, the Seventeenth Report (the "**Seventeenth Report**") of the Monitor, to be filed, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for Brookfield US Corporation, as DIP Lender and Brookfield Asset Management Inc., as Plan Sponsor and as Administrative Agent and Collateral Agent for the DIP Lender, counsel for the court-appointed Committee Representing Unrepresented Employees and Former Employees (the "**Representative Counsel**"), counsel for Communications, Energy and Paperworkers Union of Canada ("**CEP**"), counsel for the Superintendent of Financial Services of Ontario, counsel for Morneau Shepell Inc. (formerly Morneau Sobeco Inc.) ("**Morneau**") as: (i) the administrator of the New Brunswick pension plans; (ii) Ontario agent for the New Brunswick Superintendent of Pensions; and (iii) Ontario agent for the active employees of the New Brunswick Regional Council of Carpenters, Milwright and Allied Workers, local 2450 and counsel for United Steel, Paper, Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union ("**USW**"), no one appearing for any other party on the service list in these CCAA Proceedings (the "**Service List**") although all duly served as appears from the affidavit of service of Danny Nunes sworn on January 11, 2011, filed:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for the service of the notice of motion, the motion record in respect of this motion, and the Seventeenth Report be and it is hereby abridged and that this Motion is properly returnable today and service of the notice of motion, motion record and the Monitor's Seventeenth Report is hereby validated in all respects.

### **DEFINITIONS**

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Supplemental Meeting Order shall have the meanings ascribed to them in either the Meeting Order or the Amended Plan, as applicable.

### **THE AMENDED PLAN**

3. **THIS COURT ORDERS** that the Amended Plan be and is hereby accepted for filing with the Court, and that the Applicants are authorized to seek approval of the Amended Plan in the manner set forth herein.
4. **THIS COURT ORDERS** that, subject to the consent of the Plan Sponsor, the Applicants be and are hereby authorized to amend, modify and/or supplement the Amended Plan, in consultation with the Monitor, provided that any such amendment, modification or supplement:
  - (a) if made prior to the Meeting, is communicated by the Applicants or the Chair to the Affected Creditors prior to or at the Meeting;



- (b) if made at any time during the Meeting, is communicated by the Applicants or the Chair to those in attendance at the Meeting prior to the vote being taken in respect of the Amended Plan; and
  - (c) in all cases, is set out in writing and is filed with the Court and posted on the Monitor's website at [www.pwc.com/car-fraserpapers](http://www.pwc.com/car-fraserpapers) (the "**Website**") on or before the Plan Sanction Hearing.
5. **THIS COURT ORDERS** that, notwithstanding anything in paragraph 4 herein, the Applicants be and are hereby authorized to amend, modify and/or supplement the Amended Plan at any time following the date the Sanction Order, if granted, either with Court approval or without obtaining Court approval if each of the Applicants, the Plan Sponsor and the Monitor determine that such amendment, modification and/or supplement is of an administrative nature required to better give effect to the implementation of the Amended Plan and, if applicable, to the Sanction Order and is not adverse or prejudicial to the financial or economic interests of the Affected Creditors. Any such amendments, modifications and/or supplements to the Amended Plan shall be filed with the Court and posted on the Monitor's Website.

#### **CLASSIFICATION OF CREDITORS**

6. **THIS COURT ORDERS** that for the purposes of considering and voting on the Amended Plan the Affected Creditors of the Applicants shall constitute a single class of Creditors (the "**Unsecured Creditors Class**").

**NOTICE OF FEBRUARY MEETING**

7. **THIS COURT ORDERS** that as soon as practicable after the granting of this Supplemental Meeting Order (the Monitor shall use best efforts to do so by 5:00 p.m. on Tuesday, February 1, 2011) and, in any event, no later than 10:00 a.m. (Eastern Standard Time (“EST”)) on Wednesday, February 2, 2011, the Monitor shall post on its Website electronic copies of the following documents (the “**February Meeting Materials**”) with the Meeting Materials that it posted previously in accordance with the Meeting Order until 30 days after the Plan Implementation Date and email same to the Service List in this proceeding:

- (a) the Amended Plan (in English and French) with the Schedules to the Amended Plan including the Transaction Agreement (in English only);
- (b) a blacklined document comparing the Plan to the Amended Plan without Schedules (in English and French);
- (c) the Form of Proxy updated to provide information with respect to the February Meeting in the form attached hereto as Schedule “**B**” (the “**Form of Proxy**”) (in English and French);
- (d) the notice to Creditors in respect of the Amended Plan, the February Meeting and the Plan Sanction Hearing substantially in the form attached hereto as Schedule “**C**” (the “**New Notice to Creditors**”) (in English and French);
- (e) the Monitor’s Seventeenth Report (in English only); and
- (f) the Supplemental Meeting Order (in English only).

8. **THIS COURT ORDERS** that, subject to paragraph 9 of this Order, as soon as practicable after the granting of this Supplemental Meeting Order (the Monitor shall use best efforts to do so by 5:00 p.m. on Tuesday, February 1, 2011) and, in any event, no later than 10:00 a.m. (EST) on Wednesday, February 2, 2011, the Monitor shall send to each Affected Creditor by email at the e-mail address listed on the Proof of Claim submitted by such Affected Creditor or such other e-mail address subsequently provided to the Monitor by such Affected Creditor, or where such Affected Creditor is represented by legal counsel (other than Representative Counsel) in these proceedings, to such Affected Creditor's legal counsel at the e-mail address listed on the Service List:

- (a) the Form of Proxy in English and French;
- (b) the New Notice to Creditors in English and French; and
- (c) a link to the Monitor's Website to allow such Affected Creditors to access and obtain the Amended Plan and copies of all other February Meeting Materials and Meeting Materials.

9. **THIS COURT ORDERS** that as soon as practicable after the granting of this Supplemental Meeting Order (the Monitor shall use best efforts to do so by 5:00 p.m. on Tuesday, February 1, 2011) and, in any event, no later than 10:00 a.m. (EST) on Wednesday, February 2, 2011, the Monitor shall send to each Affected Creditor that voted, in person or by proxy, at the Meeting and for which the Monitor does not have an email address, the February Meeting Materials by courier at the contact address listed on the Proof of Claim submitted by such Affected Creditor or to such other address, if any, as may have been subsequently provided to the Monitor by such Affected Creditor.

10. **THIS COURT ORDERS** that posting of the February Meeting Materials on the Monitor's Website in accordance with paragraph 7 herein and the delivery of a copy of the February Meeting Materials upon the Affected Creditors in the manner set out in paragraphs 7, 8 and 9 herein shall constitute good and sufficient service of this Supplemental Meeting Order and the Amended Plan, and good and sufficient notice of the February Meeting on all Affected Creditors who may be entitled to receive notice hereof, or of these CCAA Proceedings, or who may wish to be present in person or by proxy at the February Meeting, or who may wish to appear in these CCAA Proceedings, and no other form of notice or service need be made on such Persons, and no other documents or materials need be served on such Persons in respect of these CCAA Proceedings. Service shall be effective in the case of service by e-mail on the day the e-mail was transmitted, unless such day is not a Business Day, or the e-mail transmission was made after 5:00 p.m. (EST), in which case, service shall be effective on the next Business Day and in the case of service by courier, one (1) Business Day after such courier is sent.
11. **THIS COURT ORDERS** that the form and substance of the Form of Proxy and the New Notice to Creditors is hereby approved. The Applicants are authorized to make such minor changes to the Proxy and the New Notice to Creditors as the Applicants and the Monitor deem necessary or desirable.

**THE FEBRUARY MEETING AND TREATMENT OF CREDITORS**

12. **THIS COURT ORDERS** that the Applicants are hereby authorized to call, hold and conduct the February Meeting of the Unsecured Creditor Class for the purpose of

considering, and if deemed advisable, passing, with or without variation, a resolution to approve the Amended Plan. The February Meeting shall be held at 10:00 a.m. (EST) on Tuesday, February 8, 2011 at the offices of Thornton Grout Finnigan LLP, Canadian Pacific Tower, Toronto-Dominion Centre, 100 Wellington Street West, Suite 3200, Toronto, Ontario, M5K 1K7.

13. **THIS COURT ORDERS** the provisions of the Meeting Order under the headings The Meeting and Treatment of Creditors shall be applicable to and shall govern all aspects of the February Meeting and the Amended Plan save and except as such provisions are specifically modified pursuant to this Supplemental Meeting Order.
14. **THIS COURT ORDERS** that, in respect of the February Meeting and the Amended Plan, the Chair be and is hereby authorized to accept and rely upon all duly completed Proxies previously delivered by Affected Creditors to the Monitor for the Meeting, and that Affected Creditors shall not be required to submit a new Proxy in order to vote at the February Meeting.
15. **THIS COURT ORDERS** that Proxies must be received by the Monitor by no later than 2:00 p.m. (EST) on Monday, February 7, 2011, or 48 hours (excluding Saturdays, Sundays and holidays) before the time of any recommencement of the February Meeting if it has been adjourned, or presented to the Monitor at the February Meeting or at the recommencement of the February Meeting if it has been adjourned.
16. **THIS COURT ORDERS** that an Affected Creditor who has given a Proxy may revoke such Proxy (as to any matter on which a vote has not already been cast pursuant to its authority), unless such Affected Creditor has agreed otherwise, by an instrument in

writing executed by such Affected Creditor or by its attorney, duly authorized in writing or, if such Affected Creditor is not an individual, by an officer or attorney thereof duly authorized, and delivering it to the Monitor by mail, delivery, courier, facsimile or email at the address set out in paragraph 24 herein by 2:00 p.m. (EST) on Monday, February 7, 2011, or 48 hours (excluding Saturday, Sundays and holidays) before the time of any recommencement of the February Meeting if it has been adjourned, or presented to the Monitor at the February Meeting or at the recommencement of the February Meeting if it has been adjourned.

17. **THIS COURT ORDERS** that the Monitor shall file a report with this Court by no later than noon (EST) on February 9, 2011, or within two Business Days after the February Meeting if it's adjourned to a later date, with respect to the results of the vote, including whether:
- (a) the Amended Plan has been accepted by the Required Majority of the Unsecured Creditors Class; and
  - (b) whether the votes cast in respect of Unresolved Claims, if any, would affect the approval or non-approval of the Amended Plan.

**PLAN SANCTION HEARING AND SANCTION ORDER**

18. **THIS COURT ORDERS** that if the Amended Plan has been accepted by the Required Majority set out in the CCAA, the Applicants shall bring a motion seeking the Sanction Order on Thursday, February 10, 2011, at 10:00 a.m. (EST) or as soon thereafter as the matter can be heard.

19. **THIS COURT ORDERS** that service and publication of the New Notice to Creditors as provided herein and the posting of this Supplemental Meeting Order on the Monitor's Website pursuant to paragraph 7 herein shall constitute good and sufficient service of notice of the Plan Sanction Hearing upon all Persons who may be entitled to receive such service and no other form of service or notice need be made on such Persons and no other materials need be served on such Persons in respect of the Plan Sanction Hearing unless they have served and filed a Notice of Appearance in these CCAA Proceedings.
20. **THIS COURT ORDERS** that any Person (other than Persons on the Service List) wishing to receive materials and appear at the Plan Sanction Hearing shall serve upon the lawyers for each of the Applicants, the Monitor and the Plan Sponsor and file with this Court a Notice of Appearance by no later than 5:00 p.m. (EST) on Tuesday, February 8, 2011, or, if the Plan Sanction Hearing is delayed, by no later than 5:00 p.m. (EST) on the date that is five (5) Business Days' prior to the Plan Sanction Hearing.
21. **THIS COURT ORDERS** that any Person who wishes to oppose the motion for the Sanction Order shall serve upon the lawyers for each of the Applicants, the Monitor and the Plan Sponsor, and upon all other parties on the Service List, and file with this Court a copy of the materials to be used to oppose the motion for the Sanction Order by no later than 2:00 p.m. (EST) on Wednesday, February 9, 2011, or if the Plan Sanction Hearing is delayed, by no later than 5:00 p.m. (EST) on the date that is five (5) Business Days' prior to the Plan Sanction Hearing.
22. **THIS COURT ORDERS** that if the Plan Sanction Hearing is adjourned, only those Persons who are listed on the Service List (including those Persons who have complied

with paragraph 20 of this Supplemental Meeting Order) shall be served with notice of the adjourned date of the Plan Sanction Hearing.

**GENERAL**

23. **THIS COURT ORDERS** that the Applicants and the Monitor may, in their discretion, generally or in individual circumstances, waive in writing the time limits imposed on any Affected Creditor under this Supplemental Meeting Order if the Applicants and the Monitor deem it advisable to do so, without prejudice to the requirement that all other Affected Creditors must comply with the terms of this Supplemental Meeting Order.

24. **THIS COURT ORDERS** that any notice or other communication to be given pursuant to this Supplemental Meeting Order by or on behalf of any Person to the Monitor shall be in writing and will be sufficiently given only if by mail, courier, e-mail, fax or hand-delivery addressed to:

PricewaterhouseCoopers Inc.  
Monitor of Fraser Papers Inc.  
77 King Street West, P.O. Box 82, Suite 3000  
Royal Trust Tower, TD Centre,  
Toronto, Ontario M5K 1G8

Attention: Tracey Weaver  
Telephone: 1.877.332.1688  
Fax: (416) 814-3219  
Email: FPclaims@ca.pwc.com

25. **THIS COURT ORDERS** that if any deadline set out in this Supplemental Meeting Order falls on a day other than a Business Day, the deadline shall be extended to the next Business Day.



26. **THIS COURT ORDERS** that, notwithstanding the terms of this Supplemental Meeting Order, the Applicants may apply to this Court from time to time for such further Order or Orders as they consider necessary or desirable to amend, modify, supplement or replace this Supplemental Meeting Order.

**EFFECT, RECOGNITION AND ASSISTANCE**

27. **THIS COURT ORDERS** that the Applicants and the Monitor may, from time to time, apply to this Court for advice and directions concerning the discharge of their respective powers and duties under this Supplemental Meeting Order or the interpretation or application of this Supplemental Meeting Order.
28. **THIS COURT ORDERS** that this Supplemental Meeting Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may be enforceable.
29. **THIS COURT ORDERS AND REQUESTS** the aid, recognition and assistance of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States of America and the states or other subdivisions of the United States of America, including the U.S. Court presiding over the Chapter 15 Proceedings, and of any other nation or state, to act in aid of and to be complementary to this Court in carrying out the terms of this Supplemental Meeting Order. Each of the Applicants and the

Monitor shall be at liberty, and is hereby authorized and empowered, to make such further applications, motions or proceedings to or before such other courts and judicial, regulatory and administrative bodies, and take such other steps, in Canada or in the United States of America, as may be necessary or advisable to give effect to this Supplemental Meeting Order and any other Order granted by this Court.

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**SCHEDULE "A"**

**AMENDED CONSOLIDATED PLAN OF COMPROMISE AND ARRANGEMENT**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED**

**AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR  
ARRANGEMENT WITH RESPECT TO FRASER PAPERS INC./PAPIERS FRASER  
INC., FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER  
LIMITED, FRASER PAPERS LIMITED and FRASER N.H. LLC**

Applicants

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**AMENDED CONSOLIDATED PLAN OF COMPROMISE AND  
ARRANGEMENT**

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**PURSUANT TO THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT* (CANADA)**

**concerning, affecting and involving**

**FRASER PAPERS INC./PAPIERS FRASER INC., FPS CANADA INC.,  
FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED,  
FRASER PAPERS LIMITED and FRASER N.H. LLC**

**January 27, 2011**

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# **AMENDED PLAN OF COMPROMISE AND ARRANGEMENT**

## **PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT (CANADA)***

### **ARTICLE I INTERPRETATION**

#### **1.01 Definitions**

In the Plan (including the Schedules hereto), unless otherwise stated or unless the subject matter or context otherwise requires:

**“Administration Charge”** means the charge in favour of the Monitor, counsel to the Monitor and the Applicants’ Canadian and U.S. counsel granted pursuant to paragraph 35 of the Initial Order, as more particularly set out therein, as amended and extended to include the Claims Officers;

**“Affected Claim”** means any Claim that is not an Unaffected Claim;

**“Affected Creditor”** means any Person having an Affected Claim and includes the transferee or assignee of a transferred or assigned Affected Claim who is recognized as an Affected Creditor by the Applicants and the Monitor in accordance with the Claims Order;

**“Aggregate Implementation Payment Amount”** has the meaning ascribed to it in Section 4.04 herein;

**“Applicable Law”** means in respect of any Person, property, transaction, event or other matter, any law, statute, regulation, code, ordinance, principle of common law or equity, municipal by-law, treaty or order, domestic or foreign, applicable to that Person, property, transaction, event or other matter and all applicable requirements, requests, official directives, rules, consents, approvals, authorizations, guidelines, and policies, in each case, having the force of law, of any Governmental Authority having or purporting to have the authority over that Person, property, transaction, event or other matter and regarded by such Governmental Authority as requiring compliance;

**“Applicants”** means, collectively, Fraser Papers Inc./Papiers Fraser Inc., FPS Canada Inc., Fraser Papers Holdings Inc., Fraser Timber Limited, Fraser Papers Limited and Fraser N.H. LLC;

**“BAM”** means Brookfield Asset Management Inc.;

**“Brookfield US”** means Brookfield US Corporation;

**“Business Day”** means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;



“**Cash**” includes legal tender, cheque, draft or funds received through electronic transfer;

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, in effect as of the date of the Initial Order;

“**CCAA Charges**” means, collectively, the Administration Charge, the DIP Lender’s Charge, the Directors’ Charge and the Inter-Company Charge, in each case as defined in the Initial Order;

“**CCAA Proceedings**” means the proceedings under the CCAA commenced by the Applicants pursuant to the Initial Order;

“**CDN \$**” means Canadian dollars;

“**Chapter 15 Claims Order**” means an order issued by the U.S. Court dated August 5, 2009 within the Chapter 15 Proceedings recognizing and giving full force and effect to the Claims Order;

“**Chapter 15 Proceedings**” means the proceedings commenced by the Applicants on June 18, 2009 in the U.S. Court under Chapter 15 of the United States Bankruptcy Code Case No. 09-12123 (KJC) in which the CCAA Proceedings were recognized as a foreign main proceeding;

“**Claim**” means:

- (a) a Restructuring Claim;
- (b) a Secured Claim; and/or
- (c) the rights of any Person whatsoever, including any Secured Creditor, against one or more of the Applicants and/or Directors, whether or not asserted and however acquired, in connection with any indebtedness, liability or obligation of any kind of one or more of the Applicants and/or Directors in existence on the Filing Date, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, direct or indirect, by guarantee, surety, insurance deductible or otherwise, and whether or not such claim or right arises out of a contract that is executory or anticipatory in nature, and including any claim of negligence or breach of fiduciary duty relating in any way to pension plan administration or any other claims that would have been claims provable in bankruptcy had the applicable Applicant become bankrupt on the Filing Date and whether or not such right or claim resulted in a Proof of Claim being filed against the Applicants or the Directors under the Claims Order;

“**Claims Bar Date**” means 5:00 p.m. (Eastern Standard Time) on September 30, 2009, or such later date as may be ordered by the Court;

“**Claims Officers**” means John D. Ground, Andrew Diamond and such other Persons as may be designated by the Applicants, acceptable to the Monitor and approved by the Court for the purpose of resolving Unresolved Claims in accordance with the Claims Order;

**“Claims Order”** means the Order of the Court dated July 15, 2009 and recognized in the U.S. Court by the Chapter 15 Claims Order, as such Order may be amended, restated or varied by subsequent Order of the Court from time to time;

**“Claims Process”** means the Claims Process for determining the validity of Claims for voting and distribution purposes as set out in the Claims Order;

**“Common Shares”** means two million, four hundred and one thousand nine hundred and sixty (2,401,960) common shares of Twin Rivers issued to Fraser pursuant to a Share Certificate dated April 28, 2010 representing a 49% interest in the capital stock of Twin Rivers and having a notional value of \$24 million as at April 28, 2010;

**“Continuing Obligations”** has the meaning ascribed to it in the Transaction Agreement;

**“Court”** means the Ontario Superior Court of Justice (Commercial List);

**“Creditor”** means any Person having a Claim and includes, without limitation, the transferee or assignee of a Claim or a trustee, liquidator, receiver, receiver and manager, or other Person acting on behalf of such Person;

**“Creditor Trust”** means the trust to be formed on or before the Plan Implementation Date which shall hold any Promissory Notes, Common Shares and any Cash for the benefit of all Affected Creditors with Proven Distribution Claims other than the NB Hourly Claim and the NB Salaried Claim and except those that are resident in the U.S. pursuant to the creditor trust agreements in the proposed form to be confirmed by the Trust Order;

**“Creditor Trusts”** means, collectively, the Creditor Trust and the U.S. Creditor Trust;

**“DIP Lender”** means, collectively, BAM and Brookfield US;

**“DIP Lender’s Charge”** means the charge in favour of the DIP Lender granted pursuant to paragraph 40 of the Initial Order, as more particularly set out therein;

**“Directors”** means, collectively, those individuals who are or were previously directors or officers of any one or more of the Applicants and **“Director”** means, individually, any one of them;

**“Directors’ Charge”** means the charge in favour of the Directors created under paragraph 25 of the Initial Order, as more particularly set out therein;

**“Distribution Pool”** means the Promissory Notes, the Common Shares and any Cash available to the Affected Creditors with Proven Distribution Claims pursuant to and in accordance with the Plan, which shall be held from and after the Plan Implementation Date in trust for the benefit of the Affected Creditors in one of the Trusts or in the Reserve all as more particularly described herein;

**“Encumbrance”** means any interest, charge, lien, claim, mortgage, lease, sublease, hypothecation, deed of trust, pledge, security interest, option, right of use or possession, right of

first offer or first refusal, right of way, easement, servitude, restrictive covenant, encroachment, encumbrance, or other restriction or limitation of any kind howsoever erected or arising;

**"Equity Interests"** has the meaning ascribed to it in the Transaction Agreement;

**"Filing Date"** means June 18, 2009;

**"Final Determination Date"** means a date not more than seven business (7) days after all Unresolved Claims have been finally determined for distribution purposes pursuant to the Claims Order;

**"FPHI"** means Fraser Papers Holdings Inc.;

**"FPHI Shares"** has the meaning ascribed to it in the Transaction Agreement;

**"Fraser"** means Fraser Papers Inc./Papiers Fraser Inc., a corporation governed by the *Canada Business Corporations Act*;

**"Government Priority Claims"** means all Claims that fall within Section 18.2 of the CCAA;

**"Governmental Authority"** means any domestic or foreign government, including any federal, provincial, state, territorial or municipal government, and any government department, body, ministry, agency, tribunal, commission, board, court, bureau or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government;

**"Implementation Payment"** has the meaning ascribed to it in Section 4.04 herein;

**"Implementation Payment Date"** means a date not more than seven (7) days after the Plan Implementation Date or such other date as may reasonably be determined by the Applicants in consultation with the Monitor after the Plan Implementation Date;

**"Included Property"** has the meaning ascribed to it in the Transaction Agreement;

**"Initial Order"** means the Order of the Court dated June 18, 2009, as amended, extended, restated or varied by subsequent Order of the Court from time to time;

**"Inter-Company Claim"** means a Claim of an Applicant against one or more of the other Applicants;

**"Meeting"** means the meeting of Affected Creditors to be called and held pursuant to the Meeting Order for the purpose of considering and voting on the Plan pursuant to the CCAA, and includes any adjournment of such meeting;

**"Meeting Order"** means an Order to be obtained in the CCAA Proceedings establishing the terms and procedure for calling the Meeting of Affected Creditors to vote on the Plan and setting the date of the Plan Sanction Hearing, as same may be amended, modified, supplemented, restated or varied by the Court from time to time;

**“Monitor”** means PricewaterhouseCoopers Inc., in its capacity as Court-Appointed Monitor pursuant to the Initial Order;

**“NB Hourly Claim”** means the Claim filed by Morneau Sobeco Limited Partnership (now Morneau Shepell Inc.) in its capacity as Administrator of the NB Hourly Plan in respect of the windup deficit of the NB Hourly Plan as of March 31, 2010, which has been accepted as a Proven Distribution Claim in the amount of \$110,139,269;

**“NB Hourly Plan”** means the Pension Plan for New Brunswick Hourly Paid Employees of Fraser Papers Inc., New Brunswick Registration #0251264;

**“NB Hourly Trust”** means the trust created by the NB Hourly Trust Agreement;

**“NB Hourly Trust Agreement”** means the declaration and agreement of trust made as of April 28, 2010 between Fraser as settler of the trust, Communications, Energy and Paperworkers Union of Canada as the union, and Doris Lavoie, Jean Clavette and Mario Theriault collectively as trustees, as same may be amended from time to time in accordance with its terms;

**“NB Salaried Claim”** means the Claim filed by Morneau Sobeco Limited Partnership (now Morneau Shepell Inc.) in its capacity as Administrator of the NB Salaried Plan in respect of the windup deficit of the NB Salaried Plan as of March 31, 2010, which has been accepted as a Proven Distribution Claim in the amount of \$24,257,074;

**“NB Salaried Plan”** means the Pension Plan for New Brunswick Salaried Employees of Fraser Papers Inc., New Brunswick Registration #0251256;

**“NB Salaried Trust”** means the trust created by the NB Salaried Trust Agreement;

**“NB Salaried Trust Agreement”** means the declaration and agreement of trust made as of December 2, 2010 between Fraser as settler of the trust, and Don Corey, Rino Girard and Mark Fitzherbert collectively as trustees, as same may be amended from time to time in accordance with its terms;

**“Non-Released Claims”** has the meaning given to that term in Section 9.01 herein;

**“Non-Released Parties”** has the meaning given to that term in Section 9.01 herein;

**“Order”** means any order of the Court in the CCAA Proceedings;

**“Permitted Encumbrance”** has the meaning ascribed to it in the Transaction Agreement;

**“Person”** means any individual, corporation, limited or unlimited liability company, general or limited partnership, income fund, association, trust, pension fund, union, unincorporated organization, joint venture, government or any agency, regulatory body or instrumentality thereof, legal personal representative or litigation guardian, pension plan administrator, or any other entity howsoever designated or constituted;

**“Plan”** means this plan of compromise and arrangement filed by the Applicants pursuant to the CCAA, including the Schedules hereto, as same may be amended, varied or supplemented hereinafter and from time to time in accordance with the terms hereof;

**“Plan Implementation Date”** means the Business Day on which the conditions precedent to implementation of the Plan have been satisfied, fulfilled or waived, as applicable, and the Monitor has completed and filed its certificate with the Court in accordance with Section 7.03 of the Plan;

**“Plan Sanction Hearing”** means the Court hearing at which the Applicants’ motion for the Sanction Order will be heard;

**“Plan Sponsor”** means BAM or such other Person or Person as it may designate on or prior to the Closing Date (as defined in the Transaction Agreement), in its capacity as Purchaser and Plan Sponsor under the Transaction Agreement;

**“Post-Filing Claims”** means any indebtedness, liability or obligation of any kind that arises after the Filing Date from or in respect of: (a) any executory contract or unexpired lease that has not been terminated or repudiated by an Applicant; (b) the supply of services, delivery of goods, or monies advanced to any of the Applicants on or after the Filing Date; (c) all amounts to be remitted to a tax authority pursuant to paragraph 9 of the Initial Order during the period from the Filing Date to, but excluding, the Plan Implementation Date; provided that “Post Filing Claim” shall not include any Restructuring Claim;

**“Prior Repayments”** has the meaning given to that term in Section 4.04 herein;

**“Pro Rata Share”** means, in respect of any Affected Creditor of the Unsecured Creditor Class, on the Plan Implementation Date and the Final Determination Date, as applicable, the ratio determined on the date by the following formula:

$$\text{Pro Rata Share} = \frac{\text{Proven Distribution Claim of Affected Creditor in Unsecured Creditor Class} - \text{the Implementation Payment received by that Affected Creditor}}{\text{Aggregate amount of Proven Distribution Claims of all Affected Creditors in Unsecured Creditor Class} + \text{the Unresolved Claims of Affected Creditors in Unsecured Creditor Class} - \text{the cumulative amount of all Implementation Payments ;}}$$

**“Promissory Notes”** means, collectively, a Promissory Note in the principal amount of U.S. \$30 million from Twin Rivers in favour of Fraser dated April 28, 2010 and a Promissory Note in the principal amount of U.S. \$10 million from Twin Rivers in favour of Fraser dated April 28, 2010 as may be adjusted in accordance with the Twin Rivers APA;

**“Proof of Claim”** means the form to be completed and filed by a Creditor setting forth its purported Claim in accordance with the Claims Order;

**“Proven Distribution Claim”** means an Affected Claim in respect of which a Proof of Claim has been or is deemed to have been filed in a proper and timely manner in accordance with the

Claims Order and which has been accepted or finally determined for distribution purposes in accordance with the Claims Order;

**“Proven Voting Claim”** means an Affected Claim in respect of which a Proof of Claim has been or is deemed to have been filed in a proper and timely manner in accordance with the Claims Order and which has been accepted for voting purposes in accordance with the Claims Order;

**“Purchased Companies”** has the meaning ascribed to it in the Transaction Agreement;

**“Released Claims”** has the meaning given to that term in Section 9.01 herein;

**“Released Parties”** has the meaning given to that term in Section 9.01 herein;

**“Representative Counsel”** means Davies Ward Philips & Vineberg LLP appointed as counsel to the Fraser Papers’ Committee of Salaried Employees and Retirees pursuant to the Order of the Court dated September 17, 2009, as amended, extended, restated or varied by subsequent Order of the Court from time to time.

**“Required Majority”** means a majority in number of Affected Creditors who represent at least two-thirds in value of the Proven Voting Claims of Affected Creditors who actually vote on the resolution approving the Plan (in person, by proxy or by ballot) at the Meeting;

**“Reserve”** has the meaning given to that term in Section 4.09 herein;

**“Restructuring Claim”** means any right of any Person against one or more of the Applicants in connection with any indebtedness, liability or obligation of any kind owed to such Person arising out of the restructuring, repudiation or termination after the Filing Date of any contract, lease or other agreement whether written or oral, provided however, a **“Restructuring Claim”** shall not include an Unaffected Claim;

**“Restructuring Claims Bar Date”** means 5:00 p.m. (Eastern Standard Time) on the date which is the earlier of thirty (30) calendar days after the event giving rise to the Restructuring Claim or fourteen (14) calendar days after the Plan Implementation Date;

**“Sanction Order”** means an Order made by the Court under the CCAA to, among other things, sanction, authorize and approve the Plan, in a form and substance satisfactory to the Plan Sponsor, acting reasonably, as such Order may be amended by the Court from time to time;

**“Sanction Recognition Order”** means the order to be sought from the U.S. Court recognizing and giving effect to the Sanction Order in the Chapter 15 Proceedings including, without limitation, enforcing the Plan;

**“Secured Claim”** means the portion of a Claim that is: (i) secured by security validly charging or encumbering property or assets of any of the Applicants (including statutory and possessory liens that create security interests) up to the value of such collateral; (ii) duly and properly perfected in accordance with the relevant legislation in the appropriate jurisdiction as of the Filing Date or subsequently in accordance with the Initial Order; and (iii) not an Unaffected Claim;

**“Secured Creditor”** means any Creditor holding a Secured Claim;

**“Share Certificate”** means the share certificate of Twin Rivers issued to Fraser dated April 28, 2010 evidencing the issuance of the Common Shares to Fraser;

**“Substantive Consolidation Order”** means the Order of the Court dated November 3, 2010 authorizing and directing the Applicants to prepare the Plan on the basis of substantive consolidation of all of the Applicants, as recognized and approved by the order of the U.S. Court dated November 3, 2010;

**“Taxes”** means any and all taxes, duties, fees, pending assessments, reassessments and other governmental charges, duties, impositions and liabilities of any kind whatsoever (including any Claims by Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any Province or Territory of Canada, the Canada Revenue Agency and any similar revenue or taxing authority, including any municipality, of any Province or Territory of Canada), including all interest, penalties, fines and additions with respect to such amounts;

**“Transaction Agreement”** means the Transaction Agreement among the Applicants and the Plan Sponsor dated November 25, 2010 attached hereto as Schedule “A”, as the same may be amended, restated and varied from time to time in accordance with the terms thereof;

**“Terminated Pension Plans”** means the NB Hourly Plan, the NB Salaried Plan, the Fraser Papers Inc. Defined Contribution Pension Plan, the Régime de retraite des salaires de Papiers Fraser Inc. Pates Thurso, the Régime de retraite des syndiques de Papiers Fraser Inc. Pates Thurso and the Pension Plan for Eligible Employees of Fraser Papers Limited;

**“Trust Order”** means an Order made by the Court within the CCAA Proceedings authorizing Fraser to settle the Creditor Trusts, approving the form and authorizing the execution of the creditor trust agreements and confirming the appointment of the trustees of each of the Creditor Trusts;

**“Trusts”** means, collectively, the Creditor Trusts, the NB Hourly Trust and the NB Salaried Trust;

**“Twin Rivers”** means Twin Rivers Paper Company Inc., a corporation governed by the *Business Corporations Act* (Ontario);

**“Twin Rivers APA”** means the asset purchase agreement between the Applicants and BAM and/or such other Person(s) as it may designate, namely Twin Rivers and Twin Rivers Paper Company LLC dated as of December 22, 2009, as amended;

**“Unaffected Claim”** has the meaning given to that term in Section 2.04 herein;

**“Unaffected Creditor”** means a Person who has an Unaffected Claim, but only in respect of such Unaffected Claim;

**“Unresolved Claim”** means an Affected Claim that was filed on a timely basis in accordance with the Claims Order but that is in dispute for voting and/or distribution purposes as at the date

of the Meeting or as at the Plan Implementation Date, as the case may be, pursuant to the Claims Order;

**“Unsecured Creditor Class”** means a class of Persons consisting of all Affected Creditors with an Affected Claim;

**“U.S.”** means United States of America;

**“U.S. \$”** means U.S. dollars;

**“U.S. Court”** means the United States Bankruptcy Court for the District of Delaware having jurisdiction over the Chapter 15 Proceedings;

**“U.S. Creditor Trust”** means the U.S. trust to be formed on or before the Plan Implementation Date which shall hold any Promissory Notes, Common Shares and any Cash for the benefit of all Affected Creditors with Proven Distribution Claims other than the NB Hourly Claim and the NB Salaried Claim that are resident in the U.S. pursuant to the creditor trust agreements in the proposed form to be confirmed by the Trust Order;

**“U.S. Sale Order”** means the order to be sought from the U.S. Court recognizing and giving effect to the Vesting Order in the Chapter 15 Proceedings and approving such sale, in a form and substance satisfactory to the Plan Sponsor, acting reasonably;

**“Vesting Order”** means one or more Orders made by the Court under the CCAA as contemplated under the Plan and the Transaction Agreement to approve and give effect to the Transaction Agreement and the transactions contemplated therein and, among other things, (i) vesting the FPHI Shares in the Plan Sponsor free and clear of all Encumbrances, (ii) vesting the Included Property in the Purchased Companies free and clear of any and all Encumbrances except Permitted Encumbrances, and (iii) extinguishing and forever barring any and all liabilities, obligations and claims of the Purchased Companies other than the Continuing Obligations, in a form and substance satisfactory to the Plan Sponsor; and

**“Website”** means the website of the Monitor, [www.pwc.com/car-fraserpapers](http://www.pwc.com/car-fraserpapers).

## **1.02 Certain Rules of Interpretation**

In the Plan:

- (a) the division of the Plan into Articles, Sections, subsections and clauses and the use of headings and a table of contents are for convenience of reference only and do not affect the construction or interpretation of the Plan, nor are the descriptive headings of Articles and Sections intended as complete or accurate descriptions of the contents thereof;
- (b) the terms “the Plan”, “hereof”, “hereunder”, “herein” and similar expressions refer to the Plan and not to any particular Article, Section, subsection, clause or Schedule of or to the Plan;



- (c) words importing the singular include the plural and *vice versa* and words importing any gender include all genders;
- (d) where any reference is made to a Person, including but not limited to the Applicants, Directors, DIP Lender, Plan Sponsor and Monitor, such reference shall be deemed to include all officers, directors, affiliates, employees and agents of such Person;
- (e) the words “includes” and “including” and similar terms of inclusions shall not, unless expressly modified by the words “only” or “solely”, be construed as terms of limitation but rather shall mean “includes without limitation”, “including without limitation”, “includes but is not limited to” and “including but not limited to”, as applicable, so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- (f) the word “or” is not exclusive;
- (g) unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;
- (h) all references to the CCAA are references to the CCAA as it existed on the date of the Initial Order;
- (i) all accounting terms not otherwise defined herein shall have the meanings ascribed to them, from time to time, in accordance with the Canadian generally accepted accounting principles, including those prescribed by the Canadian Institute of Chartered Accountants;
- (j) unless otherwise indicated, all references to currency and to “\$” are U.S. dollars;
- (k) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day;
- (l) unless otherwise specified, the time periods within or following which any act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day; and
- (m) whenever any action is to be taken under the Plan on a day other than a Business Day, such action shall be taken on the next succeeding Business Day.

### **1.03 Currency Conversion**

All Affected Claims dominated in a currency other than U.S. dollars shall, for the purposes of the Plan be converted to and shall constitute obligations in U.S. dollars, such calculation to be effected using the Bank of Canada noon spot rate on the Filing Date (exchange rate conversation on such date was: U.S. \$1.00 = CAD \$1.1273).

### **1.04 Interest**

Interest shall not accrue or be paid on any Affected Claims after the Filing Date, and no Affected Claims shall be entitled to interest accruing after or on the Filing Date.

### **1.05 Schedules**

The following are the Schedules to the Plan:

Schedule “A” – Transaction Agreement, without schedules;

Schedule “B” – Promissory Notes; and

Schedule “C” – Share Certificate.

## **ARTICLE II PURPOSE AND EFFECT OF PLAN**

### **2.01 Purpose**

The purpose of the Plan is to implement the consummation of the Transaction Agreement and to settle Affected Claims and effect a compromise and arrangement of all Affected Claims against the Applicants in a manner that provides consistent and equitable treatment among the Affected Creditors of the Applicants and allows for the orderly allocation of the Distribution Pool to the Affected Creditors. Affected Creditors with Proven Distribution Claims will be allocated their Pro Rata Share from the Distribution Pool. The Affected Creditors’ allocated assets of the Distribution Pool will be delivered to one of the Trusts, which have been or will be established on the Plan Implementation Date. The purpose of each of the Trusts is to hold, administer and (subject to the terms of the Common Shares and the Promissory Notes) realize upon the allocated assets of the Distribution Pool held by each trust, to facilitate a future distribution of Cash to the beneficiaries of each trust.

The Plan is presented to the Affected Creditors in the expectation that all Persons with an interest in the Applicants will derive a greater benefit from the implementation of the Plan, with the support of the DIP Lender and the creation and funding of the Creditor Trusts, than would result from a bankruptcy of the Applicants.

### **2.02 Substantively Consolidated Plan**

The Plan is presented by the Applicants to the Affected Creditors on a substantively consolidated basis in accordance with the Substantive Consolidation Order for the sole purpose of permitting

Affected Creditors having Proven Voting Claims to vote on the Plan and Affected Creditors having Proven Distribution Claims to receive distributions under the Plan in accordance with the terms hereof.

Affected Creditors under the substantively consolidated Plan will have one Claim for voting and distribution purposes against the Applicants and will not have individual Claims against each Applicant.

### **2.03 Affected Persons**

The Plan will become effective on the Plan Implementation Date and shall be binding on and enure to the benefit of the Applicants, the Directors, the Plan Sponsor, the Affected Creditors and all other Persons named or referred to in, or subject to the Plan, in accordance with its terms but, subject to Article V herein as it relates only to the transactions contemplated under the Transaction Agreement, shall not affect Unaffected Creditors with respect to and to the extent of their Unaffected Claims.

### **2.04 Unaffected Claims**

Subject to Article V herein as it relates only to the transactions contemplated under the Transaction Agreement, the Plan does not compromise or affect the following Claims and any rights that may exist in respect thereof (collectively, the “**Unaffected Claims**”):

- (a) Claims secured by the CCAA Charges other than in respect of the Inter-Company Charge;
- (b) Claims of the Directors pursuant to an indemnity from any Applicant which are not otherwise covered by the Directors’ Charge;
- (c) any Claim against any Director that cannot be compromised due to the provisions of Section 5.1(2) of the CCAA;
- (d) Government Priority Claims;
- (e) Secured Claims; and
- (f) Post-Filing Claims.

## **ARTICLE III CLASSIFICATION OF CREDITORS AND PROCEDURAL MATTERS**

### **3.01 Classes of Creditors**

For the purposes of considering and voting on the Plan, the Affected Creditors shall constitute a single class, the “**Unsecured Creditor Class**”.

### **3.02 Claims Procedure**

Creditors shall prove their Claims, vote in respect of the Plan and receive distributions provided for under and pursuant to the Plan in accordance with the Claims Order, the Meeting Order and the Plan, as applicable.

### **3.03 Claims Bar Date and Restructuring Claims Bar Date**

Nothing in the Plan extends or shall be interpreted as extending or amending the Claims Bar Date or the Restructuring Claims Bar Date, or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Order, the Meeting Order, the Plan and/or the Sanction Order.

### **3.04 No Vote or Distribution in Respect of Unaffected Claims**

Notwithstanding anything to the contrary herein, no Unaffected Creditor shall be entitled to vote or receive any distributions under the Plan in respect of such Unaffected Claim. Nothing in the Plan shall affect the Applicants' rights and defences with respect to any Unaffected Claim.

### **3.05 Approval by Creditors**

In order to be approved by the Affected Creditors, the Plan must receive an affirmative vote by the Required Majority.

### **3.06 Inter-Company Claims**

Notwithstanding anything to the contrary herein, the Applicants shall not be entitled to vote in respect of the Plan and shall not receive any distributions pursuant to the Plan in respect of any Inter-Company Claims or otherwise.

### **3.07 Meeting of Creditors**

The Meeting shall be held in accordance with the Meeting Order, the Claims Order and any further Order of the Court.

### **3.08 Voting**

Each Affected Creditor who is entitled to vote at the Meeting, pursuant to and in accordance with the Meeting Order, shall be entitled to one vote equal to the dollar value of its Affected Claim determined as a Proven Voting Claim.

### **3.09 Voting of Unresolved Claims**

Subject to Section 3.10, each Affected Creditor holding an Unresolved Claim shall be entitled to attend the Meeting and shall be entitled to one vote as such Meeting. The Monitor shall keep a separate record of votes cast by Affected Creditors holding Unresolved Claims and shall report to the Court with respect thereto at the Plan Sanction Hearing. The votes cast in respect of any Unresolved Claim shall not be counted for any purposes unless, until and only to the extent that

such Unresolved Claim is finally determined to be a Proven Voting Claim in accordance with the Claims Order, the Meeting Order, the Plan and any further Order of the Court.

### **3.10 Procedure for Valuing Voting Claims**

The procedure for resolving Unresolved Claims for voting purposes shall be as set forth in the Claims Order, the Meeting Order, the CCAA and the Plan. The Applicants and the Monitor shall have the right to seek the assistance of the Court in valuing any Unresolved Claim in accordance with the Claims Order, the Meeting Order, the CCAA and the Plan, if required, to ascertain the result of any vote on the Plan.

## **ARTICLE IV TREATMENT OF CREDITORS**

### **4.01 Compromise of Affected Claims**

For the purposes of the Plan, Affected Creditors shall receive the treatment as provided in the Plan on account of their Affected Claims and on the Plan Implementation Date all Affected Claims shall be compromised, settled, released and otherwise affected in accordance with the terms of the Plan.

### **4.02 Unaffected Creditors**

Subject to Article V herein as it relates only to the transactions contemplated under the Transaction Agreement, all Unaffected Claims shall be unaffected by the Plan.

### **4.03 Payment of Government Priority Claims**

The Government Priority Claims shall be paid in full in Cash by the Applicants other than the Purchased Companies to Her Majesty in Right of Canada or the applicable province within six (6) months of the date of the Sanction Order, in accordance with the CCAA.

### **4.04 Implementation Payment**

Subject to the Applicants having sufficient Cash available (the “**Aggregate Implementation Payment Amount**”) after repayment of all amounts owing to (i) the DIP Lender and secured under the DIP Lender’s Charge (including a reserve to conclude the CCAA Proceedings) and (ii) the Secured Creditors, (collectively, the “**Prior Repayments**”), a payment shall be made by the Applicants to each Affected Creditor with a Proven Distribution Claim in an amount equal to the lesser of: (i) the full amount of the Affected Creditor’s Proven Distribution Claim (if less than \$500.00); or (ii) \$500.00. If the Applicants have insufficient Cash to fund the Aggregate Implementation Payment Amount in full after repaying the Prior Repayments, the Implementation Payment to each Affected Creditor with a Proven Distribution Claim shall be reduced on an equal basis to ensure that the Aggregate Implementation Payment Amount does not exceed the Cash available to the Applicants to make such payment. If the Cash available to the Applicants to fund a reduced Aggregate Implementation Payment Amount would result in an Implementation Payment of less than \$100.00 to each Affected Creditor with a Proven Distribution Claim, the Applicants shall not be required to incur the cost to make such

distribution (such distribution made under this Section **4.04**, referred to as the “**Implementation Payment**”).

#### **4.05 Delivery of Implementation Payment**

The Implementation Payment to Affected Creditors with Proven Distribution Claims shall be made by prepaid ordinary mail by the Monitor as follows:

- (a) to the addresses set forth in the Proofs of Claim filed by such Affected Creditors in accordance with the Claims Order;
- (b) if applicable, to the addresses set forth in any written notices of address change delivered to the Monitor after the date on which any corresponding Proof of Claim was filed, provided such notice is received by the Monitor at least five (5) Business Days prior to the Plan Implementation Date; or
- (c) if applicable, and to the extent differing from the foregoing, to the address of such Affected Creditors’ respective legal representatives, in trust for such Affected Creditors.

#### **4.06 Unclaimed Distributions**

If any Person entitled to a Implementation Payment cannot be located on the Plan Implementation Date or at any time thereafter or otherwise fails to claim his Implementation Payment hereunder, then such Cash shall be segregated and set aside by the Monitor on behalf of such Person. If such Person is located within two (2) months of the Implementation Payment Date, such Cash shall be distributed to such Person by the Monitor. If such Person cannot be located within two (2) months of the Implementation Payment Date, any segregated Cash shall be added to the Reserve held by the Monitor in respect of Unresolved Claims and such Person shall be deemed to have released its Claim to such Cash and such portion of the Affected Creditors’ Claim shall be discharged and forever barred. Nothing contained in the Plan shall require the Monitor to take any steps to attempt to locate any Affected Creditor.

If any Implementation Payment is not negotiated or deposited by such Affected Creditor within the time period permitted by the Canadian Payment Association rules or other clearing rules applicable to Canadian bank accounts such that the item becomes stale-dated or otherwise not capable of being negotiated, the Applicant shall be under no obligation to re-issue a Implementation Payment to that Affected Creditor. In such event, the Affected Creditor shall be deemed to have released its interest in such Implementation Payment, and the amount of that Affected Creditor’s distribution shall be remitted to the Creditor Trusts.

#### **4.07 Allocation of Distribution Pool to Affected Creditors and Delivery to the Trusts**

On the Plan Implementation Date, the Monitor shall, after establishing the Reserve as contemplated in Section **4.09(2)** herein, allocate to each Affected Creditor in the Unsecured Creditor Class with a Proven Distribution Claim its Pro Rata Share of assets remaining in the Distribution Pool, in full and final satisfaction, compromise, settlement, release and discharge of and exchange for each such Proven Distribution Claim. The Applicants, in consultation with the

Monitor, shall deliver the allocated assets from the Distribution Pool in respect of the Affected Creditors with Proven Distribution Claims in the Unsecured Creditor Class in the manner contemplated in Section 4.08 herein as follows:

- (a) in respect of the NB Hourly Claim to the NB Hourly Trust;
- (b) in respect of the NB Salaried Claim to the NB Salaried Trust; and
- (c) in respect of all other Proven Distribution Claims to the Creditor Trusts in accordance with the terms of the Trust Order and the creditor trust agreements to be confirmed therein.

#### **4.08 Delivery of Allocated Assets from Distribution Pool to the Trusts**

On the Plan Implementation Date, upon being advised by the Monitor of the allocation of the Distribution Pool among the NB Hourly Trust, the NB Salaried Trust and the Creditor Trusts as contemplated in Section 4.07 herein, and establishing the amount of the Reserve as contemplated by Section 4.09 herein, the Applicants shall cause Twin Rivers to exchange the Share Certificate and the Promissory Notes for share certificates and promissory notes in the amount of the allocation in the name of the Trustee for each of the NB Hourly Trust, the NB Salaried Trust and the Creditor Trusts for the benefit of the beneficiaries of such Trusts and in the amount of the Reserve in the name of the Applicants. On the Final Determination Date, upon being advised by the Monitor of the allocation of the Reserve among the NB Hourly Trust, the NB Salaried Trust and the Creditor Trusts, the Applicants shall cause Twin Rivers to exchange the share certificates and promissory note in respect of the Reserve for share certificates and promissory notes in the amount of the allocation in the name of the Trustee for each of the NB Hourly Trust, the NB Salaried Trust and the Creditor Trusts for the benefit of the beneficiaries of the Trusts.

#### **4.09 Unresolved Claims**

(1) A Creditor holding an Unresolved Claim will not be entitled to receive an allocation, delivery or distribution under the Plan in respect thereof unless and until such Unresolved Claim becomes a Proven Distribution Claim.

(2) In the case of any Claim that is an Unresolved Claim on the Plan Implementation Date, the Applicants and the Monitor both acting reasonably (and subject to their rights to seek directions from the Court), will establish a reserve for such Unresolved Claims from the Distribution Pool and the Cash for the Implementation Payment (the “**Reserve**”). The Applicants and the Monitor shall continue to hold the Reserve for the benefit of the Affected Creditors ultimately determined to have Proven Distribution Claims as of the Final Determination Date.

(3) If an Unresolved Claim is ultimately disallowed in whole or in part in accordance with the Claims Order after the Plan Implementation Date, any portion of the Reserve in respect of such Unresolved Claim will become available for allocation to the Affected Creditors with Proven Distribution Claims by making a further allocation to the Affected Creditors with Proven Distribution Claims in accordance with Section 4.07 herein of their Pro Rata Share of the

Distribution Pool from the portion of the Reserve for such Unresolved Claims on the Final Determination Date and deliver it to the Trusts in accordance with Section 4.08 herein.

(4) On the Final Determination Date, the Monitor shall (i) allocate to the Affected Creditors with Unresolved Claims that become Proven Distribution Claims, their Pro Rata Share of the Distribution Pool from the Reserve and deliver it to the Creditor Trusts in accordance with Section 4.08 herein, (ii) pay the Implementation Payment to such Affected Creditor, and (iii) remit any remaining Cash in the Reserve to the Creditor Trusts.

#### **4.10 Withholding Requirements**

In connection with the Plan, any Implementation Payment made hereunder by the Applicants or the Monitor shall be made net of all applicable Taxes. Notwithstanding any other provision of the Plan, each Affected Creditor that is to receive an Implementation Payment pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed by any Governmental Authority (including income, withholding and other Tax obligations on account of such distribution). The Applicants and the Monitor, as necessary, shall be authorized to take any and all actions as may be necessary or appropriate to comply with such withholding and reporting requirements. All amounts withheld on account of Taxes shall be treated for all purposes as having been paid to the Affected Creditor in respect of which such withholding was made, provided such withheld amounts are remitted to the appropriate Governmental Authority.

## **ARTICLE V TRANSACTION AGREEMENT**

### **5.01 Incorporation of Transaction Agreement**

The Plan is to be implemented, and all Court orders and other actions relating to this Plan are to be made or taken, in conjunction with the implementation of the transactions contemplated by the Transaction Agreement. The Plan shall be deemed to incorporate the terms and conditions of the Transaction Agreement as they relate to the Applicants and their respective: (a) property, assets and undertaking; and (b) debts, obligations, claims and liabilities of any kind whatsoever.

### **5.02 Included Property**

For greater certainty, and notwithstanding any other provision of the Plan, upon implementation of the Plan and the Transaction Agreement all right, title and interest in and to: (a) the Included Property shall be held by and vest in the Purchased Companies; and (b) the Equity Interests of FPHI shall be transferred to and vest in the Plan Sponsor; in each case free and clear of any and all charges, liens and encumbrances whatsoever.

### **5.03 Continuing Obligations & Release**

For greater certainty, and notwithstanding any other provision of the Plan, upon implementation of the Plan and the Transaction Agreement: (a) the Purchased Companies shall have no debts,



obligations, claims or liabilities whatsoever other than the Continuing Obligations; and (b) any and all debts, obligations, claims or liabilities of the Purchased Companies other than Continuing Obligations, whenever and howsoever incurred or arising, shall be deemed to have been released, waived, extinguished and forever barred as against the Purchased Companies, the Plan Sponsor, and the Plan Sponsor's Affiliates (as defined in the Transaction Agreement).

## **ARTICLE VI SANCTION ORDER AND VESTING ORDER**

### **6.01 Application for Sanction Order and Vesting Order**

A motion shall be brought by the Applicants seeking the Sanction Order and the Vesting Order that is to be heard by the Court as soon as reasonably practicable following the approval of the Plan by the Required Majority of the Affected Creditors.

### **6.02 Effect of Sanction Order and Vesting Order**

In addition to approving and sanctioning the Plan, and subject to the discretion of the Court, the Sanction Order and Vesting Order shall, among other things and without limitation:

- (a) declare that (i) the Plan has been approved by the Required Majority of Affected Creditors in conformity with the CCAA; (ii) the Applicants have complied with the provisions of the CCAA and the Orders made in the CCAA Proceedings in all respects; (iii) the Court is satisfied that the Applicants have not done nor purported to do anything that is not authorized by the CCAA; and (iv) the Plan and the transactions contemplated thereby are fair and reasonable;
- (b) direct and authorize the Applicants and the Monitor to fulfill the obligations under the Plan, including to complete the transactions and distributions contemplated under the Plan free and clear of all Claims;
- (c) confirm the effect of the Claims Order, including, without limitation, the effect of the Claims Bar Date, the Restructuring Claims Bar Date and the releases, injunctions and prohibitions provided thereunder;
- (d) confirm the effect of the Meeting Order;
- (e) effective on the Plan Implementation Date, permanently stay all Claims and declare that the compromises effected hereby are approved, binding and effective as herein set out upon all Creditors and other Persons affected by the Plan;
- (f) effective on the Plan Implementation Date, declare that the compromises, releases and injunctions effected hereby are approved, binding and effective as of the Plan Implementation Date upon all Affected Creditors and all other Persons affected by the Plan and shall inure to the benefit of the Applicants, the Directors, the Plan Sponsor, the Monitor and all Persons affected by the Plan;

- (g) continue the stay of proceedings under the Initial Order until the CCAA Proceedings are terminated by Order of the Court;
- (h) effective on the Plan Implementation Date, declare that each of the Charges and the Unaffected Claims shall be terminated, discharged and released as against the FPHI Shares, the Purchased Companies and Included Property;
- (i) effective on the Plan Implementation Date, declare that all right, title and interest of the Applicants in and to the FPHI Shares shall vest in the Plan Sponsor free and clear of all Encumbrances;
- (j) effective on the Plan Implementation Date, declare that all right, title and interest of the Applicants (other than the Purchased Companies) in and to the Included Property shall vest in the Purchased Companies, free and clear of all Encumbrances (other than Permitted Encumbrances);
- (k) effective on the Plan Implementation Date, discharge and extinguish all Encumbrances (other than Permitted Encumbrances) on the Purchased Companies and the Included Property;
- (l) subject to Section 5.1(2) of the CCAA, effective on the Plan Implementation Date, stay any and all steps or proceedings, including, without limitation, administrative orders, declarations or assessments, commenced, taken or proceeded with against the Directors or that could have been commenced, taken or proceeded with against the Directors save for the stay of proceedings, and discharge the Directors from any liability arising as a result of their acting as a director and/or officer of any of the Applicants;
- (m) confirm the releases contemplated by Section **9.01** of the Plan;
- (n) effective on the Plan Implementation Date, permanently enjoin the commencement or prosecution, whether directly, derivatively or otherwise, of any demands, claims, actions, counterclaims, suits, judgments, or other remedy or recovery with respect to any indebtedness, liability, obligation or cause of action released, discharged or terminated pursuant to the Plan;
- (o) confirm that the Monitor and the Applicants' advisors shall continue to have the benefit of the Administration Charge and the Directors shall continue to have the benefit of the Directors Charge, as provided in the Initial Order until such time as the CCAA Proceedings are terminated and all obligations secured thereby are paid in full; and
- (p) effective on the Plan Implementation Date, discharge the Inter-Company Charge and the DIP Lender Charge and, except as against the FPHL Shares and the Purchased Companies, continue the Administration Charge and the Directors' Charge until the CCAA Proceedings are terminated and all obligations secured thereby are paid in full.

**ARTICLE VII**  
**CONDITIONS PRECEDENT**

**7.01 Conditions Precedent to Implementation of Plan**

The implementation of the Plan is conditional upon the fulfilment, satisfaction or waiver by the Applicants, the Plan Sponsor and the DIP Lenders, as applicable, of the following conditions on or before the Plan Implementation Date:

- (a) the Plan being approved by the Required Majority;
- (b) the Plan terms being acceptable to the Plan Sponsor;
- (c) the Sanction Order and Vesting Order being issued by the Court on or before February 10, 2011 or such later date as may be agreed by the Applicants and the Monitor;
- (d) the Sanction Recognition Order and the U.S. Sale Order being issued by the U.S. Court on or before February 11, 2011 or such later date as may be agreed by the Applicants and the Monitor;
- (e) all applicable appeal periods in respect of the Sanction Order, the Sanction Recognition Order, the Vesting Order and the U.S. Sale Order having expired and any appeals therefrom having been finally disposed of by the applicable appellate tribunal;
- (f) the transactions, events and actions contemplated under the Transaction Agreement having been completed and the Applicants and the Plan Sponsor being in compliance with all of their obligations and agreements under the Transaction Agreement, the Plan, the Sanction Order, the Sanction Recognition Order, the Vesting Order and the U.S. Sale Order;
- (g) arrangements satisfactory to the Applicants and the DIP Lender having been made for the repayment of all amounts secured under the DIP Lender's Charge;
- (h) the resolution of Secured Claims on terms acceptable to the Applicants and the Monitor or pursuant to an Order of the Court;
- (i) the issuance of replacement Promissory Notes and the resolution and release of the holdback in accordance with the Twin Rivers APA;
- (j) the establishment and funding of the Creditor Trusts to hold the Promissory Notes and the Common Shares for the benefit of the Affected Creditors with Proven Distribution Claims (other than in respect of the NB Hourly Claim and the NB Salaried Claim) from and after the Plan Implementation Date as contemplated under the Trust Order; and

- (k) the execution of releases satisfactory to the Applicants and the Directors by the administrators of the Terminated Pension Plans, the Superintendent of Pensions for New Brunswick and the Regie des rentes du Quebec; and
- (l) all relevant Persons having executed, delivered and filed all documents and other instruments and the Applicants having obtained all consents and approvals that, in the opinion of the Applicants, acting reasonably, are necessary to implement the provisions of the Plan.

## **7.02 Waiver**

Any waiver of the conditions in Section 7.01 hereof capable of being waived shall be in writing by the Applicants, the Plan Sponsor or the DIP Lender, as applicable.

## **7.03 Monitor's Certificate**

Upon being advised by the Applicants and the Plan Sponsor that the conditions set out in Section 7.01 hereof have been satisfied or waived, the Monitor shall file with the Court a certificate that states that all conditions precedent set out in Section 7.01 of the Plan have been satisfied or waived.

# **ARTICLE VIII EFFECT OF PLAN**

## **8.01 Effect of Plan Generally**

The Plan (including, without limitation, the releases and injunctions contained in the Plan), upon being sanctioned and approved by the Court pursuant to the Sanction Order and the Sanction Order being recognized by the U.S. Court pursuant to the Sanction Recognition Order, shall be binding as of the Plan Implementation Date on all Persons irrespective of the jurisdiction in which the Persons reside or in which the Claims arose and shall constitute:

- (a) a full, final and absolute settlement of all rights of the holders of all Claims; and
- (b) an absolute release and discharge of all indebtedness, liabilities and obligations of the Applicants of or in respect of the Claims.

## **8.02 Consents, Waivers and Agreements**

On the Plan Implementation Date, each Affected Creditor shall be deemed to have consented and to have agreed to all of the provisions of the Plan in its entirety. In particular, each Affected Creditor shall be deemed:

- (a) to have executed and delivered to the Monitor and the Applicants all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety; and

- (b) to have waived any and all defaults then existing or previously committed by the Applicants in any covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in any contract, agreement, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto, existing between any such Affected Creditor and the Applicants and any and all notices of default and demands for payment under any instrument, including, without limitation any guarantee, shall be deemed to have been rescinded.

## ARTICLE IX RELEASES AND INJUNCTIONS

### 9.01 Release and the Released Parties

For good and valuable consideration, including, without limitation, the settlement by the Applicants of the Creditor Trusts and the distributions to be made pursuant to the Plan, every Person, (regardless of whether or not such person is a Creditor), and save and except for Unaffected Creditors with respect to their Unaffected Claims (other than as it relates to the Included Property or the Purchased Companies pursuant to the Transaction Agreement), on the Person's own behalf and on behalf of the Person's respective affiliates, present and former officers, directors, employees, associated individuals, auditors, beneficiaries, financial advisors, legal counsel, other professionals, sureties, insurers, indemnities, agents, dependents, heirs, representatives and assigns, as applicable, hereby fully, finally, irrevocably and unconditionally releases and forever discharges each of the Applicants, the Directors, the Monitor, the Plan Sponsor, the DIP Lender, Representative Counsel and all current and former members of all pension committees together with each of their and their affiliates' respective current and former legal representatives, directors, officers, predecessors, heirs, spouses, dependants, administrators, executors, subsidiaries, affiliates, related companies, member companies, partners, shareholders, employees, solicitors, attorneys, auditors, contractors, consultants, financial advisors, servants, agents and assigns (collectively, the "**Released Parties**" and individually, a "**Released Party**"), of and from any and all claims, including, without limitation, all claims in respect of statutory liabilities of Directors and any alleged fiduciary (whether acting as a director, officer, member of pension committee or acting in any other capacity in connection with the administration of the Terminated Pension Plans or any other pension or benefit plans or trusts of any of the Applicants) and any and all past, present and future claims, rights, interests, actions, rights of indemnity, liabilities, demands, duties, injuries, damages, expenses, fees (including solicitors' fees and liens), costs, compensation, or causes of action of whatsoever kind or nature whether foreseen or unforeseen, known or unknown, asserted or unasserted, contingent or actual, liquidated or unliquidated, whether in tort or contract, whether statutory, at common law or in equity, based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, any act, inaction or omission existing or taking place on or prior to the Plan Implementation Date relating to or otherwise in connection with the Applicants including, without limitation, the business and operations of the Applicants, the property of the Applicants, the CCAA Proceedings, the Chapter 15 Proceedings, all pension plans administered by the Applicants, including the Terminated Pension Plans, or in respect of which the Released Parties had any role, whether in their capacity as Directors or in any other capacity, including as or on

behalf of the administrators of the Terminated Pension Plans and any other employee benefit or retirement savings plan, including without limitation any post-employment benefits and as trustees of the health and welfare trust, and all agreements with the DIP Lender (collectively, the **“Released Claims”**); and each Person shall not make or continue any claims or proceedings whatsoever based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, the substance of the facts giving rise to any matter herein released (including, without limitation, any action, cross-claim, counter-claim, third party action or application) against any Person who claims or might reasonably be expected to claim in any manner or forum against one or more of the Released Parties, including, without limitation, by way of contribution or indemnity, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation, and that in the event that any of the Released Parties are added to such claim or proceeding, it will immediately discontinue any such claim or proceeding. Notwithstanding the foregoing, nothing herein shall release or discharge a Released Party from its obligations, if any, under the Plan. This Section 9.01 does not release: (i) any Unaffected Claims; (ii) any claim referred to in Section 5.1(2) of the CCAA or (iii) any claim against any actuarial firm or record keeper/third party administrator affiliated with such actuarial firm, whether such firm operates as a partnership, limited partnership or corporation (which for greater certainty shall not include the Released Parties) of the Terminated Pension Plans (the **“Non-Released Parties”**) solely for the several liability for such Non-Released Party’s contribution to any loss or damages (those matters included in subparagraphs (i), (ii) and (iii) being collectively referred to herein as the **“Non-Released Claims”**). For greater certainty, and notwithstanding anything else contained herein, any Non-Released Claim that may be asserted by any Person against any Non-Released Parties expressly excludes any right of such Non-Released Party to claim over, claim against or otherwise assert or pursue any rights or any claim against any of the Released Parties at any time, all of which are hereby released.

## 9.02 Injunction

All Persons, along with their respective affiliates, present and former officers, directors, employees, associated individuals, auditors, financial advisors, legal counsel, other professionals, sureties, insurers, indemnities, agents, dependents, heirs, representatives and assigns, as applicable, are permanently and forever barred, estopped, stayed and enjoined, on and after the Plan Implementation Date, with respect to the Released Claims, from:

- (a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties;
- (b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Released Parties or their property;
- (c) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation, by way of contribution or indemnity or other relief, in common law, or in equity, breach of trust or breach of

fiduciary duty or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative, regulatory or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim in any manner or forum, against one or more of the Released Parties;

- (d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind; or
- (e) taking any actions to interfere with the implementation or consummation of the Plan, the Transaction Agreement or rights under the Trusts.

This Section 9.02 does not apply to any Non-Released Claims or to the enforcement of any obligations under the Plan. For greater certainty, and notwithstanding anything else contained herein, any Non-Released Claim that may be asserted by any Person against any Non-Released Parties expressly excludes any right of such Non-Released Party to claim over, claim against or otherwise assert or pursue any rights or any claim against any of the Released Parties at any time, all of which are hereby enjoined.

### **9.03 Carve Out to Release and Injunction**

For greater certainty: (i) nothing in the Plan shall release, enjoin or compromise the Non-Released Claims; and (ii) any Non-Released Claim that may be asserted by any Person against any Non-Released Parties expressly excludes any right of such Non-Released Party to claim over, claim against or otherwise assert or pursue any rights or any claim against any of the Released Parties at any time.

### **9.04 Inter-Company Claims**

For greater certainty and for good and valuable consideration including, without limitation, the terms of the Plan and the release of all Claims as against the Applicants, each of the Applicants has agreed and shall be deemed to have agreed that, conditional only upon the implementation of the Plan on the Plan Implementation Date:

- (a) it shall not prove, nor vote, nor receive a distribution under the Plan on account of its Inter-Company Claims, if any; and
- (b) its Inter-Company Claims, if any, are hereby fully, finally, irrevocably and unconditionally waived and released and each of the other Applicants stands fully and finally released, remised and forever discharged of any and all liability in connection with such Inter-Company Claims.

## **ARTICLE X PLAN AMENDMENTS OR TERMINATION**

### **10.01 Plan Amendment**

Prior to and during the Meeting, the Applicants, in consultation with the Monitor, may at any time and from time to time (subject to the approval of the Plan Sponsor) amend, modify and/or supplement the Plan by written instrument, and the Monitor shall post such amendment on the Website. The Applicants will give reasonable written notice to all Affected Creditors present at the Meeting of the details of any such amendment prior to the vote being taken to approve the Plan.

Following the Sanction Order, any amendment, modification or supplement to the Plan may be made by the Applicants by written instrument with the consent of the Monitor and the Plan Sponsor or approved by the Court provided that it concerns a matter which, in the opinion of the Applicants, the Monitor and the Plan Sponsor, each acting reasonably, is of an administrative nature required to better give effect to the implementation of the Plan and to the Sanction Order and is not adverse or prejudicial to the financial or economic interests of the Affected Creditors. The Monitor shall post such amendment on the Website and the Applicants shall file the amendment to the Plan with the Court, but no additional vote of the Affected Creditors will be necessary in order to give effect to such amendment to the Plan.

Any amended, modified or supplementary plan or plans of compromise or arrangement filed with the Court and, if required by this Section **10.01**, approved by the Court, shall, for all purposes, be and be deemed to be a part of, and be incorporated in the Plan.

### **10.02 Termination of the Plan**

At any time prior to the Plan Implementation Date, the Applicants may, subject to further order of the Court, determine not to proceed with the Plan notwithstanding any prior approvals given at the Meeting or the obtaining of the Sanction Order.

If the conditions precedent to implementation of the Plan are not satisfied or waived, if the Applicants determine not to proceed with the Plan, or if the Sanction Order are not issued by the Court: (a) the Plan shall be null and void in all respects; (b) any document or agreement executed pursuant to the Plan shall be deemed null and void; and (c) nothing contained in the Plan, and no act taken in preparation of the consummation of the Plan, shall constitute or be deemed to constitute a waiver or release of any Claims or any defences thereto by or against any of the Applicants or any other Person.

## **ARTICLE XI GENERAL PROVISIONS**

### **11.01 Severability of Plan Provisions**

If, prior to the Plan Implementation Date, any term or provision of the Plan is held by the Court to be invalid, void or unenforceable, the Court, at the request of the Applicants, may: (a) sever such term or provision from the balance of the Plan and provide the Applicants with the option to



proceed with the implementation of the balance of the Plan as of and with effect from the Plan Implementation Date; or (b) alter or interpret such term or provision to make it valid and enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such severing, holding, alteration or interpretation, and provided the Applicants proceed with the implementation of the Plan, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such severing, holding, alteration or interpretation. Notwithstanding the foregoing, no such severance, alteration or interpretation shall affect Unaffected Claims and the rights of Creditors with Unaffected Claims.

#### **11.02 Advice and Directions**

The Applicants and the Monitor shall each be entitled to apply to the Court from time to time for advice and directions concerning the implementation, operation and administration of the Plan.

#### **11.03 Paramountcy**

From and after the Plan Implementation Date, any conflict between the Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, credit document, agreement for sale, by-laws of the Applicants, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between one or more of the Creditors and the Applicants as at the Plan Implementation Date will be deemed to be governed by the terms, conditions and provisions of the Plan and the Sanction Order, which shall take precedence and priority.

#### **11.04 Responsibilities of the Monitor**

The Monitor is acting solely in its capacity as Monitor in the CCAA Proceedings and shall not be responsible or liable for any obligations of the Applicants hereunder. The Monitor shall have those powers and protections granted to it by the Plan, the CCAA and by any Order of the Court in the CCAA Proceedings, including the Initial Order, the Claims Order, the Meeting Order and the Sanction Order.

#### **11.05 Deeming Provisions**

In the Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

#### **11.06 Notices**

Any notice or communication to be delivered hereunder shall be in writing and shall reference the Plan and may, subject as hereinafter provided, be made or given by personal delivery, mail or by facsimile addressed to the respective parties as follows:

- (i) if to the Applicants:

Fraser Papers Inc.  
Box 762, Suite 200

Brookfield Place, 181 Bay Street  
Toronto, ON M5J 2T4

Attention: Glen McMillan, CRO  
Facsimile: (416) 359-8606

with a copy to:

Thornton Grout Finnigan LLP  
Suite 3200, Canadian Pacific Tower,  
100 Wellington St. West, P.O. Box 329  
Toronto Dominion Centre  
Toronto, ON M5K 1K7

Attention: D.J. Miller  
Facsimile: 416-304-1313

(ii) if to the Monitor:

PricewaterhouseCoopers Inc.  
Royal Trust Tower  
20th Floor, 77 King Street West  
Toronto, ON M5K 1G8

Attention: John McKenna  
Facsimile: (416) 941-8378

with a copy to:

Goodmans LLP  
333 Bay Street, Suite 3400  
Toronto ON M5H 2S7

Attention: Robert Chadwick  
Facsimile: (416) 979-1234

or to such other address as any party may from time to time notify the others in accordance with this Section 11.06. All such notices and communications that are hand delivered shall be deemed to have been received on the date of delivery, provided same is a Business Day. Any such notices and communications that are faxed shall be deemed to be received on the date faxed if sent before 5:00 p.m. on a Business Day and otherwise shall be deemed to be received on the Business Day next following the day upon which such fax was sent. Any notice or other communication sent by mail shall be deemed to have been received on the fifth Business Day after the date of mailing if mailed within Canada and on the ninth Business Day after the date of mailing if mailed outside of Canada. The unintentional failure by the Applicants to give a notice contemplated hereunder shall not invalidate any action taken by any Person pursuant to the Plan.

**11.07 Successors and Assigns**

The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, trustee, administrator, successor or assign of such Person.

**11.08 Further Assurances**

Notwithstanding that the transactions and events set out in the Plan shall be deemed to occur without any additional act or formality other than as set out herein, each of the Persons affected hereby shall make, do and execute or cause to be made, done or executed all such further acts, deeds, agreements, transfers, assurances, instruments, documents or discharges as may be reasonably required by the Applicants in order to implement and give effect to the Plan.

**11.09 Governing Law**

The Plan shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. In the event of any dispute or issue in connection with, or related to, the interpretation, application or effect of the Plan, such dispute or issue shall be subject to the exclusive jurisdiction of the Court.

Dated at **Toronto, Ontario** this 27<sup>th</sup> day of January, 2011.

**Schedule “A” – Transaction Agreement, without schedules**

**TRANSACTION AGREEMENT**

**BY AND AMONG**

**FRASER PAPERS INC., FRASER PAPERS LIMITED, FPS CANADA INC., FRASER  
PAPERS HOLDINGS INC., FRASER TIMBER LIMITED AND FRASER N.H. LLC**

**As the Vendors and Plan Proponents**

**AND**

**THE PLAN SPONSOR, AS HEREIN DEFINED**

**As the Purchaser and Plan Sponsor**

**DATED AS OF NOVEMBER 25, 2010**

## TRANSACTION AGREEMENT

**TRANSACTION AGREEMENT**, dated as of November 25, 2010 (the "Effective Date") by and among Fraser Papers Inc. ("FPI"), a corporation incorporated under the federal laws of Canada, Fraser Papers Limited ("Fraser Madawaska"), a corporation incorporated under the laws of the State of Maine, FPS Canada Inc., a corporation incorporated under the federal laws of Canada ("FPS Canada"), Fraser Papers Holdings Inc. ("FPHI"), a corporation incorporated under the laws of the State of Delaware, Fraser Timber Limited ("FTL"), a corporation incorporated under the laws of the State of Maine, and Fraser N.H. LLC ("FNHL"), a limited liability company formed under the laws of the State of Delaware (collectively, the "Vendors") and Brookfield Asset Management Inc., a corporation amalgamated under the laws of the Province of Ontario.

### RECITALS:

**WHEREAS**, on June 18, 2009, the Vendors commenced proceedings (the "CCAA Proceedings") in the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") under the *Companies' Creditors Arrangement Act* (Canada), R.S.C. 1985, c.C-36, as amended (the "CCAA"), pursuant to which, *inter alia*, PricewaterhouseCoopers Inc. was appointed as monitor (the "Monitor");

**AND WHEREAS**, on June 19, 2009, the Vendors sought and obtained recognition and provisional relief in an ancillary proceeding (the "Bankruptcy Case") pursuant to Chapter 15 of Title 11 of the *United States Code* 11 U.S.C. §§ 101-1532C, as amended (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

**AND WHEREAS**, the Vendors desire to propose a plan of arrangement or compromise on a substantively consolidated basis in the CCAA Proceedings, to be recognized and ratified in the Bankruptcy Case;

**AND WHEREAS**, in conjunction with their proposed plan of arrangement or compromise, the Vendors wish to sell to the Plan Sponsor all of the FPHI Shares (as hereinafter defined) on the basis that the Purchased Companies (as hereinafter defined) will at Closing (as hereinafter defined) hold all right, title and interest in the Included Property (as hereinafter defined) and will have no Liabilities (as hereinafter defined) other than the Continuing Obligations (as hereinafter defined), and on the other terms and conditions of this Agreement;

**AND WHEREAS**, the Plan Sponsor wishes to purchase from the Vendors all of the FPHI Shares on the basis that the Purchased Companies will at Closing hold all right, title and interest in the Included Property and will have no Liabilities other than the Continuing Obligations, and on the other terms and conditions of this Agreement;

**AND WHEREAS**, Plan Sponsor wishes to facilitate the plan of arrangement or compromise to be proposed by the Vendors in conjunction with the transactions contemplated by this Agreement;

**AND WHEREAS**, the boards of directors of each of the Vendors have determined that it is advisable and in the best interests of each of the Vendors' estates and the beneficiaries of such estates to proceed with the Plan (as hereinafter defined) and to consummate the transactions provided for herein pursuant to the Canadian Orders (as hereinafter defined) and the U.S. Orders (as hereinafter defined), and have approved the Plan and this Agreement;

**AND WHEREAS**, the Plan and the transactions contemplated by this Agreement and the Ancillary Agreements are subject to the approval of the Canadian Court and the Bankruptcy Court and will be consummated only subject to the terms and conditions set forth herein and in accordance with the Canadian Orders (as hereinafter defined) and the U.S. Orders (as hereinafter defined) to be entered in the CCAA Proceedings and the Bankruptcy Case, respectively;

**NOW, THEREFORE**, in consideration of the premises, representations and warranties and the mutual covenants and agreements set forth herein and other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, the Parties, agree as follows:

## **ARTICLE 1 DEFINITIONS; INTERPRETATION**

### **Section 1.1 Definitions.**

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

**"Accounts Receivable"** shall mean any and all accounts receivable, notes receivable, book debts, trade debts, rebates, refunds and other debts or receivables due or accruing due, together with all interest accrued on such items, and the full benefit of any security therefor, but excluding any Intercompany Receivable.

**"Affiliate"** shall mean, with respect to any Person, any other Person which Controls, is Controlled by or is under common Control with, directly or indirectly, such Person, and, if such Person is a natural person, includes any member of such Person's immediate family, or, if such Person is an entity, includes any trustee, member, general partner, manager, director or executive officer of, or any Person performing similar functions for, such Person.

**"Agreement"** shall mean this Transaction Agreement, including the Schedules and the Exhibits hereto, in each case as amended or supplemented from time to time.

**"Ancillary Agreements"** shall mean any and all agreements or documents entered into or executed by the Parties on or prior to Closing in connection with or pursuant to the terms of this Agreement and the transactions contemplated herein, all in form and substance satisfactory to the Plan Sponsor, acting reasonably.

**"Ashland Assets"** shall mean the property and assets of every kind and description used in the operation of or relating to the Ashland Mill.

**"Ashland Mill"** shall mean the lumber mill owned and operated by the Vendors at 100 Levesque Mill Road, Ashland, Maine 04732 and the operations carried on thereat.

"Assets" shall mean collectively the Ashland Assets, the Masardis Assets and the Gorham Assets. If the Gorham Assets and the Gorham Mill become Excluded Property in accordance with the terms set out in Section 2.3 of this Agreement, the term "Assets" shall mean collectively the Ashland Assets and the Masardis Assets.

"Bankruptcy Case" shall have the meaning given to such term in the recitals.

"Bankruptcy Code" shall have the meaning given to such term in the recitals.

"Bankruptcy Court" shall have the meaning given to such term in the recitals.

"Benefit Plans" shall mean all oral or written plans, arrangements, agreements, programs, policies, practices or undertakings of the Vendors with respect to some or all of the Employees and which provide for or relate to:

(a) bonus, profit sharing or deferred profit sharing, performance compensation, deferred or incentive compensation, supplemental retirement arrangements, share compensation, share purchase or share option, share appreciation rights, phantom stock, vacation or vacation pay, sick pay, employee loans, or any other compensation in addition to salary; or

(b) insured or self-insured benefits for or relating to income continuation or other benefits during absence from work (including short term disability, long term disability and workers compensation), hospitalization, health, welfare, legal costs or expenses, medical or dental treatments or expenses, life insurance, accident, death or survivor's benefits, supplementary employment insurance, day care, tuition or professional commitments or expenses or similar employment benefits.

"Books and Records" shall mean any and all books of account, legal, financial and accounting information and records, production reports and records, equipment logs, operating guides, manuals and marketing and advertising materials and all other files, correspondence and other information (whether written, printed, electronic or computer print out form, or saved on computer disc or other data and software storage and media devices), in any form, but excluding for greater certainty any books and records pertaining solely to the Excluded Property.

"Brookfield" shall mean Brookfield Asset Management Inc.

"Brookfield DIP Facility" shall mean the court approved senior secured superpriority revolving loan facility of up to a maximum amount of US\$25,000,000 provided to the Vendors by the DIP Lender.

"Brookfield Letters of Credit" shall mean the letters of credit or letters of guarantee issued or provided for the benefit of the Vendors under the Brookfield DIP Facility or otherwise by the DIP Lender, the Plan Sponsor or the Plan Sponsor's Affiliates.

"Budget" shall mean the rolling 19 week cash flow projection as at October 22, 2010 and attached as Exhibit B to the affidavit of Glen McMillan sworn October 28, 2010, as amended, updated, modified and supplemented pursuant to and in accordance with the terms of the Brookfield DIP Facility.



"Business" shall mean collectively, the Gorham Business and the Lumber Mill Business. If the Gorham Assets and the Gorham Mill become Excluded Property in accordance with the terms set out in Section 2.3 of this Agreement, the term "Business" shall mean the Lumber Mill Business.

"Business Day" shall mean any day of the year other than (a) any Saturday or Sunday, or (b) any other day on which the banks located in the Province of Ontario are required by Law to be closed for business.

"Canadian Approval and Vesting Order" shall mean one or more Orders of the Canadian Court in form and substance satisfactory to the Plan Sponsor, acting reasonably, approving and giving effect to this Agreement and the transactions contemplated herein and, among other things, (i) vesting the FPHI Shares in the Plan Sponsor free and clear of any and all Encumbrances except Permitted Encumbrances, (ii) vesting the Included Property in the Purchased Companies free and clear of any and all Encumbrances except Permitted Encumbrances, and (iii) extinguishing and forever barring any and all Liabilities of the Purchased Companies other than the Continuing Obligations.

"Canadian Court" shall have the meaning given to such term in the recitals.

"Canadian Orders" shall mean collectively, the Canadian Approval and Vesting Order, the Canadian Sanction Order, and any other Order of the Canadian Court, in form and substance satisfactory to the Plan Sponsor, acting reasonably, issued and entered in the CCAA Proceedings in respect of the transactions contemplated in this Agreement and the Plan.

"Canadian Sanction Order" shall mean an Order of the Canadian Court sanctioning the Plan in form and substance satisfactory to the Plan Sponsor, acting reasonably.

"CCAA" shall have the meaning given to such term in the recitals.

"CCAA Proceedings" shall have the meaning given to such term in the recitals.

"Closing" shall have the meaning given to such term in Section 12.1.

"Closing Date" shall have the meaning given to such term in Section 12.1.

"Consents and Approvals" shall mean all consents, approvals, notifications, waivers and/or filings from Third Parties (including any Governmental Authority and counter parties under any Contracts of the Purchased Companies) as may be necessary or desirable to effectuate the transactions contemplated by this Agreement including, without limitation all consents, approvals, notifications, waivers and/or filings required: (a) by the terms of (or which are necessary or desirable to avoid breach, contravention, violation, forfeiture, or termination of) the Contracts, the Permits, and the Timber Licences of the Purchased Companies; (b) to avoid the triggering of any Third Party rights resulting from the transactions contemplated by this Agreement, the Plan, the CCAA Proceedings or the Bankruptcy Case; and (c) by Order of the Canadian Court in the CCAA Proceedings pursuant to Section 11.3 of the CCAA, as such Order is recognized by the Bankruptcy Court in the Bankruptcy Case (all such Orders being to the satisfaction of the Plan Sponsor, acting reasonably).

"Continuing Employees" shall mean the Designated Employees who continue to be employed by the Purchased Companies as at the Closing Date. For greater certainty, Unionized Employees are not Continuing Employees.

"Continuing Obligations" shall have the meaning given to such term in Section 3.1.

"Contracts" means any and all contracts, agreements, leases instruments and other legally binding commitments or arrangements, written or oral.

"Control" means:

(a) when applied to the relationship between a Person and a corporation, the beneficial ownership by such Person at the relevant time of shares of such corporation carrying more than the greater of 50% of the voting rights ordinarily exercisable at meetings of shareholders of such corporation and the percentage of voting rights ordinarily exercisable at meetings of shareholders of such corporation that are sufficient to elect a majority of the directors of such corporation;

(b) when applied to the relationship between a Person and a partnership, joint venture or other unincorporated entity, the beneficial ownership by such Person at the relevant time of more than 50% of the ownership interests of the partnership, joint venture or other unincorporated entity in circumstances where it can reasonably be expected that such Person directs or has the power to direct the affairs of the partnership, joint venture or other unincorporated entity; and

(c) in the case of any Person, the right to directly or indirectly (i) exercise a majority of the voting rights in respect of that Person, (ii) otherwise control that Person by virtue of provisions contained in its constituting documents, or (iii) manage all or substantially all of the assets of that Person pursuant to any contract or arrangement;

"Court Orders" shall mean the Canadian Orders and the U.S. Orders.

"Designated Employees" shall mean the Employees who are not Unionized Employees and who are designated by the Plan Sponsor on a schedule to be delivered by the Plan Sponsor to the Vendors on or before Closing and which, when delivered, shall form Schedule A hereto, which schedule shall include all or substantially all Employees at the Closing Date who are not Unionized Employees.

"DIP Lender" shall mean Brookfield (US) Corporation.

"Employee" shall mean an individual who is employed by the Vendors in the Business, whether on a full-time or a part-time basis.

"Encumbrance" means any interest, charge, lien, claim, mortgage, lease, sublease, hypothecation, deed of trust, pledge, security interest, option, right of use or possession, right of first offer or first refusal, right of way, easement, servitude, restrictive covenant, encroachment, encumbrance, or other restriction or limitation of any kind howsoever erected or arising.

"Equity Interests" of a Person shall mean capital stock, capital stock equivalents (including stock options, restricted stock units, stock appreciation rights, any securities convertible into or exchangeable or exercisable for any such capital stock, and phantom stock), partnership interests, membership interests, participations, shares and other equity interests of any class or kind (however designated) of such Person.

"Excluded Property" shall have the meaning given to such term in Section 2.3.

"Existing Collective Agreement" shall mean the Labour Agreement dated as of May 31, 2002 between Fraser NH LLC and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union A.F.L.-C.I.O. and its Local Union No. 4-0075 (extended by agreement until August 29, 2010).

"Filing Date" shall mean the date of the commencement of the CCAA Proceedings, being June 18, 2009.

"Final Order" shall mean an order, judgment or other decree: (i) the operation or effect of which has not been reversed, stayed, modified or amended; (ii) as to which any and all appeal periods with respect to such order, judgment or decree have expired; and (iii) as to which no appeal or any extension thereof shall then be pending or, if an appeal has been sought, such appeal has been withdrawn, discontinued, dismissed with prejudice, or affirmed by the highest court to which it was appealed, and the time to appeal under any extension thereof has expired.

"Fixed Assets" means any and all equipment and machinery, improvements, office equipment, furniture, fixtures, signage, tools, storage systems, furnishings and supplies of all kinds of the Vendors.

"FNHL Shares" shall mean any and all of the issued and outstanding shares and other Equity Interests of FNHL.

"Former Landfill" shall mean Former Landfill LLC, a limited liability company formed under the laws of the State of New Hampshire.

"FPHI Shares" shall mean any and all of the issued and outstanding shares and other Equity Interests of FPHI.

"Fraser Madawaska Shares" shall mean any and all of the issued and outstanding shares and other Equity Interests of Fraser Madawaska.

"FTL Shares" shall mean any and all of the issued and outstanding shares and other Equity Interests of FTL.

"Gorham APA" shall mean the asset purchase agreement dated November 3, 2010 between M&M Consulting and Contracting LLC and FNHL.

"Gorham Assets" shall mean the property and assets of every kind and description used in the operation of or relating to the Gorham Mill.

"Gorham Business" shall mean the business of manufacturing and selling paper products and related activities carried on with the Gorham Assets or otherwise in relation to the Gorham Mill.

"Gorham Mill" means the paper mill owned and operated by the Vendors at 72 Cascade Flats, Gorham, New Hampshire, U.S., 03581 and the operations carried on thereat.

"Governmental Authority" shall mean any government (including any Canadian, US or foreign, federal, provincial, state, city, municipal or county government), any political subdivision thereof and any governmental, administrative, ministerial, regulatory, central bank, self-regulatory, quasi-governmental, taxing, executive or legislative department, commission, body, agency, authority or instrumentality of any thereof, including any Judicial Authority.

"Included Property" shall mean the Assets and any and all other direct or indirect businesses, property and assets of each of the Purchased Companies other than the Excluded Property, and shall include, without limitation, any and all: (i) Accounts Receivable, Inventory, Fixed Assets, Lands, Contracts, Permits, Timber Licenses, Equity Interests (including, without limitation, the FTL Shares, the Fraser Madawaska Shares and, unless excluded pursuant to Section 2.3(a) hereof, the FNHL Shares), Intellectual Property, Prepaid Expenses and Books and Records; (ii) the Mills; and (iii) the Katahdin Preferred Shares.

"Intellectual Property" shall mean all intellectual property including, without limitation, issued patents, inventions, pending applications for patents, copyrights, copyright registrations and applications, industrial designs and process, royalty rights, or other proprietary rights (and any applications related thereto), ISO registrations, dedicated computer software other than commercial off-the-shelf software, (including licences to use such computer software), engineering drawings and plans, technical specifications and ratings data, know-how, trade secrets, instruction manuals, formulae, industrial and production technology, process control technology, quality specifications, and similar rights including, without limitation, URLs and world wide web domain names.

"Intercompany Liabilities" shall mean any and all Liabilities owing by any Vendor or any of such Vendor's Affiliates or Subsidiaries, respectively, to any other Vendor or any of such other Vendor's Affiliates or Subsidiaries, respectively.

"Intercompany Receivables" shall mean any and all Accounts Receivables owing to any Vendor or any of such Vendor's Affiliates or Subsidiaries, respectively, from any other Vendor or any of such other Vendor's Affiliates or Subsidiaries, respectively.

"Inventory" shall mean any and all inventory including, without limitation: (i) raw materials, including all wood, fiber supplies, chemicals and fillers; (ii) operating supplies, including fuel and other consumables; (iii) all spare parts, mill stores, supplies and equipment including, but not limited to, those described in Schedule B, (iii) all goods or materials in the process of being manufactured or otherwise characterized as work in process; (iv) all finishing supplies utilized in the wrapping and transportation of the finished product as at the Closing Date; and (v) all finished goods as at the Closing Date.

"Judicial Authority" shall mean any court, arbitrator, special master, receiver, tribunal or similar body of any kind entitled to exercise judicial authority including without limitation the Canadian Court and the Bankruptcy Court.

"Katahdin Preferred Shares" shall mean the 10,000 convertible, term units of Katahdin Paper Company LLC owned by Fraser Madawaska.

"Lands" shall mean any and all freehold property and interests therein, and all buildings and other structures, facilities or improvements currently or hereafter located thereon, all fixtures, systems and items of personal property attached or appurtenant thereto and any and all rights of way, licences or rights of occupation, easements or other similar rights, as applicable, in connection with such freehold property, including without limitation the freehold property municipally known as:

(a) 100 Levesque Mill Road, Ashland, Maine;

(b) Route 11, 1220 Masardis Road, Masardis, Maine; and

(c) to the extent that the Gorham Assets and the Gorham Mill do not become Excluded Property in accordance with the terms set out in Section 2.3 of this Agreement, 75 Cascade Flats, Gorham, New Hampshire.

"Law" shall mean any treaty, code, statute, law (including common law), rule, regulation, or ordinance of any kind of any Governmental Authority.

"Liability" shall mean, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"Lumber Mills" shall mean collectively, the Ashland Mill and the Masardis Mill.

"Lumber Mills Business" shall mean the business of manufacturing and selling lumber and related activities carried on with the Ashland Assets and the Masardis Assets or otherwise in relation to the Lumber Mills.

"Masardis Assets" shall mean the property and assets of every kind and description used in the operation of or relating to the Masardis Mill.

"Masardis Mill" shall mean the lumber mill owned and operated by the Vendors at Route 11, 1220 Masardis Road, Masardis, Maine 04732 and the operations carried on thereat.

"Material Adverse Effect" shall mean any change, event or occurrence, or any material worsening of any current circumstance, event or occurrence, that individually or in the aggregate (taking into account all other such changes, events or occurrences or material worsening) has had, or would in the reasonable opinion of the Plan Sponsor be likely to have (i) a material

adverse change in or material adverse effect on the business, operations, performance, prospects, liabilities, results of operations, assets, properties or condition (financial or otherwise) of any of the Vendors, the Purchased Companies, the Business or the Included Property (excluding the Excluded Property and the Excluded Liabilities) or the Plan Sponsor's use and enjoyment of the Purchased Companies or the Included Property, in each case taken as a whole, or (ii) a material adverse change in or to the ability of the Vendors to consummate the transactions contemplated by this Agreement or to perform their obligations hereunder, or (iii) a material adverse change to or deviation from the Budget; or (iv) a material adverse change to the CCAA Proceedings or the Bankruptcy Case; or (v) the result or consequence that the Plan Sponsor or the Purchased Companies shall be deemed or required to assume or discharge any debt, liability or obligation other than as may be specifically provided for in this Agreement, but excluding, in any case (i) effects resulting from changes in general economic, regulatory, political or industry conditions or from acts of terror or war, (ii) effects resulting from changes in (or proposals to change) any Laws after the date hereof; (iii) effects resulting from the identity of, or acts attributable to, or omissions by the Plan Sponsor, the Plan Sponsor's Affiliates or the Purchased Companies, (iv) effects resulting from changes in commodity or energy prices, in interest or currency exchange rates or in capital market conditions, (v) effects resulting from circumstances that affect the industries in which the Vendors operate generally, or (vi) effects resulting from changes in generally accepted accounting principles after the date hereof. For greater certainty and without limiting the generality of the foregoing, each of the following events shall constitute a Material Adverse Effect: (a) any change, event or occurrence, or any material worsening of any current circumstance, event or occurrence, that individually or in the aggregate reduces the reasonable market value of the FPHI Shares, the Included Property or the Business by \$1,500,000 or more; and (ii) a Default or an Event of Default (as such terms are defined in the Brookfield DIP Facility) occurs under the Brookfield DIP Facility.

"Mills" shall mean collectively, the Gorham Mill and the Lumber Mills. If the Gorham Assets and the Gorham Mill become Excluded Property in accordance with the terms set out in Section 2.3 of this Agreement, the term "Mills" shall mean the Lumber Mills.

"Monitor" shall have the meaning given to such term in the recitals.

"Monitor's Certificate" means the certificate of the Monitor confirming that all matters to be completed prior to the consummation of the purchase transactions contemplated hereby have been completed, substantially in the form attached to the Canadian Approval and Vesting Order.

"Net Working Capital" shall mean the sum of all of the following that is Included Property in relation to the Lumber Mills Business: (a) Accounts Receivable; (b) Prepaid Expenses; (c) Inventory that is in good and useful condition for its purpose; minus the Continuing Accounts Payable in relation to the Lumber Mills Business.

"Order" shall mean any judgment, writ, decree, directive, decision, injunction, ruling, award or order (including any consent decree or cease and desist order) of any kind of any Governmental Authority or Judicial Authority.

"Ordinary Course" shall mean, with respect to any action to be taken by a Vendor or a Purchased Company, that such action is consistent with the past customs and practices (including

with respect to quantity and frequency) of such Vendor or Purchased Company and is taken in the ordinary course of the normal day-to-day business, operations and activities of the Vendor or the Purchased Company in respect of the Business, taking into account the commencement of the CCAA Proceedings and the Bankruptcy Case.

"Organizational Documents" of a Person at any time shall mean (a) all certificates, articles or agreements of any kind filed with any Governmental Authority or Judicial Authority to form or organize such Person, and (b) all agreements, documents or instruments creating, organizing or governing the internal affairs of such Person, including trust agreements, by-laws, codes of regulations, memoranda of incorporation or association, partnership agreements, limited liability company agreements, articles, charters and operating agreements, in each case, as in effect at such time.

"Party" shall mean a party to this Agreement and any reference to a Party includes its successors and permitted assigns and "Parties" means every Party.

"Permits" means any and all authorizations, registrations, permits, certificates of approval, approvals, grants, licences, quotas, consents, commitments, rights or privileges (other than those relating to the Intellectual Property) issued or granted by any Governmental Authority.

"Permitted Encumbrances" shall mean (i) easements, leases, reservations, or other rights of others in, or minor defects and irregularities in title that do not materially impair the use of the encumbered property or assets for the purposes for which they are held; (ii) mechanics', materialmen's, carriers', workers', repairers' and similar statutory liens arising in the Ordinary Course which liens have not had and are not reasonably likely to have a material impact on the FPHI Shares or the Included Property; (iii) any Encumbrance or privilege vested in any lessor, licensor or permittor for rent or other obligations solely related to the period after Closing in respect of any Contract; (iv) licenses of or other grants of rights to use Intellectual Property entered into prior to the Filing Date in the ordinary course of business consistent with past practice of the Vendors (and from and after the Filing Date, in the Ordinary Course) that do not materially impair the use of the encumbered property or assets for the purposes for which they are held; (v) Encumbrances, title exceptions or other imperfections of title caused by or resulting from acts of the Plan Sponsor or any of the Plan Sponsor's Affiliates, employees, officers, directors, agents, contractors, invitees or licensees of the Plan Sponsor; and (vi) such other Liens as permitted by the Plan Sponsor, in its sole discretion.

"Person" shall mean an individual, a partnership, a sole proprietorship, a company, a firm, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, a union, a group acting in concert, a Judicial Authority, a Governmental Authority or any other entity or association of any kind.

"Plan" shall mean the plan of compromise or arrangement under the CCAA in respect of all of the Vendors on a substantively consolidated basis that, among other things, is consistent with and gives effect to the transactions contemplated by this Agreement, and is otherwise in form and substance satisfactory to the Plan Sponsor, acting reasonably, substantially in the form attached as Exhibit A, as recognized by the Bankruptcy Court in the Bankruptcy Case, as

amended, modified, varied, or restated from time to time in a manner acceptable to the Plan Sponsor, acting reasonably.

"Plan Sponsor" shall mean Brookfield or such other Person or Persons as it may designate on or prior to Closing.

"Plan Sponsor's Affiliates" shall mean any and all Affiliates of the Plan Sponsor other than the Vendors and the Subsidiaries of the Vendors.

"Plan Sponsor's Solicitors" means Torys LLP.

"Premises" means all real property, buildings and facilities, including Lands and any part of any property, building or facility owned, leased, or operated.

"Prepaid Expenses" shall mean any and all prepaid expenses and deposits at any time.

"Purchase Price" shall have the meaning given to such term in Section 4.1(a).

"Purchased Companies" shall mean collectively, FPHI, Fraser Madawaska, FTL and, unless the FNHL Shares, the Gorham Assets and the Gorham Mill become Excluded Property pursuant to Section 2.3 hereof, FNHL.

"Representatives" of a Person shall mean controlling persons, partners, directors, officers, managers, trustees, including any trustee-in-bankruptcy, employees, agents, representatives, consultants, affiliates, advisors, counsel or nominees of such Person.

"Subsidiary" means, with respect to any specified Person, any other Person of which such specified Person is, at the time, directly or indirectly, (a) owns at least 50% of the outstanding capital stock (or other shares of beneficial interest) entitled to vote generally, (b) holds at least 50% of the partnership, limited liability company, joint venture or similar interests, or (c) is a general partner, managing member or joint venturer.

"Targeted Net Working Capital" shall mean Three Million, Eight Hundred and Forty Thousand Dollars (\$3,840,000.00), representing the targeted Net Working Capital of the Lumber Mills Business as at the Closing Date.

"Tax" shall mean all taxes including all income, sales, use, goods and services, harmonized sales, value added, 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, levies, imposts and other assessments or similar charges in the nature of a tax, together with any installments with respect thereto, and any interest, fines and penalties, in all cases imposed by any Governmental Authority in respect thereof and whether disputed or not.

"Termination Date" shall have the meaning given to such term in Section 13.2(b).

"Third Party" shall mean any Person other than a Party or any of its Affiliates.



"Timber Licences" shall mean any and all rights to harvest timber from lands issued by a Governmental Authority or otherwise.

"Transaction" shall mean the transactions contemplated by this Agreement.

"Transactional Costs" shall mean all filing fees, recording fees, surveys, notarial fees, software license fees and all other similar fees and costs arising out of this Agreement, the transfer, assignment, conveyance or delivery of property and assets pursuant hereto, and the other transactions contemplated by this Agreement.

"Unionized Employees" shall mean the Employees who are governed by the Existing Collective Agreement and who are employees of FNHL as of the Closing Date.

"United States" or "U.S." shall mean the United States of America

"U.S. Orders" shall mean collectively, the U.S. Sale Order, the U.S. Sanction Recognition Order and any other Order of the Bankruptcy Court issued and entered in the Bankruptcy Case in respect of the transactions contemplated in this Agreement and the Plan.

"U.S. Sale Order" shall mean an Order of the Bankruptcy Court recognizing and giving effect to the Canadian Approval and Vesting Order and approving the transactions contemplated by this Agreement, in form and substance satisfactory to the Plan Sponsor, acting reasonably.

"U.S. Sanction Recognition Order" shall mean an Order of the Bankruptcy Court recognizing the Canadian Sanction Order, in form and substance satisfactory to the Plan Sponsor, acting reasonably.

"Vendors" shall have the meaning given to such term in the introductory paragraph.

"Vendors' Affiliates" shall mean an Affiliate of the Vendors, which Affiliate for greater certainty shall exclude the Plan Sponsor and any of the Plan Sponsor's Affiliates.

"Vendors' Solicitors" means Thomson Grout Finnigan LLP.

"Workers Compensation Obligations" shall mean obligations of the Purchased Companies to present or past employees of either Lumber Mill pursuant to the Maine Workers Compensation Law (39 A M.R.S. § 101 et seq. or predecessor or successor statutes) and which are subject to insurance policies that are Included Property, including without limitation the claims listed on Schedule C. For greater certainty, any claims under or in relation to insurance policies that are not Included Property and do not remain with the Purchased Companies following Closing are not Workers Compensation Obligations for purposes of this Agreement.

## **Section 1.2 Headings and Table of Contents.**

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof. The terms "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article,

Section or other portion hereof. Unless otherwise provided, references herein to Articles, Sections and Schedules are to Articles, Sections and Schedules to this Agreement.

**Section 1.3 Gender and Number and Extended Meanings.**

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and *vice versa*, words importing gender include all genders or the neuter, and words importing the neuter include all genders. The term "includes" and "including" means "includes without limitation" and "including without limitation".

**Section 1.4 Statutory References.**

In this Agreement, unless the context otherwise requires or except as otherwise provided herein, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

**Section 1.5 Currency.**

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in U.S. currency.

**Section 1.6 Generally Accepted Accounting Principles.**

In this Agreement, except to the extent otherwise expressly provided, references to "generally accepted accounting principles" mean, for all principles stated in the Handbook of the Canadian Institute of Chartered Accountants, such principles so stated.

**Section 1.7 Interpretation.**

The Parties acknowledge and agree that: (i) each Party and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to their revision; (ii) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement; and (iii) the terms and provisions of this Agreement shall be construed fairly as to the Parties hereto and not in favour of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement.

**Section 1.8 Invalidity of Provisions.**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. To the extent permitted by Law, the Parties waive any provision of Law which renders any provision of this Agreement invalid or unenforceable in any respect. The Parties shall engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

**Section 1.9 Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement. There are no warranties, conditions, or representations (including any that may be implied by statute) and there are no agreements in connection with such subject matter except as specifically set forth or referred to in this Agreement. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made either prior to, contemporaneous with, or after entering into this Agreement, or any amendment or supplement thereto, by any Party to this Agreement or its directors, officers, employees or agents, to any other party to this Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement, and none of the Parties to this Agreement has been induced to enter into this Agreement or any amendment or supplement by reason of any such warranty, representation, opinion, advice or assertion of fact. Accordingly, there shall be no liability, either in tort or in contract, assessed in relation to any such warranty, representation, opinion, advice or assertion of fact, except to the extent contemplated above.

**Section 1.10 Waiver, Amendment.**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

**Section 1.11 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.

**Section 1.12 Schedules and Exhibits.**

The following are the Schedules and Exhibits attached to this Agreement:

Exhibit A	— Form of Plan
Exhibit B	— Form of U.S. Tax Certificate
Exhibit C	— Form of Notice Re U.S. Tax Certificate
Schedule A	— Designated Employees
Schedule B	— Inventory
Schedule C	— Workers Compensation Obligations
Schedule 3.1	— Continuing Obligations
Schedule 3.1(a)	— Continuing Accounts Payable
Schedule 7.1	— Capitalization
Schedule 7.5	— Compliance with Laws
Schedule 7.6	— Permits

Schedule 7.7 — Title  
Schedule 7.8 — Lands

## ARTICLE 2 AGREEMENT OF PURCHASE AND SALE AND PLAN PROPOSAL

### Section 2.1 Agreement to Purchase and Sell the FPHI Shares.

Upon the terms and subject to the conditions contained in this Agreement, at Closing the Vendors shall sell, convey, transfer, assign and deliver to the Plan Sponsor, and the Plan Sponsor shall purchase and accept from the Vendors, free and clear of any and all Encumbrances, all right, title and interest of the Vendors in and to the FPHI Shares.

### Section 2.2 Release and Assignment of Interests in Included Property.

Upon the terms and subject to the conditions contained in this Agreement, at Closing the Vendors other than the Purchased Companies shall release, sell, convey, transfer, assign and deliver to the Purchased Companies, and the Purchased Companies shall purchase and accept from such other Vendors, free and clear of any and all Encumbrances (other than Permitted Encumbrances), any and all right, title and interest they may have in and to the Included Property. For greater certainty, all right, title and interest in and to the Included Property shall on and after Closing be held by the Purchased Companies free and clear of any and all Encumbrances other than Permitted Encumbrances and free and clear of any and all Liabilities other than Continuing Obligations.

### Section 2.3 Excluded Property.

Notwithstanding anything contained herein to the contrary, subject to the terms and conditions contained in this Agreement, the Included Property shall not include any of the following (collectively, the "Excluded Property"):

(a) the Gorham Assets, the Gorham Mill and the FNHL Shares if, prior to Closing, the Vendors complete the sale or the liquidation of the Gorham Assets and the Gorham Mill to one or more arm's length third party Plan Sponsors for cash consideration and on terms and conditions satisfactory to the Plan Sponsor, acting reasonably, whether pursuant to the Gorham APA or otherwise; and

(b) any Assets or other property and assets of the Purchased Companies that the Plan Sponsor designates as Excluded Property by written notice given to the Vendors at any time on or before Closing.

### Section 2.4 The Plan.

The purchase and sale transactions contemplated by this Agreement shall be implemented in conjunction with the implementation of the Plan in respect of all of the Vendors. The Plan, and all Court Orders and other documents relating to the Plan, shall among other things extinguish and forever bar any and all Liabilities of the Purchased Companies as of

Closing other than the Continuing Obligations, and shall give effect to and be consistent with the terms and conditions of this Agreement and the Ancillary Agreements and be otherwise in form and content satisfactory to the Plan Sponsor, acting reasonably.

### ARTICLE 3 CONTINUING OBLIGATIONS

#### Section 3.1 Continuing Obligations.

(a) For greater certainty, and notwithstanding anything else in this Agreement or in the Ancillary Agreements: (i) none of the Plan Sponsor and the Plan Sponsor's Affiliates shall assume or be deemed to assume, agree to become responsible for, perform, discharge or pay when due, any Liabilities whatsoever of the Purchased Companies or the other Vendors including, without limitation, the Continuing Obligations and the Excluded Liabilities; and (ii) none of the Purchased Companies shall assume or be deemed to assume, agree to become responsible for, perform, discharge or pay when due any Continuing Obligations of any other Purchased Company.

(b) As a result of the implementation of the Plan, the Court Orders, and other events contemplated by this Agreement, and as a condition precedent to completion of the transactions contemplated by this Agreement, on and immediately after Closing the Purchased Companies shall have no Liabilities whatsoever except for the Liabilities described in Schedule 3.1 attached hereto (collectively, the "Continuing Obligations").

(c) For greater certainty, on Closing the Purchased Companies shall only be liable for accounts payable that constitute Continuing Accounts Payable set out in Schedules 3.1 and 3.1(a) delivered by the Vendors on Closing and mutually agreed to by the Parties. The Purchased Companies shall have no liability whatsoever for any Liabilities with respect to the Ordinary Course accounts payable and trade payables that are to be paid by the Vendors in the Ordinary Course before the Closing. For greater certainty, the Continuing Accounts Payable shall be limited to the post-Filing Date amounts owing to the Person(s) listed in Schedule 3.1(a).

(d) Without limiting the generality of the foregoing, and for greater certainty, the Continuing Obligations will not include any of the following (collectively, the "Excluded Liabilities"):

- (i) any and all Liabilities relating to Excluded Property;
- (ii) any and all Intercompany Liabilities owing by any of the Purchased Companies to any of the other Vendors;
- (iii) any and all Liabilities incurred under or in relation to the Vendors' CCAA Proceedings or Bankruptcy Case;
- (iv) any and all Liabilities of any of the Purchased Companies or other Vendors arising prior to, or relating to events or any operations occurring prior to, the Filing Date (except for the Liabilities expressly set out in clause (ii) and (iii) of Schedule 3.1);

- (v) any and all Liabilities with respect to any current or former Employees of the Purchased Companies who are neither Continuing Employees nor Unionized Employees (regardless of when such Liability arises), and any and all Liabilities with respect to any current or former Employees of any of the other Vendors;
- (vi) any and all Liabilities with respect to the Workers Compensation Obligations if, on or prior to Closing, the Vendors implement Alternative LC Arrangements as defined in Section 4.2 of this Agreement; and
- (vii) any and all Liabilities of the Vendors arising under this Agreement or the Ancillary Agreements.

#### ARTICLE 4 PURCHASE PRICE AND RELATED MATTERS

##### Section 4.1 Purchase Price.

(a) Subject to Section 4.1(b), the aggregate purchase price (the "Purchase Price") payable by the Plan Sponsor to the Vendors in respect of the purchase and sale transactions contemplated by this Agreement shall be Fifteen Million Dollars (\$15,000,000) in cash (the "Cash Component"), subject to adjustment in accordance with Section 4.5 of this Agreement.

(b) If the Gorham Assets, the Gorham Mill and the FNHL Shares become Excluded Property in accordance with the terms set out in Section 2.3 of this Agreement, the Cash Component will be reduced by an amount equal to the lesser of: (i) the aggregate net proceeds realized from the sale or liquidation of the Gorham Assets and the Gorham Mill; or (ii) \$2,695,722 million.

##### Section 4.2 Payment of Purchase Price.

(a) On Closing, the Plan Sponsor shall pay the Cash Component, as adjusted in accordance with Section 4.5 of this Agreement, as follows:

- (i) Payment to the DIP Lender of such amount as may be required to fully and finally repay and satisfy any and all debts, obligations and liabilities under or in respect of the Brookfield DIP Facility. For greater certainty, subject to Section 4.3, the Vendors' obligations in respect of the Brookfield Letters of Credit shall be satisfied by irrevocable and unconditional payment to the DIP Lender of cash in an amount equal to the full amount which may be payable, contingent or otherwise, to recipients or beneficiaries of the Brookfield Letters of Credit (the "Brookfield LC Amount").
- (ii) The balance of the Cash Component, if any, to the Monitor in trust for the benefit of the Vendors other than the Purchased Companies (the "Balance").

(b) The Vendors may make such alternative arrangements as may be available to them prior to Closing, and as may be satisfactory to the Plan Sponsor acting reasonably, to terminate, cancel and surrender the Brookfield Letters of Credit without payment or other obligation, contingent or otherwise, on the part of the DIP Lender, Brookfield, the Plan Sponsor or the Plan Sponsor's Affiliates (the "Alternative LC Arrangements"). In that event, the amount payable under Section 4.2(a)(i) of this Agreement shall be adjusted accordingly so that no amount shall be payable to the DIP Lender in respect of the Brookfield Letters of Credit and the Workers Compensation Obligations shall be Excluded Liabilities.

#### **Section 4.3 Contingent Reimbursement Obligation**

If:

(a) at Closing the Vendors satisfy their obligations in respect of the Brookfield Letters of Credit by irrevocable and unconditional payment to the DIP Lender of the Brookfield LC Amount, pursuant to and as contemplated by Section 4.2(a)(i) of this Agreement; and

(b) the cumulative aggregate payments, out-of-pocket costs and expenses, and other third party out-of-pocket amounts paid or payable by the DIP Lender, the Purchased Companies, the Plan Sponsor or the Plan Sponsor's Affiliates to fully and finally satisfy and terminate all obligations and liabilities in respect of the Brookfield Letters of Credit and Workers Compensation Obligations (the "Actual WCB/LC Liability") is less than the Brookfield LC Amount;

the Plan Sponsor shall, as soon as practicable, make to or for the benefit of the Vendors (other than the Purchased Companies) a cash reimbursement payment in an amount equal to the amount by which the Actual WCB/LC Liability is less than the Brookfield LC Amount. The Purchased Companies, the Plan Sponsor and the DIP Lender shall at any time following Closing be entitled to enter into reasonable agreements and arrangements for the satisfaction of any or all liabilities and obligations in respect of the Brookfield Letters of Credit and Workers Compensation Obligations. On or before Closing, the Vendors, the Plan Sponsor, the DIP Lender and the Monitor, each acting reasonably, shall enter into a further agreement detailing the administration of the obligations in this Section 4.3.

#### **Section 4.4 Closing Date Estimated Balance Sheet**

Not less than two (2) Business Days before the Closing Date, the Vendors shall deliver to the Plan Sponsor a balance sheet of the Business as at the Closing Date which shall reflect a good faith estimate by the Vendors of the (a) balance sheets of the Business and the Purchased Companies as at the Closing Date, and (b) the Net Working Capital of the Purchased Companies (the "Closing Date Estimated Balance Sheet"). The Closing Date Estimated Balance Sheet shall be accompanied by a certificate of the chief restructuring officer of FPI, or other senior officer of FPI acceptable to the Plan Sponsor, to the effect that such officer has reviewed the Closing Date Estimated Balance Sheet; that the Closing Date Estimated Balance Sheet represents the best estimate, made in good faith, of the financial position of the Business as at the Closing Date, prepared in accordance with this Agreement, and that such officer has no reason to believe that such estimate may not be relied upon for purposes of the Closing. The Closing Date Estimated

Balance Sheet shall also be accompanied by a copy of the working papers of the Vendors used in the preparation thereof, together with such other evidence supporting the amounts specified therein as the Plan Sponsor may reasonably request.

#### **Section 4.5 Adjustment to Cash Component**

(a) Within three (3) Business Days of the Closing Date, the Vendors shall notify the Plan Sponsor of any revisions to the Closing Date Estimated Balance Sheet (the "Final Closing Date Balance Sheet"), accompanied by an updated certificate and other materials referred to in Section 4.3 hereof. If, and to the extent that, the Net Working Capital is disclosed in the Final Closing Balance Sheet as being less or more than the Targeted Net Working Capital, the Cash Component will be adjusted accordingly.

(b) For greater certainty: (a) if the Final Closing Date Balance Sheet discloses that the Net Working Capital is greater than the Targeted Net Working Capital, the Cash Component will be increased by the same amount as such difference; and (b) if the Final Closing Date Balance Sheet discloses that the Net Working Capital is less than the Targeted Net Working Capital, the Cash Component will be decreased by the same amount as such shortfall.

(c) Absent patent error, inconsistencies or other defects, the Final Closing Date Balance Sheet shall be used for purposes of determining the Cash Component on Closing and for otherwise completing the transactions contemplated by this Agreement on Closing.

(d) The Purchase Price shall be held and not distributed by the Vendors and the Monitor until the Final Closing Date Balance Sheet has been delivered to the Plan Sponsor and the payment contemplated by Section 4.5(b) hereof, if any, has been made. Notwithstanding the foregoing, the Vendors shall on the Closing Date use any portion of the Purchase Price required to fully repay and satisfy the Brookfield DIP Facility as contemplated by this Agreement.

#### **Section 4.6 Financial Statements**

All financial statements and financial information required to be prepared and provided pursuant to this Agreement shall be prepared in accordance with generally accepted accounting principles applied on a basis consistent with previous fiscal periods, except as otherwise provided in this Agreement.

### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES REGARDING THE PLAN SPONSOR**

The Plan Sponsor hereby represents and warrants to the Vendors as of the date hereof as follows:

#### **Section 5.1 Organization.**

The Plan Sponsor is a corporation, partnership, limited liability company or other entity that is duly organized, validly existing and in good standing under the Laws of its jurisdiction of formation. The Plan Sponsor has the corporate power and authority necessary to (a) execute,



deliver and perform its obligations under this Agreement and the Ancillary Agreements, (b) consummate the transactions contemplated hereby and thereby to be consummated by it, and (c) conduct its business as currently conducted by it. The Plan Sponsor is duly qualified or licensed and in good standing as a foreign corporation authorized to do business under the Laws of each jurisdiction in which the ownership, leasing or use of assets by it or the conduct of business by it requires such licensing or qualification, except where the failure to be so licensed or qualified and in good standing would not have a material adverse effect on the Plan Sponsor, the execution, delivery or performance of this Agreement, or any of the Ancillary Agreements by the Plan Sponsor or the consummation of the transactions contemplated hereby and thereby to be consummated by it. The Plan Sponsor is not in violation of any provision of its Organizational Documents.

#### **Section 5.2 Authorization, Execution and Enforceability.**

The execution and delivery of this Agreement and the Ancillary Agreements in each case to which the Plan Sponsor is a party, by the Plan Sponsor, the performance by the Plan Sponsor of its obligations hereunder and thereunder and the consummation by the Plan Sponsor of the transactions contemplated hereby and thereby to be consummated by it have been duly authorized by all necessary corporate action on the part of the Plan Sponsor. This Agreement constitutes and, as of the Closing each of the Ancillary Agreements will constitute, a legal, valid and binding obligation of the Plan Sponsor, enforceable against the Plan Sponsor in accordance with its respective terms, except insofar as enforceability may be limited by bankruptcy, insolvency, moratorium or other Laws which may affect creditors' rights and remedies generally and by principles of equity (regardless of whether such enforceability is considered in a Proceeding in equity or at law). This Agreement has been, and, as of the Closing each Ancillary Agreement will have been, duly executed and delivered by the Plan Sponsor.

#### **Section 5.3 Financing.**

The Plan Sponsor has sufficient funds available on hand to enable the Plan Sponsor (a) to pay the Purchase Price and all fees and expenses related to the transactions contemplated hereby, to the extent that this Agreement or the Ancillary Agreements requires it to pay such fees and expenses, and (b) to pay and discharge all of its other liabilities and obligations when due.

#### **Section 5.4 Brokers; Finders.**

No finder, broker or similar intermediary acting on behalf of the Plan Sponsor or any of the Plan Sponsor's Affiliates is entitled to a commission, fee or other compensation in connection with the negotiation, execution or delivery of this Agreement or the Ancillary Agreements or the consummation of any of the transactions contemplated hereby or thereby.

#### **Section 5.5 Vendors' Acknowledgment; Exclusivity of Representations and Warranties.**

The Vendors acknowledge and agree that except for the representations and warranties expressly set forth herein or in any Ancillary Agreement, the Vendors have not relied on any representation or warranty from the Plan Sponsor or any of the Plan Sponsor's Affiliates or any employee, officer, director, accountant, financial, legal or other Representative of the Plan Sponsor or the Plan Sponsor's Affiliates in determining whether to enter into this Agreement.

## **ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF THE VENDORS**

Each of the Vendors represents and warrants to the Plan Sponsor, as of the date hereof, as follows:

### **Section 6.1 Organization.**

Each of the Vendors is a corporation, partnership, limited liability company or other entity that is duly organized, validly existing and in good standing under the Laws of its jurisdiction of formation. Each of the Vendors has the corporate power and authority necessary to conduct the Business as currently conducted by it. Subject to requisite Canadian Court and Bankruptcy Court approval, each of the Vendors has the corporate power and authority necessary to (a) execute, deliver and perform its obligations under this Agreement and the Ancillary Agreements, and (b) consummate the transactions contemplated hereby and thereby to be consummated by it. Each of the Vendors is duly qualified or licensed and in good standing as a foreign corporation authorized to do business under the Laws of each jurisdiction in which the current ownership, leasing or use of assets by it or the current conduct of business by it requires such licensing or qualification, except where the failure to be so licensed or qualified and in good standing would not, individually or in the aggregate, have a Material Adverse Effect on any of the Vendors, the execution, delivery or performance of this Agreement, or any of the Ancillary Agreements by each of the Vendors or the consummation of the transactions contemplated hereby and thereby to be consummated by each of them. Each of the Vendors is not in violation of any provision of its Organizational Documents except where such violation would not, individually or in the aggregate, have a Material Adverse Effect.

### **Section 6.2 Authorization, Execution and Enforceability.**

Subject to requisite Canadian Court approval and Bankruptcy Court approval, the execution and delivery of this Agreement and the Ancillary Agreements by each of the Vendors, the performance by each of the Vendors of its obligations hereunder and thereunder and the consummation by each of the Vendors of the transactions contemplated hereby and thereby to be consummated by it have been duly authorized by all necessary corporate action on the part of each of the Vendors. Subject to requisite Canadian Court approval and Bankruptcy Court approval, this Agreement constitutes, and, as of the Closing each of the Ancillary Agreements will constitute, a legal, valid and binding obligation of each of the Vendors, enforceable against each of the Vendors in accordance with its respective terms, except insofar as enforceability may be limited by general principles of equity. This Agreement has been, and, as of the Closing each Ancillary Agreement will have been, duly executed and delivered by each of the Vendors.

### **Section 6.3 No Conflict.**

Subject to approval of the Canadian Court and the Bankruptcy Court and receipt of the Consents and Approvals, the execution, delivery and performance by each Vendor of this Agreement and the Ancillary Agreements to which such Vendor is, or on the Closing Date will be, a party do not and will not conflict with or result in a breach of the terms, conditions or provisions of, constitute a default under, result in a violation of, give to any Person any right of

termination, amendment, modification, acceleration or cancellation or any preemptive right or right to the payment of any penalty under, or result in the creation or imposition of any Encumbrance upon any of the assets or property of the Vendors, or require any consent or other action by or declaration or notice to any Government Authority pursuant to (i) the Organizational Documents of the Vendors, (ii) any material contract to which the Vendors are a party or to which any of their assets or property are subject, (iii) any order of any Government Authority or Judicial Authority applicable to any Vendor or by which any of their assets or property are bound, or (iv) any Laws to which any of the Vendors, or any of their assets or property are subject, except for such defaults, violations and notifications that would not, individually or in the aggregate, materially hinder, delay or impair the performance by the Vendors of any of their obligations under the Ancillary Agreements.

**Section 6.4 Brokers; Finders.**

No finder, broker or similar intermediary acting on behalf of the Vendors is entitled to a commission, fee or other compensation in connection with the negotiation, execution or delivery of this Agreement or the Ancillary Agreements or the consummation of any of the transactions contemplated hereby or thereby.

**Section 6.5 Non Resident.**

FPI is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).

**Section 6.6 Title to the FPHI Shares.**

FPI is the beneficial owner of record of the FPHI Shares with good title thereto. The FPHI Shares are not subject to any voting trust, shareholder agreement or voting agreement. Upon completion of the transactions contemplated by this Agreement, all of the FPHI Shares will be owned by the Plan Sponsor as the beneficial owner of record, with good title thereto, and, at the Time of Closing, will be free and clear of all Encumbrances, except for Permitted Encumbrances.

**Section 6.7 Title to the FTL Shares and the Fraser Madawaska Shares.**

FPHI is the beneficial owner of record of the FTL Shares and the Fraser Madawaska Shares, in each case, with good title thereto. None of the FTL Shares or the Fraser Madawaska Shares is subject to any voting trust, shareholder agreement or voting agreement. Upon completion of the transactions contemplated by this Agreement, all of the FTL Shares and the Fraser Madawaska Shares will be owned by the Plan Sponsor as the beneficial owner of record, with good title thereto, and, at the Time of Closing, will be free and clear of all Encumbrances, except Permitted Encumbrances.

**Section 6.8 Title to the FNHL Shares.**

Fraser Madawaska is the beneficial owner of record of the FNHL Shares with good title thereto. The FNHL Shares are not subject to any voting trust, shareholder agreement or voting agreement. Unless excluded pursuant to Section 2.3(a) hereof, upon completion of the transactions contemplated by this Agreement, all of the FNHL Shares will be owned by Fraser

Madawaska as the beneficial owner of record, with good title thereto, and, at the Time of Closing, will be free and clear of all Encumbrances, except for Permitted Encumbrances.

**ARTICLE 7**  
**REPRESENTATIONS AND WARRANTIES IN RESPECT OF THE PURCHASED**  
**COMPANIES, THE INCLUDED ASSETS AND THE BUSINESS**

Each of the Vendors represents and warrants to the Plan Sponsor, as of the date hereof, as follows:

**Section 7.1 Capitalization.**

Schedule 7.1 sets out the particulars of the authorized and issued capital of each of the Purchased Companies, the names of the beneficial owners of such securities, and if such beneficial owners are not the registered owners of such securities, the names of the Persons shown on the securities register of the applicable Purchased Company. The owners have good and marketable title, free of all Encumbrances, to the securities which are owned by them, as set out in Schedule 7.1. All of the securities listed in Schedule 7.1 as being issued and outstanding have been validly issued in compliance with all applicable Law and are outstanding as fully paid and non-assessable securities.

**Section 7.2 Subsidiaries.**

Except for the Katahdin Preferred Shares, FNHL and Former Landfill, none of the Purchased Companies has any other direct or indirect subsidiaries or hold, directly or indirectly, any shares or other ownership, equity or proprietary interests in any other Person or have any agreement of any nature to acquire, directly or indirectly, any shares or other ownership, equity or proprietary interests in any other Person.

**Section 7.3 No Other Agreements to Purchase or Sell.**

Except as set out in this Agreement and the transactions contemplated thereby and hereby, and except for the Gorham APA, no Person has any written or oral agreement, option or warrant or any right or privilege (whether by applicable Law, pre-emptive or contractual) capable of becoming such for the purchase, subscription, allotment or issuance of any interests in any of the Purchased Companies, the FPHI Shares or any of the Included Property.

**Section 7.4 Records.**

The Books and Records of each of the Purchased Companies are complete and accurate in all material respects and all corporate proceedings and actions reflected in such Books and Records have been conducted or taken in compliance with all applicable Law and with the applicable Organizational Documents of each of the Purchased Companies, as applicable.

**Section 7.5 Compliance with Laws.**

Except as set forth in Schedule 7.5, and except as would not, individually or in the aggregate, have a Material Adverse Effect, each of the Purchased Companies has conducted and

continues to conduct the Business in accordance with all Laws and Orders applicable to the Business and, to the knowledge of the Vendors, none of the Purchased Companies is in violation of any Law or any Order applicable to the operation of the Business.

**Section 7.6 Permits.**

Schedule 7.6 sets forth all of the material Permits and all pending applications therefore which have been issued to, or are held or used by, each of the Vendors which are, or upon issuance, would reasonably be expected to be, material to the conduct of Business or the ownership of the FPHI Shares or the Included Property. The Permits have been duly obtained and are to the knowledge of the Vendors, in full force and effect. The Vendors are in compliance with all material terms of such Permits, in each case except for such violations as would not have, individually or in the aggregate, a Material Adverse Effect.

**Section 7.7 Title.**

Each of the Vendors, including the Purchased Companies are the beneficial owners of the Included Property, as applicable, and have good and marketable title thereto. Except for the Encumbrances listed in Schedule 7.7 that will be discharged by the Vendors prior to Closing or pursuant to the Plan approved by the Court Orders, each of the Purchased Companies owns its respective Included Property free and clear of all Encumbrances, except Permitted Encumbrances.

**Section 7.8 Lands.**

Schedule 7.8 contains true and complete descriptions of all of the Lands. Except as described in Schedule 7.8 or except as would not have, individually or in the aggregate, a Material Adverse Effect, the Purchased Companies have title in fee simple to the Lands, as applicable, free and clear of all Encumbrances, except Permitted Encumbrances and Encumbrances that will be discharged by the Vendors on or before Closing or pursuant to the Court Orders. None of the Lands has been classified as "Tree Growth", "Farmland", or "Open Space" property for tax purposes.

**Section 7.9 Survival of Covenants, Representations and Warranties.**

The covenants, representations and warranties contained in this Agreement, the Ancillary Agreements and in all certificates and documents delivered pursuant to or contemplated by this Agreement or the Ancillary Agreements shall survive the Closing.

**ARTICLE 8  
EMPLOYEE MATTERS**

**Section 8.1 Continuing Employment.**

(a) In the event that the Gorham Assets and the Gorham Mill constitute Included Property, at Closing FNHL shall continue to employ the Unionized Employees who are Employees of FNHL immediately prior to Closing, on the same terms and conditions applicable to such Unionized Employees immediately prior to the Closing.

(b) The Purchased Companies shall continue to employ at Closing such of their respective Employees who are Continuing Employees, pursuant to and in accordance with the terms and conditions of this Agreement. The Vendors and the Plan Sponsor acknowledge that the transactions contemplated by this Agreement shall not constitute a severance of employment of any such Continuing Employee prior to or upon the consummation of the transactions contemplated hereby, and that such employees will have continuous and uninterrupted employment immediately before and immediately after the Closing.

(c) The Purchased Companies agree to provide any required notice under the *Worker Adjustment and Retraining Notification Act*, as amended (the "WARN Act"), and any similar statute, and to otherwise comply with any such statute with respect to any "plant closing" or "mass layoff" (as defined in the WARN Act) or similar event affecting Continuing Employees or Unionized Employees (including as a result of the consummation of the transactions contemplated by this Agreement) and occurring on or after the Closing Date. Between the Effective Date and the Closing Date, the Vendors shall not, without the Plan Sponsor's consent, which consent may be withheld in the Plan Sponsor's sole and absolute discretion, take any action whatsoever that would cause any termination of employment of any Employees by the Purchased Companies during such period of time that would constitute a "plant closing" or "mass layoff" under the WARN Act or any similar statute.

## ARTICLE 9 ADDITIONAL AGREEMENTS OF THE PARTIES

### Section 9.1 Conduct by the Plan Sponsor.

The Plan Sponsor covenants and agrees that, except as expressly contemplated by this Agreement, or as otherwise required by Law, after the Effective Date and prior to the earlier of the Closing Date or the Termination Date:

(a) the Plan Sponsor shall, and shall cause the Plan Sponsor's Affiliates to, refrain from taking any action which would cause any representation or warranty contained in Article 5 to be untrue or incorrect in any material respect as of the Closing; and

(b) subject to the Court Orders and subject to the express provisions of this Agreement, the Plan Sponsor shall use commercially reasonable efforts (i) to perform and satisfy all conditions to each of the Plan Sponsor's obligations to consummate the transactions contemplated by this Agreement that are to be performed or satisfied by the Plan Sponsor under this Agreement, and (ii) to cause the Closing to occur as promptly as reasonably practicable and the Plan Sponsor shall not, and shall not permit any of the Plan Sponsor's Affiliates to, intentionally take any action that is reasonably likely to prevent or delay the consummation of the transactions contemplated hereby.

### Section 9.2 Conduct by the Vendors.

Each of the Vendors covenants and agrees that, except as expressly contemplated by this Agreement, or as otherwise required by Law, after the Effective Date and prior to the earlier of the Closing Date or the Termination Date:

(a) each of the Vendors shall, and shall cause the Vendors' Affiliates to, refrain from taking any action that would cause any representation or warranty contained in Article 6 or Article 7 to be untrue or incorrect as of the Closing; and

(b) subject to the Court Orders and the express provisions of this Agreement, each of the Vendors shall use commercially reasonable efforts (i) to perform and satisfy all conditions to such Vendor's obligations to consummate the transactions contemplated by this Agreement that are to be performed or satisfied by such Vendor under this Agreement; and (ii) to cause the Closing to occur as promptly as reasonably practicable, and each of the Vendors shall not, and shall not permit any of the Vendors' Affiliates to, intentionally take any action that is reasonably likely to prevent or delay the consummation of the transactions contemplated hereby.

### **Section 9.3 Conduct of Business.**

Subject to any Court Orders, after the Effective Date and prior to the earlier of the Closing Date or the Termination Date, to the extent related solely to the Business and the Purchased Companies, each of the Vendors shall, and shall cause the Vendors' Affiliates to, except as may otherwise be consented to by the Plan Sponsor, in writing, acting reasonably: (i) carry on business in the Ordinary Course; (ii) use its best efforts to preserve its business organization and goodwill; (iii) maintain its relationships with suppliers, customers, consultants and others having business relations with it; (iv) retain in its employ all of its employees; and (v) make all payments in the Ordinary Course; and shall not, except as may otherwise be consented to by the Plan Sponsor, acting reasonably:

(a) amend, revise, modify or agree to do any of the foregoing in respect of any Contract material to the Business;

(b) amend, revise, modify or agree to do any of the foregoing in respect of any of the Benefit Plans; and

(c) seek any Order in respect of, in relation to or in connection with the FPHI Shares, the Included Property, the Continuing Obligations or the Business unless such Order is satisfactory to the Plan Sponsor, acting reasonably.

### **Section 9.4 Access to Information.**

Prior to the Closing, the Vendors shall, and shall cause their Subsidiaries to, (i) give the Plan Sponsor and its authorized Representatives, upon reasonable advance notice and during regular business hours, reasonable access to all Books and Records, personnel, officers and other facilities and properties of the Business, (ii) permit the Plan Sponsor to make such copies and inspections thereof, upon reasonable advance notice and during regular business hours, as the Plan Sponsor may reasonably request, (iii) grant the Plan Sponsor and its Representatives reasonable access to each of the facilities of the Business where the FPHI Shares or the Included Property is located for purposes of completing an updated inventory of the fixed assets of the Business for purposes of completing an appraisal of the value thereof, and (iv) cause the officers of the Vendors to furnish the Plan Sponsor with such additional financial and operating data and other information with respect to the Business as is regularly prepared in the Ordinary Course that the Plan Sponsor may from time to time reasonably request; provided, however, that any

such access shall be conducted at the Plan Sponsor's expense, in accordance with Law, at a reasonable time, under the supervision of the Vendors' personnel and in such a manner as to maintain confidentiality and not to unreasonably interfere with the normal operations of the businesses of the Vendors and the Vendors' Affiliates.

**Section 9.5 Regulatory Matters.**

Each of the Parties, as promptly as practicable after the execution of this Agreement, will make, or cause to be made, all such filings and submissions under all Laws, as may be required for it to consummate the purchase and sale of the FPHI Shares and the Included Property in accordance with the terms of this Agreement. The Parties will coordinate and cooperate with one another in exchanging such information and supplying such assistance as may be reasonably requested by each in connection with the foregoing, including providing each other with all notices and information supplied to or filed with any Governmental Authority (except for notices and information which any Party, acting reasonably, considers highly confidential and sensitive which may be filed on a confidential basis), and all notices and correspondence received from any Governmental Authority.

**Section 9.6 Maintenance of Books and Records; Access after Closing.**

The Plan Sponsor shall use its commercially reasonable efforts to retain all of the Books and Records delivered to it by the Vendors hereunder and relating to any period ending on or prior to the Closing Date for a period of six (6) years following the Closing Date. At any time during such six-year period, each of the Vendors and its Representatives shall have reasonable access thereto, during normal business hours, in connection with the affairs of the Vendors but the Plan Sponsor shall not be responsible or liable to any of the Vendors for or as a result of any unintentional loss or destruction of or damage to any of the Books and Records.

**Section 9.7 Ancillary Agreements.**

The Parties shall use their reasonable efforts to promptly negotiate and finalize in good faith the Ancillary Agreements to which it is contemplated they will be Parties. All Ancillary Agreements must be in form and content satisfactory to the Plan Sponsor, acting reasonably.

**Section 9.8 Tax Structure.**

During the period from the date hereof to the Time of Closing, each of the Vendors shall use its reasonable efforts to assist and co-operate with the Plan Sponsor in structuring the transactions contemplated by this Agreement in a tax effective and tax efficient manner for the Purchased Companies, the Plan Sponsor and the Plan Sponsor's Affiliates, as may be reasonably requested by the Plan Sponsor, provided that the Vendors shall not be required to undertake any structuring that adversely affects the financial condition of the Vendors, acting reasonably.

**Section 9.9 Transfer of Assets.**

Prior to the Time of Closing, each of the Vendors, other than the Purchased Companies, shall have executed, delivered and registered all documents, at such Vendor's expense and in form and substance satisfactory to the Plan Sponsor, required to release or convey, free of



Encumbrances other than Permitted Encumbrances, to the Purchased Companies any and all right, title and interest in: (i) any and all assets and properties used in the operation of or relating to any or all of the Mills; (ii) the Katahdin Preferred Shares; and (iii) all other Included Property.

**Section 9.10 Notice of Untrue Representation or Warranty.**

The Vendors will promptly notify the Plan Sponsor, and the Plan Sponsor will promptly notify the Vendors, upon (i) any representation or warranty made by it contained in this Agreement becoming untrue, incorrect or misleading during the period from the date hereof to the Time of Closing and for the purposes of this Section 9.10 each representation and warranty will be deemed to be given at and as of all times during such period; and (ii) becoming aware that any representation or warranty made by it contained in any of the Ancillary Agreements will not be true and correct as at the Time of Closing. Any such notification will set out particulars of the untrue, incorrect or misleading representation or warranty and details of any actions being taken by the Vendors or the Plan Sponsor, as the case may be, to rectify that state of affairs.

**Section 9.11 Vendors' Covenants**

Each of the Vendors covenants and agrees that none of its obligations under this Agreement or any Ancillary Agreement shall be subject to compromise or arrangement pursuant to the Plan or otherwise under the CCAA Proceedings, any recognition proceedings under the Bankruptcy Case, or any other applicable Law or proceeding.

**ARTICLE 10  
CONDITIONS TO CLOSING**

**Section 10.1 Conditions for the Benefit of the Plan Sponsor.**

The obligations of the Plan Sponsor to consummate the transactions contemplated hereby are, unless waived by the Plan Sponsor, subject to the fulfillment, at or before the Closing or as otherwise specified below, of each of the following conditions:

(a) the representations and warranties of the Vendors set forth in Article 6 and Article 7 shall be true and correct in all material respects;

(b) the Schedules provided on or before the Effective Date and required to be updated and delivered for Closing shall not contain any new information at Closing that would, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(c) (i) no Law shall be in effect, and (ii) no Governmental Authority shall have enacted, issued, promulgated or entered an Order which is in effect, in each case that has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement;

(d) the Vendors shall have at all times been in compliance with all of their covenants and agreements in this Agreement;

(e) the Plan Sponsor shall have received the Ancillary Agreements required to be delivered to it by the Vendors at or before the Closing, duly executed by all necessary Persons (other than the Plan Sponsor) and in form and content satisfactory to the Plan Sponsor, acting reasonably;

(f) the Canadian Court shall have entered the Canadian Orders and the Bankruptcy Court shall have entered the U.S. Orders, which orders shall be in form and content satisfactory to the Plan Sponsor, acting reasonably, shall have become Final Orders, and shall not have been stayed, modified or amended in any way;

(g) no injunction or other Order shall have been issued to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement;

(h) all actions, proceedings, instruments and documents required to complete the Transaction, including the Agreement and the Ancillary Agreements, shall have been approved as to form, substance and legality by the Plan Sponsor, and the Plan Sponsor and the Vendors shall have entered into the Ancillary Agreements;

(i) satisfaction of the Plan Sponsor, acting reasonably, that on Closing none of the Purchased Companies will be liable for any Liabilities other than the Continuing Obligations, solely as specifically and expressly provided for in this Agreement;

(j) satisfaction of the Plan Sponsor, acting reasonably, that none of it or the Plan Sponsor's Affiliates will assume or be deemed to assume any Liabilities of the Purchased Companies or the Vendors as a result of having entered into this Agreement or having taken any action contemplated by or in furtherance of this Agreement or the Transaction;

(k) each of the Vendors shall have complied, at all times, with the terms and conditions of all of its agreements with the Plan Sponsor and the Plan Sponsor's Affiliates including, without limitation, the DIP Lender;

(l) the obligations of the Vendors under or in respect of the Brookfield DIP Facility shall not have materially exceeded the borrowing projections contemplated by the Budget and, in any case, shall not at Closing exceed US\$15,000,000 less the amount of the net proceeds realized or to be realized from a sale or liquidation of the Gorham Assets and the Gorham Mill on or before Closing;

(m) (i) the Vendors shall have promptly applied all cash-on-hand and cash receipts (including, without limitation, all net proceeds realized from a sale or liquidation of the Gorham Assets and the Gorham Mill and the Cash Component) to repayment of all amounts owing under the Brookfield DIP Facility; (ii) all obligations under the Brookfield DIP Facility shall have been fully paid and satisfied in the manner contemplated by this Agreement (including, without limitation, in relation to the Brookfield Letters of Credit); and (iii) the Brookfield DIP Facility shall have been terminated and cancelled in a manner satisfactory to the DIP Lender, acting reasonably;

(n) the transfers and conveyances contemplated in Section 9.9 shall have been completed, in form and substance satisfactory to the Plan Sponsor;

(o) the Plan shall have received all necessary or desirable approvals to the satisfaction of the Plan Sponsor, acting reasonably, and the Plan Sponsor shall be satisfied, acting reasonably, with the terms and conditions of the Plan and all other materials and documents relating to the Plan or the Transaction;

(p) the Closing shall have occurred and the Transaction shall have been consummated on or prior to February 15, 2011;

(q) all Consents and Approvals shall have been obtained on terms and conditions satisfactory to the Plan Sponsor, acting reasonably, in respect of the transactions contemplated by this Agreement including, without limitation, the sale of the FPHI Shares, the release and assignment of the Included Property (including Contracts, Permits and Timber Licences of the Purchased Companies), and the implementation of the Plan;

(r) no Material Adverse Effect shall, individually or in the aggregate, have occurred between the Effective Date and the Closing Date; and

(s) all other events and actions contemplated by this Agreement shall have been completed, and the Vendors shall be in compliance with all of their obligations and agreements under this Agreement, the Plan, and the Court Orders, all to the satisfaction of the Plan Sponsor, acting reasonably.

The foregoing conditions are for the exclusive benefit of the Plan Sponsor and may be waived by the Plan Sponsor in whole or in part. Any such waiver shall be binding on the Plan Sponsor only if made in writing.

#### **Section 10.2 Conditions for the Benefit of the Vendors.**

The obligations of the Vendors to consummate the transactions contemplated hereby are, unless waived by the Vendors, subject to the fulfillment, at or before the Closing, of each of the following conditions:

(a) payment of the Purchase Price as set forth in Section 4.2, subject to adjustment as set forth in Section 4.1(b) and Section 4.5 of this Agreement;

(b) the representations and warranties of the Plan Sponsor set forth in Article 5 shall be true and correct in all material respects;

(c) (i) no Law shall be in effect, and (ii) no Governmental Authority shall have enacted, issued, promulgated or entered an Order which is in effect, in each case that has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement;

(d) the Plan Sponsor shall have at all times been in compliance in all material respects with all of its covenants and agreements set forth in this Agreement;

(e) the Vendors shall have received the Ancillary Agreements required to be delivered to them by the Plan Sponsor at or before the Closing, duly executed by all necessary

Persons (other than the Vendors) and in form and content satisfactory to the Vendors, acting reasonably;

(f) (i) the Canadian Court shall have entered the Canadian Orders and the Bankruptcy Court shall have entered the U.S. Orders, which orders shall not have been stayed, modified or amended in any way;

(g) no injunction or other Order shall have been issued to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement; and

(h) this Agreement shall have been approved by the Board of Directors of the Vendors.

The foregoing conditions are for the exclusive benefit of the Vendors and may be waived by the Vendors in whole or in part. Any such waiver shall be binding on the Vendors only if made in writing.

## **ARTICLE 11 TRANSACTIONAL COSTS**

### **Section 11.1 Payment of Transactional Costs.**

The Plan Sponsor and the Vendors shall be liable for all of their own Transactional Costs and transactional taxes payable under any Law on or with respect to the transactions contemplated by this Agreement.

### **Section 11.2 Elections.**

The Vendors and the Plan Sponsor agree to make, execute and file with the appropriate taxing authorities such elections or purchase exemption certificates as the parties hereto agree are reasonable or mutually desirable, if any, in prescribed form and within the prescribed time.

### **Section 11.3 U.S. Tax Certificate Information**

The Vendors shall provide to the Plan Sponsor prior to Closing such information as the Plan Sponsor may reasonably request to allow the Plan Sponsor to confirm that the stock of FPHI does not constitute a "United States real property interest" within the meaning of Section 897(c)(1) of the United States Internal Revenue Code of 1986, as amended, and such statements and documents in relation thereto as the Plan Sponsor may reasonably request for filing with or delivery to applicable tax authorities including, without limitation, in relation to the filing of certificates substantially in the form of Exhibits B and C attached to this Agreement.

## **ARTICLE 12 CLOSING**

### **Section 12.1 Location and Time of the Closing.**

Upon the terms and subject to the conditions hereof, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Torys LLP, located at Suite 3000, 79 Wellington St. West, Toronto-Dominion Centre, Toronto, Ontario, M5K 1N2, or such other place as the Plan Sponsor and the Vendors may mutually agree, no later than three (3) Business Days following the date on which the conditions set forth in Section 10.1 and Section 10.2 of this Agreement have been satisfied or (if permissible) waived (other than the conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or (if permissible) waiver of such conditions), or such other date as the Vendors and the Plan Sponsor may mutually agree (the "Closing Date"). The Closing shall be deemed to have been consummated and become effective for all purposes as of 12:01 a.m. Toronto time on the Closing Date.

### **Section 12.2 Closing Deliveries of the Vendors.**

At the Closing, the Vendors shall deliver or cause to be delivered to the Plan Sponsor:

- (a) assignments or other instruments of transfer duly endorsed in blank, or accompanied by share powers or other instruments of transfer duly executed in blank, and otherwise in form and substance reasonably acceptable to the Plan Sponsor for transfer of the FPHI Shares to the Plan Sponsor, bills of sale, assurances, transfers, assignments, consents, and such other agreements, documents and instruments as may be reasonably required by the Plan Sponsor to complete the Transactions provided for in this Agreement;
- (b) all original certificates and instruments in respect of the FPHI Shares;
- (c) the written resignation of each member of the board of directors and officer of each of the Purchased Companies, together with a release in favour of each of the Purchased Companies in his or her capacity as director or officer only effective as at the Closing;
- (d) all Books and Records relating to the Purchased Companies;
- (e) a certificate, dated the Closing Date, confirming that all of the representations and warranties of the Vendors contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date. For greater certainty, the representations and warranties of the Vendors contained in this Agreement made as of the Closing Date shall not be qualified by knowledge;
- (f) the Schedules to this Agreement updated and delivered for Closing pursuant to the terms of this Agreement in form and content satisfactory to the Plan Sponsor, acting reasonably;

(g) an acknowledgement, dated the Closing Date, that each of the conditions precedent in Section 10.2 of this Agreement have been fulfilled, performed or waived as of the Closing Date;

(h) a certified copy of each of the Canadian Orders;

(i) a certified copy of each of the U.S. Orders;

(j) the Consents and Approvals;

(k) a certificate substantially in the form of Exhibit B;

(l) a Notice substantially in the form of Exhibit C;

(m) an executed copy of the Monitor's Certificate;

(n) a counterpart signature page to each Ancillary Agreement, duly executed by each of the Vendors, as applicable; and

(o) such other certificates, instruments and documents, in form and substance reasonably satisfactory to the Plan Sponsor, as may be contemplated by this Agreement or as the Plan Sponsor may reasonably request.

#### **Section 12.3 Closing Deliveries of the Plan Sponsor.**

At the Closing, the Plan Sponsor shall deliver, or cause to be delivered, to the Vendors:

(a) payment of the Purchase Price as set forth in Section 4.2;

(b) a counterpart signature page to each Ancillary Agreement, duly executed by the Plan Sponsor;

(c) a certificate, dated the Closing Date, confirming that all of the representations and warranties of the Plan Sponsor contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;

(d) an acknowledgement, dated the Closing Date, that each of the conditions precedent in Section 10.1 of this Agreement have been fulfilled, performed or waived as of the Closing Date; and

(e) such other certificates, instruments and documents in form and substance reasonably acceptable to the Vendors, as the Vendors may reasonably request.

#### **Section 12.4 Maine Real Estate Transfer Taxes.**

At Closing, the Plan Sponsor and the Purchased Companies, as applicable, conveying the Lands relating to the Included Assets and/or the Mills shall execute one or more real estate transfer declarations that shall establish the portion of the Purchase Price that is allocable to such Lands. The Plan Sponsor and the Purchased Companies, as applicable, shall use best

commercial efforts to establish that the transfer of such Lands hereunder is exempt from taxation under 36 MRSA Sec. 4641-C(14). Notwithstanding Section 11.1 hereof, to the extent that any taxes are payable with respect to the transfer of such Lands, the Plan Sponsor and the Vendors shall each be responsible for, and pay, 50% of such taxes.

#### **Section 12.5 Possession.**

The Purchased Companies shall be entitled to vacant possession of the Mills and other Included Property on and after Closing. The Vendors shall deliver to the Purchased Companies on Closing such keys, lock and safe combinations and other similar items as the Purchased Companies may require to obtain immediate and full occupation, possession and control of the Mills and the Included Property.

### **ARTICLE 13 RISK AND TERMINATION**

#### **Section 13.1 Risk of Loss.**

The FPHI Shares and the Included Property shall be and remain the risk of the Vendors until Closing and at the risk of the Plan Sponsor (in the case of the FPHI Shares) and the Purchased Companies (in the case of the Included Property) from and after Closing. If, prior to Closing, the Included Property shall be substantially damaged or destroyed by fire or other casualty, then, at its option, the Plan Sponsor may decline to complete the Transaction. Such option shall be exercised within five (5) Business Days after notification to the Plan Sponsor by the Vendors of the occurrence of damage or destruction (or prior to the Closing Date if such occurrence takes place within five (5) Business Days of the Closing Date) in which event this Agreement shall be terminated automatically. If the Plan Sponsor does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Plan Sponsor shall complete the Transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction provided that such damage or destruction is insured or, otherwise by an agreed abatement.

#### **Section 13.2 Termination.**

This Agreement may be terminated at any time prior to the Closing:

- (a) by mutual written consent of the Parties;
- (b) by the Plan Sponsor, upon written notice to the Vendors, if the Closing does not take place by February 15, 2011 (the "Termination Date");
- (c) by the Plan Sponsor in the event of a material breach by the Vendors of the Vendors' representations, warranties, agreements or covenants set forth in this Agreement, which breach would result in a failure to satisfy the conditions to Closing set forth in Section 10.1 of this Agreement;

(d) by the Vendors in the event of a material breach by the Plan Sponsor of the Plan Sponsor's representations, warranties, agreements or covenants set forth in this Agreement, which breach would result in a failure to satisfy the conditions to Closing set forth in Section 10.2 of this Agreement;

(e) by the Plan Sponsor if any of the conditions in Section 10.1 of this Agreement have not been satisfied by Closing and the Plan Sponsor has not waived such condition at or prior to Closing; or

(f) by the Vendors if any of the conditions in Section 10.2 of this Agreement have not been satisfied by Closing and the Vendors have not waived such condition at or prior to Closing.

### **Section 13.3 Effects of Termination.**

If this Agreement is terminated pursuant to Section 13.2, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for the provisions of: (i) Section 7.9 (Survival of Covenants, Representations and Warranties); (ii) Section 13.2 (Termination); (iii) Section 13.3 (Effects of Termination); and (iv) Article 14 (Miscellaneous), provided, that neither the termination of this Agreement nor anything in this Section shall relieve any Party from liability for any breach of this Agreement occurring before the termination hereof and thereof.

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

### **Section 14.1 Confidentiality.**

The Parties hereby agree to keep confidential this Agreement and the terms and conditions contained herein, and not at any time to disclose such information except: (i) where such information is in the public domain through no breach of the terms of this Agreement by either Party, (ii) where such information is required by Law to be disclosed to any Governmental Authority (including, without limitation, any stock exchange), (iii) on a need to know basis to each of the Parties' Representatives, (iv) as required in connection with the CCAA Proceedings and the Bankruptcy Case, or as otherwise directed by the Canadian Court and the Bankruptcy Court, or (v) where disclosure is agreed to in writing between the Parties.

### **Section 14.2 Non-Disclosure.**

Except (i) as and to the extent required by Law, the CCAA Proceedings or the Bankruptcy Case, (ii) to its Representatives, (iii) to the Monitor and its Representatives, or (iv) to the DIP Lender and its Representatives, neither the Plan Sponsor nor the Vendors shall, and each shall direct its Representatives not to, without the prior written consent of the other Party, directly or indirectly, make any public comment, statement or communication with respect to, or otherwise disclose or permit the disclosure of the existence of discussions regarding, a possible transaction between the Parties or any of the terms, conditions or other aspects of the Transaction or the contents of this Agreement or the Ancillary Agreements.



### **Section 14.3 Expenses.**

The Plan Sponsor and the Vendors shall be responsible for their own respective costs and expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement.

### **Section 14.4 Solicitors and Agents and Tender**

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Plan Sponsor's Solicitors on behalf of the Plan Sponsor and by the Vendors' Solicitors on behalf of the Vendors and any tender of this Agreement or the Ancillary Agreements and the balance of the Purchase Price may be made upon the Vendors' Solicitors and the Plan Sponsor's Solicitors, as the case may be.

### **Section 14.5 Successors and Assigns.**

This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns. This Agreement may not be assigned by either Party without the prior written consent of the other, which consent shall not be unreasonably withheld; provided, however, that the Plan Sponsor may, without the consent of the Vendors, assign and delegate its rights under this Agreement to one or more of the Plan Sponsor's Affiliates, and in interpreting this Agreement any such assignee(s) shall be considered the "Plan Sponsor".

### **Section 14.6 Third Party Beneficiaries.**

Each Party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties hereto and their successors and permitted assigns, and no Person, other than the Parties hereto and their successors and their permitted assigns, shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

### **Section 14.7 Notices.**

(a) Mode of Giving Notice. Any notice, direction, 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 means of electronic communication, in each case to the applicable address set out below:

(i) if to the Plan Sponsor, to:

c/o Brookfield Asset Management Inc.  
181 Bay Street, Suite 300  
Brookfield Place  
Toronto, Ontario M5J 2T3

Attention: Sam Pollock/Justin Beber  
Email: spollock@brookfield.com/jbeber@brookfield.com  
Fax No.: 416.365.9642

with a copy to:

Torys LLP  
Suite 3000, 79 Wellington Street West  
Toronto-Dominion Centre  
Toronto, Ontario M5K 1N2

Attention: Tony DeMarinis/Natasha De Cicco  
Email: tdemarinis@torys.com/ndecicco@torys.com  
Fax No.: 416.865.7380

(ii) if to the Vendors, to:

c/o Fraser Papers Inc.  
181 Bay Street, Suite 200  
Brookfield Place  
Toronto, Ontario M5J 2T3

Attention: Glen McMillan  
Email: gmcmillan@toronto.fraserpapers.com  
Fax No.: 416.359.8606

with a copy to:

Thornton Grout Finnigan LLP  
Suite 3200, 100 Wellington Street West  
Toronto-Dominion Centre  
Toronto, Ontario M5K 1K7

Attention: D.J. Miller  
Email: djmiller@tgf.ca  
Fax No.: 416.304.1313

with a copy to counsel for the Monitor:

Goodmans LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Ontario M5H 2S7

Attention: Robert Chadwick  
Email: rchadwick@goodmans.ca  
Fax: 416.979.1234

(b) Deemed Delivery of Notice. 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. (Toronto time) 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.

**Section 14.8 Time of Essence.**

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

**Section 14.9 Further Assurances.**

Each of the Parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other Party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.

**Section 14.10 Counterparts.**

This Agreement may be executed in 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 Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by facsimile transmission or other means of electronic communication and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.

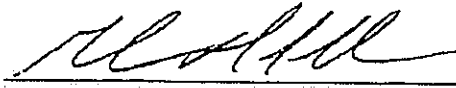
**Section 14.11 Paramountcy.**

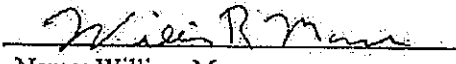
In the event of any conflict or inconsistency between the provisions of this Agreement and any other agreement, document or instrument executed or delivered in connection with the Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such inconsistency.

[Remainder of the Page Intentionally Left Blank; Signature Page Follows]

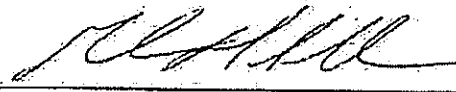
IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

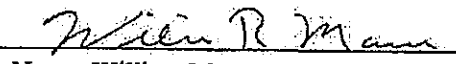
**FRASER PAPERS INC.**

By:   
Name: Glen McMillan  
Title: Chief Restructuring Officer

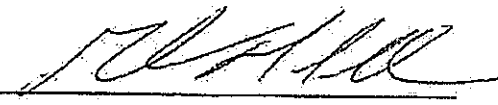
By:   
Name: William Manzer  
Title: Senior Vice President, Strategy  
and Special Project


**FRASER PAPERS LIMITED**

By:   
Name: Glen McMillan  
Title: Secretary

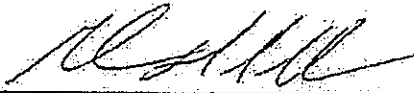
By:   
Name: William Manzer  
Title: Vice President


**FPS CANADA INC.**

By:   
Name: Glen McMillan  
Title: Secretary

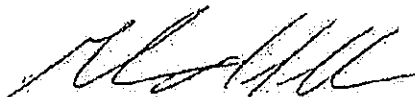
By:   
Name: William Manzer  
Title: Vice President

**FRASER PAPERS HOLDINGS INC.**

By:   
Name: Glen McMillan  
Title: Secretary

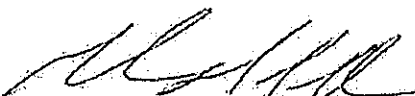
By:   
Name: William Manzer  
Title: Vice President

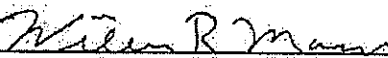
**FRASER TIMBER LIMITED**

By:   
Name: Glen McMillan  
Title: Secretary

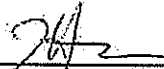
By:   
Name: William Manzer  
Title: Vice President

**FRASER N.H. LLC**

By:   
Name: Glen McMillan  
Title: Secretary

By:   
Name: William Manzer  
Title: Vice President

**BROOKFIELD ASSET MANAGEMENT  
INC.**

By:  \_\_\_\_\_

Name: Jeffrey Haar

Title:

By:  \_\_\_\_\_

Name: Justin Beber

Title:

**Schedule 3.1**  
**Continuing Obligations**

- (i) Ordinary Course trade payables and accrued payables outstanding as of the Closing Date for goods provided and services rendered following the Filing Date by Person(s) listed in Schedule 3.1(a) attached hereto in relation solely to the Purchased Companies and the Business and all accrued payroll obligations and accrued vacation pay for Continuing Employees and, to the extent that the Gorham Assets are Included Property, the Unionized Employees but excluding, for greater certainty, any and all Intercompany Receivables and Intercompany Liabilities, any and all trade payables and accrued payables to be paid by the Purchased Companies in the Ordinary Course prior to the Closing Date and any and all trade payables and accrued payables for goods provided and services rendered to the Vendors other than the Purchased Companies or to the Purchased Companies for purposes other than the Business (collectively, the "Continuing Accounts Payable");
- (ii) Liabilities arising from asset retirement obligations of FTL in respect of the Ashland Assets and the Masardis Assets that are consistent with past public disclosure and disclosure to the Plan Sponsor and the Plan Sponsor's Affiliates;
- (iii) To the extent that the Gorham Assets and the Gorham Mills are not Excluded Property, Liabilities arising from asset retirement obligations of FNHL in respect of the Gorham Assets that are consistent with past public disclosure and disclosure to the Plan Sponsor and the Plan Sponsor's Affiliates;
- (iv) unless the Vendors implement Alternative LC Arrangements on or prior to Closing, Liabilities of the Purchased Companies arising from the Workers Compensation Obligations that are consistent with past public disclosure and disclosure to the Plan Sponsor and the Plan Sponsor's Affiliates, up to a maximum aggregate amount equal to the maximum aggregate amount payable under the Brookfield Letters of Credit;
- (v) Liabilities arising from the employment of the Continuing Employees and, to the extent that the Gorham Assets and Gorham Mill constitute Included Property, the Unionized Employees from and after the Closing Date in accordance with the provisions of Section 8.1 of this Agreement; and
- (vi) Liabilities arising from the landfill maintenance obligations of Former Landfill to any Governmental Authority in respect of the landfill located in the city of Moraine, Ohio that are consistent with past public disclosure and disclosure to the Plan Sponsor and the Plan Sponsor's Affiliates.

**Schedule 3.1(a)**  
**Continuing Accounts Payable**

Amounts payable to the following Persons listed hereto.

Notwithstanding anything to the contrary, Continuing Accounts Payable shall not include any amounts owing by any of the Vendors or the Purchased Companies in respect of any goods provided or services rendered, or any other transaction or event occurring, prior to the Filing Date (the "Pre-petition Payables"), and neither the Plan Sponsor nor the Purchased Companies shall under any circumstance be responsible or liable for the Pre-petition Payables.



## **Schedule “B” – Promissory Notes**

**NON-NEGOTIABLE NON-TRANSFERABLE**  
**UNSECURED PROMISSORY NOTE**

Toronto, Ontario

Principal Amount: US\$30,000,000

April 28, 2010

**1. General**

(a) FOR VALUE RECEIVED the undersigned, Twin Rivers Paper Company Inc., a corporation incorporated and existing under the laws of the Province of Ontario, having a head office at 27 Rice Street Edmundston, NB, E3V 1S9 (hereinafter, together with its successors and permitted assigns, referred to as the "Payor"), hereby promises to pay to Fraser Papers Inc. (together with its successors and permitted assigns, hereinafter referred to as the "Payee"), on the Maturity Date, in lawful money of the United States, the sum of Thirty Million Dollars (US\$30,000,000) (the "Principal Amount"), as adjusted pursuant to Section 3.8 of the Purchase Agreement (defined below), at its office at Toronto, Ontario, or at such other place as the Payee may designate.

(b) This Promissory Note is issued pursuant to and is subject to the provisions of the Purchase Agreement. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Purchase Agreement. The terms and conditions of the Purchase Agreement are incorporated herein by reference with the same force and effect as if such terms and conditions were fully set forth herein.

**2. Definitions**

In this Promissory Note, capitalized terms used but otherwise defined herein shall have the following meanings ascribed to such terms:

"**Brookfield Debt**" means any debt owing to Brookfield Asset Management Inc. (or its successors) or an affiliate thereof, pursuant to the definition of "affiliate" in the *Business Corporations Act* (Ontario) as such definition exists as of the date of this Promissory Note.

"**CIT Facility**" means the senior secured credit facility dated as of the date hereof between the Payor, as borrower, certain subsidiaries of the Payor, as guarantors, CIT Business Credit Canada Inc. as agent and lender and the other lenders party thereto from time to time, as may be amended, restated, or otherwise modified from time to time.

"**Fraser Papers**" shall mean, collectively, Fraser Papers Inc. and its subsidiaries (being, on the date hereof, Fraser Papers Limited, FPS Canada Inc., Fraser Papers Holdings Inc., Fraser Timber Limited and Fraser N.H. LLC).

"**Maturity Date**" means April 28, 2018.

"**Purchase Agreement**" means the asset purchase agreement dated as of December 22, 2009 (as amended, modified or restated from time to time) between Fraser Papers, as Vendors, and Brookfield Asset Management Inc. or its designate(s), as Purchaser, as assigned to the Payor and

Twin Rivers Paper Company LLC pursuant to an assignment and assumption agreement dated as of April 28, 2010.

"Senior Indebtedness" means the principal of and the interest and premium (or any other amounts payable thereunder), if any, on:

(a) all indebtedness, liabilities and obligations of the Payor in respect of any indebtedness which is secured by liens, encumbrances or charges on any assets of the Payor, whether outstanding on the date of this Promissory Note or thereafter created, incurred, assumed or guaranteed, including, for greater certainty, all indebtedness, liabilities and obligations of the Payor under or in respect of the CIT Facility; and

(b) renewals, extensions, restructurings, refinancings and refundings of any such indebtedness, liabilities or obligations;

unless in each case it is provided by the terms of the instrument creating or evidencing such indebtedness, liabilities or obligations that such indebtedness, liabilities or obligations are *pari passu* with or subordinate in right of payment to this Promissory Note.

"Trustee" means a trustee appointed to hold an interest in the Principal Amount for the benefit of one or more classes or groups of creditors of Fraser Papers.

### 3. Intercreditor Agreement

The Payee hereby acknowledges and agrees that all rights and remedies of the Payee (including its successors and assigns) hereunder, including with respect to payment and enforcement of this Promissory Note, are subject to the Intercreditor Agreement dated April 28, 2010 between, among others, CIT Business Credit Canada Inc. and the Payee (the "Intercreditor Agreement").

### 4. Term

The Principal Amount shall be payable only on the Maturity Date, unless the Principal Amount is prepaid earlier in accordance with the terms and conditions of this Promissory Note and the Intercreditor Agreement. Notwithstanding the foregoing, but subject to the Intercreditor Agreement, the Principal Amount shall become due and payable in the event that the Payor institutes legal proceedings in respect of itself or substantially all of its property and assets under any federal, provincial or applicable foreign law relating to bankruptcy, insolvency, receivership, or creditor protection of insolvent persons (including the Bankruptcy and *Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada)) or any such legal proceedings are instituted by creditors of the Payor and are not withdrawn, dismissed or terminated within sixty (60) days thereof.

### 5. Non-Interest Bearing Promissory Note

The Principal Amount shall not bear any interest.

### 6. Unsecured, Subordinated Promissory Note

This Promissory Note is a direct obligation of the Payor but is not secured by any mortgage, pledge, hypothec or other charge, lien or encumbrance. This Promissory Note and all Replacement Notes (as such term is defined below) shall rank *pari passu* with all other outstanding direct, unsecured and unsubordinated present and future obligations (except as otherwise prescribed by law) of the Payor and will be payable rateably without preference or priority. The Principal Amount hereof is subordinated and postponed to the repayment in full of all Senior Indebtedness of the Payor, provided that notwithstanding the foregoing postponement, the Payor shall repay the Promissory Note on the Maturity Date provided that no default then exists or would result from such payment under any Senior Indebtedness the terms of which would prohibit such repayment if a default then exists or would result from such payment, and provided further that if such Senior Indebtedness is also Brookfield Debt, then 180 days following the Maturity Date the Payee shall be free to pursue its available remedies to enforce payment upon the Promissory Note, however the Promissory Note shall remain subordinated to all Senior Indebtedness including Brookfield Debt.

**7. Voluntary Prepayment**

The Payor shall have the right and the privilege, at its sole option, of prepaying in whole or in part any portion of the Principal Amount at any time or from time to time prior to the Maturity Date without premium or penalty in minimum increments of US\$1,000,000. In the event that more than one Promissory Note is outstanding as a result of any replacement Promissory Notes being issued pursuant to Section 7 or Section 13, any such voluntary prepayment shall be made in respect of all notes held by parties having claims of equal priority in respect of one another, on a *pro rata* basis. The Payee shall not have the right to require the Payor to redeem or call for the repayment of this Promissory Note at any time prior to the Maturity Date.

**8. Successors and Assigns**

This Promissory Note shall enure to the benefit of and shall be binding upon the Payor and the Payee and their respective successors and permitted assigns. This Promissory Note shall not be transferable or assignable by the Payee, its successors or its permitted assigns without the prior written consent of the Payor, in its sole and absolute discretion; provided however that:

(a) the Payee may transfer or assign this Promissory Note, in whole and not in part, without the consent of the Payor, to a successor (by operation of law or otherwise) of Fraser Papers; and

(b) the Payee may transfer or assign this Promissory Note, in whole or in part, without the consent of the Payor, to one or more Trustees or a nominee of such Trustee and any successor trustee or nominee thereof, holding the Promissory Note on behalf of Fraser Papers or any Persons designated by Fraser Papers or to whom an interest in the Promissory Note is to be distributed in accordance with such Orders of the Canadian Court and the Bankruptcy Court as may subsequently be made, provided that (i) the terms of any Order authorizing any such distribution shall expressly provide that such distribution, and the rights and remedies of any successor or assign of Payee, is subject to the Intercreditor Agreement, and (ii) Payor is satisfied, acting reasonably, that such transfer or assignment would not result in the Payor becoming a

reporting issuer in any province or territory of Canada (or the equivalent in any other jurisdiction).

9. Amendment

This Promissory Note may not be modified, except and only by a written instrument executed by the Payor and the Payee.

10. Non-Negotiable Instrument

This Promissory Note is not and is not intended to be a negotiable instrument.

11. Governing Law

This Promissory Note is governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

12. Submission to Jurisdiction

(a) The Payee hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the courts of the Province of Ontario, and any appellate court thereof, in any action or proceeding arising out of or relating to this Promissory Note, or enforcement of any judgment, and each of the Payor and the Payee hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in Ontario. Each of the Payor and the Payee agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law. Nothing in this Promissory Note shall affect any right that the Payor may otherwise have to bring any action or proceeding relating to this Promissory Note against the Payee in the courts of any other jurisdiction.

(b) The Payee hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Promissory Note in any court referred to in this Section 12(b). Each of the Payor and the Payee hereby irrevocably waives, to the fullest extent permitted by applicable law, any *forum non conveniens* defence to the maintenance of such action or proceeding in any such court.

13. Waiver of Jury Trial

EACH OF THE PAYOR AND THE PAYEE HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS PROMISSORY NOTE (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH OF THE PAYOR AND THE PAYEE (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD

NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**14. Replacement Notes**

(a) Should it be determined pursuant to Section 3.8 of the Purchase Agreement, that the Principal Amount of the Promissory Note is to be adjusted to an amount other than \$30,000,000, the Payee shall promptly return this Promissory Note to the Payor in exchange for a promissory note in identical form in the amount of such adjusted Principal Amount.

(b) Upon receiving written notice of any assignment by the Payee of this Promissory Note made in accordance with Section 8, the Payor shall, upon request by the Payee and return of the original Promissory Note to be replaced, issue a replacement promissory note or notes in identical form to reflect such whole or partial transfer. For greater certainty, any replacement note issued in accordance with this Section shall state that the rights and remedies of the Payee thereunder are subject to the Intercreditor Agreement.

IN WITNESS WHEREOF, the undersigned hereunto sets its hand and seal as of the date first set forth above.

TWIN RIVERS PAPER COMPANY INC.

By: 

Name:

Title:

Justin Beber

Managing Partner & General  
Vice President

Agreed to and acknowledged as of this 28 day of April, 2010.

FRASER PAPERS INC.

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Promissory Note]

IN WITNESS WHEREOF, the undersigned hereunto sets its hand and seal as of the date first set forth above.

TWIN RIVERS PAPER COMPANY INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Agreed to and acknowledged as of this 28 day of April, 2010.

FRASER PAPERS INC.

By: \_\_\_\_\_

Name: *Glen McMillan*

Title: *Senior VP and CFO*

By: \_\_\_\_\_

Name: *Marina Mueller*

Title: *Assistant Corporate Secretary*

[Signature Page to Promissory Note]



**NON-NEGOTIABLE NON-TRANSFERABLE**  
**UNSECURED PROMISSORY NOTE**

Toronto, Ontario

Principal Amount: US\$10,000,000

April 28, 2010

1. **General**

(a) FOR VALUE RECEIVED the undersigned, Twin Rivers Paper Company Inc., a corporation incorporated and existing under the laws of the Province of Ontario, having a head office at 27 Rice Street Edmundston, NB, E3V 1S9 (hereinafter, together with its successors and permitted assigns, referred to as the "Payor"), hereby promises to pay to Fraser Papers Inc. (together with its successors and permitted assigns, hereinafter referred to as the "Payee"), on the Maturity Date, in lawful money of the United States, the sum of Ten Million Dollars (US\$10,000,000) (the "Principal Amount"), as adjusted pursuant to Section 3.8 of the Purchase Agreement (defined below), at its office at Toronto, Ontario, or at such other place as the Payee may designate.

(b) This Promissory Note is issued pursuant to and is subject to the provisions of the Purchase Agreement. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Purchase Agreement. The terms and conditions of the Purchase Agreement are incorporated herein by reference with the same force and effect as if such terms and conditions were fully set forth herein.

2. **Definitions**

In this Promissory Note, capitalized terms used but otherwise defined herein shall have the following meanings ascribed to such terms:

"Brookfield Debt" means any debt owing to Brookfield Asset Management Inc. (or its successors) or an affiliate thereof, pursuant to the definition of "affiliate" in the *Business Corporations Act* (Ontario) as such definition exists as of the date of this Promissory Note.

"CIT Facility" means the senior secured credit facility dated as of the date hereof between the Payor, as borrower, certain subsidiaries of the Payor, as guarantors, CIT Business Credit Canada Inc. as agent and lender and the other lenders party thereto from time to time, as may be amended, restated, or otherwise modified from time to time.

"Fraser Papers" shall mean, collectively, Fraser Papers Inc. and its subsidiaries (being, on the date hereof, Fraser Papers Limited, FPS Canada Inc., Fraser Papers Holdings Inc., Fraser Timber Limited and Fraser N.H. LLC).

"Maturity Date" means April 28, 2018.

"Purchase Agreement" means the asset purchase agreement dated as of December 22, 2009 (as amended, modified or restated from time to time) between Fraser Papers, as Vendors, and Brookfield Asset Management Inc. or its designate(s), as Purchaser, as assigned to the Payor and

Twin Rivers Paper Company LLC pursuant to an assignment and assumption agreement dated as of April 28, 2010.

"Senior Indebtedness" means the principal of and the interest and premium (or any other amounts payable thereunder), if any, on:

(a) all indebtedness, liabilities and obligations of the Payor in respect of any indebtedness which is secured by liens, encumbrances or charges on any assets of the Payor, whether outstanding on the date of this Promissory Note or thereafter created, incurred, assumed or guaranteed, including, for greater certainty, all indebtedness, liabilities and obligations of the Payor under or in respect of the CIT Facility; and

(b) renewals, extensions, restructurings, refinancings and refundings of any such indebtedness, liabilities or obligations;

unless in each case it is provided by the terms of the instrument creating or evidencing such indebtedness, liabilities or obligations that such indebtedness, liabilities or obligations are *pari passu* with or subordinate in right of payment to this Promissory Note.

"Trustee" means a trustee appointed to hold an interest in the Principal Amount for the benefit of one or more classes or groups of creditors of Fraser Papers.

3. Intercreditor Agreement

The Payee hereby acknowledges and agrees that all rights and remedies of the Payee (including its successors and assigns) hereunder, including with respect to payment and enforcement of this Promissory Note, are subject to the Intercreditor Agreement dated April 28, 2010 between, among others, CIT Business Credit Canada Inc. and the Payee (the "Intercreditor Agreement").

4. Term

The Principal Amount shall be payable only on the Maturity Date, unless the Principal Amount is prepaid earlier in accordance with the terms and conditions of this Promissory Note and the Intercreditor Agreement. Notwithstanding the foregoing, but subject to the Intercreditor Agreement, the Principal Amount shall become due and payable in the event that the Payor institutes legal proceedings in respect of itself or substantially all of its property and assets under any federal, provincial or applicable foreign law relating to bankruptcy, insolvency, receivership, or creditor protection of insolvent persons (including the Bankruptcy and Insolvency Act (Canada) and the Companies' Creditors Arrangement Act (Canada)) or any such legal proceedings are instituted by creditors of the Payor and are not withdrawn, dismissed or terminated within sixty (60) days thereof.

5. Non-Interest Bearing Promissory Note

The Principal Amount shall not bear any interest.

6. Unsecured, Subordinated Promissory Note

This Promissory Note is a direct obligation of the Payor but is not secured by any mortgage, pledge, hypothec or other charge, lien or encumbrance. This Promissory Note and all Replacement Notes (as such term is defined below) shall rank *pari passu* with all other outstanding direct, unsecured and unsubordinated present and future obligations (except as otherwise prescribed by law) of the Payor and will be payable rateably without preference or priority. The Principal Amount hereof is subordinated and postponed to the repayment in full of all Senior Indebtedness of the Payor, provided that notwithstanding the foregoing postponement, the Payor shall repay the Promissory Note on the Maturity Date provided that no default then exists or would result from such payment under any Senior Indebtedness the terms of which would prohibit such repayment if a default then exists or would result from such payment, and provided further that if such Senior Indebtedness is also Brookfield Debt, then 180 days following the Maturity Date the Payee shall be free to pursue its available remedies to enforce payment upon the Promissory Note, however the Promissory Note shall remain subordinated to all Senior Indebtedness including Brookfield Debt.

7. Voluntary Prepayment

The Payor shall have the right and the privilege, at its sole option, of prepaying in whole or in part any portion of the Principal Amount at any time or from time to time prior to the Maturity Date without premium or penalty in minimum increments of US\$1,000,000. In the event that more than one Promissory Note is outstanding as a result of any replacement Promissory Notes being issued pursuant to Section 7 or Section 13, any such voluntary prepayment shall be made in respect of all notes held by parties having claims of equal priority in respect of one another, on a *pro rata* basis. The Payee shall not have the right to require the Payor to redeem or call for the repayment of this Promissory Note at any time prior to the Maturity Date.

8. Successors and Assigns

This Promissory Note shall enure to the benefit of and shall be binding upon the Payor and the Payee and their respective successors and permitted assigns. This Promissory Note shall not be transferable or assignable by the Payee, its successors or its permitted assigns without the prior written consent of the Payor, in its sole and absolute discretion; provided however that:

(a) the Payee may transfer or assign this Promissory Note, in whole and not in part, without the consent of the Payor, to a successor (by operation of law or otherwise) of Fraser Papers; and

(b) the Payee may transfer or assign this Promissory Note, in whole or in part, without the consent of the Payor, to one or more Trustees or a nominee of such Trustee and any successor trustee or nominee thereof, holding the Promissory Note on behalf of Fraser Papers or any Persons designated by Fraser Papers or to whom an interest in the Promissory Note is to be distributed in accordance with such Orders of the Canadian Court and the Bankruptcy Court as may subsequently be made, provided that (i) the terms of any Order authorizing any such distribution shall expressly provide that such distribution, and the rights and remedies of any successor or assign of Payee, is subject to the Intercreditor Agreement; and (ii) Payor is satisfied, acting reasonably, that such transfer or assignment would not result in the Payor becoming a

reporting issuer in any province or territory of Canada (or the equivalent in any other jurisdiction).

9. Amendment

This Promissory Note may not be modified, except and only by a written instrument executed by the Payor and the Payee.

10. Non-Negotiable Instrument

This Promissory Note is not and is not intended to be a negotiable instrument.

11. Governing Law

This Promissory Note is governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

12. Submission to Jurisdiction

(a) The Payee hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the courts of the Province of Ontario, and any appellate court thereof, in any action or proceeding arising out of or relating to this Promissory Note, or enforcement of any judgment, and each of the Payor and the Payee hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in Ontario. Each of the Payor and the Payee agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law. Nothing in this Promissory Note shall affect any right that the Payor may otherwise have to bring any action or proceeding relating to this Promissory Note against the Payee in the courts of any other jurisdiction.

(b) The Payee hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Promissory Note in any court referred to in this Section 12(b). Each of the Payor and the Payee hereby irrevocably waives, to the fullest extent permitted by applicable law, any *forum non conveniens* defence to the maintenance of such action or proceeding in any such court.

13. Waiver of Jury Trial

EACH OF THE PAYOR AND THE PAYEE HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS PROMISSORY NOTE (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH OF THE PAYOR AND THE PAYEE (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD

NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**14. Replacement Notes**

(a) Should it be determined pursuant to Section 3.8 of the Purchase Agreement, that the Principal Amount of the Promissory Note is to be adjusted to an amount other than \$10,000,000, the Payee shall promptly return this Promissory Note to the Payor in exchange for a promissory note in identical form in the amount of such adjusted Principal Amount.

(b) Upon receiving written notice of any assignment by the Payee of this Promissory Note made in accordance with Section 8, the Payor shall, upon request by the Payee and return of the original Promissory Note to be replaced, issue a replacement promissory note or notes in identical form to reflect such whole or partial transfer. For greater certainty, any replacement note issued in accordance with this Section shall state that the rights and remedies of the Payee thereunder are subject to the Intercreditor Agreement.

IN WITNESS WHEREOF, the undersigned hereunto sets its hand and seal as of the date first set forth above.

TWIN RIVERS PAPER COMPANY INC.

By: 

Name:

Title:

Justin Bebel  
Managing Partner & President  
Vice President

Agreed to and acknowledged as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

FRASER PAPERS INC.

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Promissory Note]

IN WITNESS WHEREOF, the undersigned hereunto sets its hand and seal as of the date first set forth above.

TWIN RIVERS PAPER COMPANY INC.

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Agreed to and acknowledged as of this 28 day of April, 2010.

FRASER PAPERS INC.

By: [Signature]

Name: Glen McMillan

Title: Senior VP and CFO

By: [Signature]

Name: Marina Mueller

Title: Assistant Corporate Secretary

[Signature Page to Promissory Note]

## **Schedule “C” – Share Certificate**



INCORPORATED UNDER THE LAW OF THE PROVINCE OF ONTARIO

1000 SHARES

TWIN RIVERS PAPER COMPANY INC.

FRASER PAPERS INC.

This is to Certify that

is the registered holder of

\*\*2,401,960\*\*

Common Shares of

TWIN RIVERS PAPER COMPANY INC.

The class or series of shares represented by this Certificate has rights, privileges, restrictions or conditions attached thereto and the Corporation will furnish to the holder, on demand and without charge, a full copy of the text of,

- (i) the rights, privileges, restrictions and conditions attached to the said shares and to each class authorized to be issued and to each series insofar as the same have been fixed by the directors, and
- (ii) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series, if applicable.

COMMON

RESTRICTIONS ON TRANSFER. There are restrictions on the right to transfer the shares represented by this Certificate.

IN WITNESS WHEREOF the Corporation has caused this certificate to be signed by its duly authorized officers

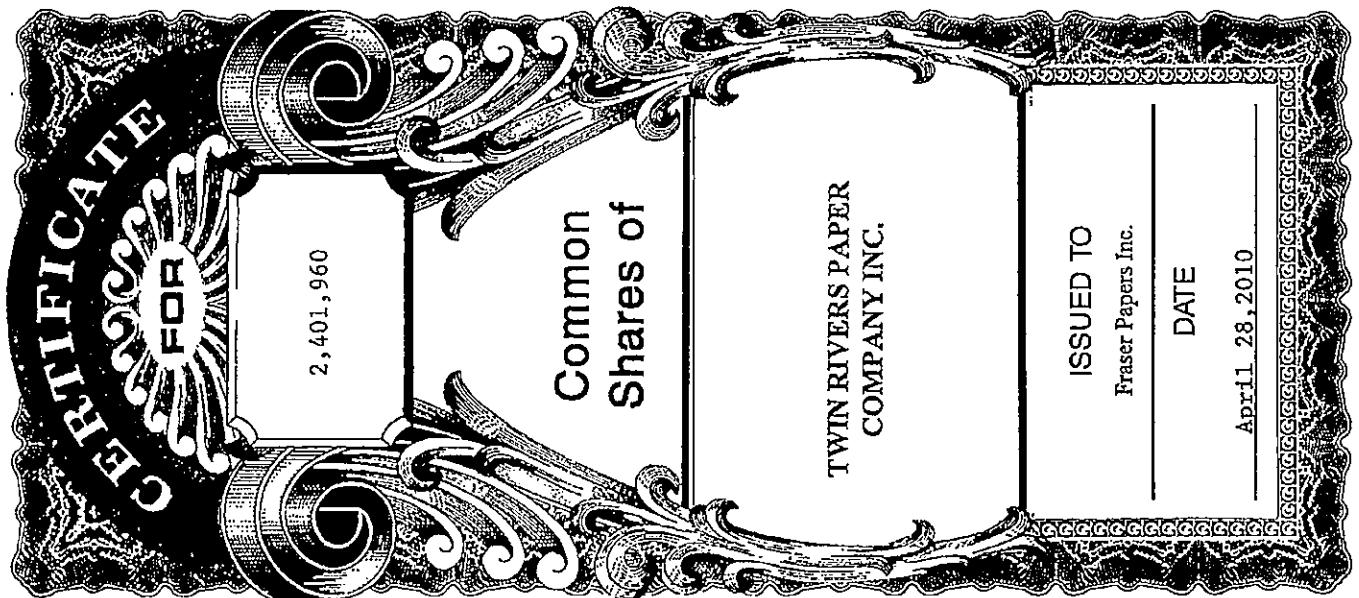
this 28th day of April 2010



NO PAR VALUE

The shares represented by this certificate are subject to a unanimous shareholder agreement made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010 among the Corporation and its shareholders, as the same may be supplemented, amended, restated or replaced from time to time, and may not be pledged, sold or otherwise transferred except in accordance with the provisions thereof.

Unless permitted under securities legislation, the holder of this security must not trade the security before the date that is four months and a day after the later of (i) \_\_\_\_\_, and (ii) the date the Corporation become a reporting issuer in any province or territory.



*For Value Received, \_\_\_\_\_ hereby assign and transfer unto*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ *Common Shares*

*represented by the within Certificate.*

*Dated \_\_\_\_\_ (year) \_\_\_\_\_*

*In the presence of*

\_\_\_\_\_  
\_\_\_\_\_

NOTICE THE SIGNATURE OF THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

**SCHEDULE "B"**  
**FORM OF PROXY**

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FRASER PAPERS INC./PAPIERS FRASER INC., FPS CANADA INC.,  
FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED,  
FRASER PAPERS LIMITED and FRASER N.H. LLC (the "Applicants")

**FORM OF PROXY FOR THE MEETING OF AFFECTED CREDITORS TO BE HELD  
ON FEBRUARY 8, 2011 (the "February Meeting")**

to be held pursuant to an Order of the Ontario Superior Court of Justice  
(Commercial List) made December 3, 2010, as amended by the Amending Meeting Order  
dated December 17, 2010 (collectively, the "Meeting Order"), as supplemented by the  
Supplemental Meeting Order dated February 1, 2011 (the "Supplemental Meeting Order")  
and, in connection with the Applicants' Amended Consolidated Plan of Compromise and  
Arrangement under the *Companies' Creditors Arrangement Act* (the "Amended Plan")

at 10:00 a.m. (EST) at the offices of Thornton Grout Finnigan LLP, Canadian Pacific  
Tower, Toronto-Dominion Centre, 100 Wellington Street West, Suite 3200, Toronto,  
Ontario M5K 1K7

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**IF YOU FILED A PROXY TO VOTE AT THE MEETING HELD ON JANUARY 10,  
2011, YOUR PREVIOUSLY FILED PROXY WILL BE COUNTED AT THE FEBRUARY  
MEETING AND YOU DO NOT NEED TO FILE A NEW PROXY TO VOTE AT THE  
FEBRUARY MEETING UNLESS YOU WISH TO CHANGE OR REVOKE YOUR  
VOTE.**

Before completing this form of proxy (the "Proxy"), please read carefully the accompanying  
instructions for information respecting the proper completion and return of this Proxy. **IF YOU  
HAVE PREVIOUSLY NOT FILED A PROXY**, THIS PROXY MUST BE COMPLETED,  
SIGNED AND PROVIDED TO PRICEWATERHOUSECOOPERS INC. (the "Monitor")  
PRIOR TO THE FEBRUARY MEETING IF ANY PERSON ON BEHALF OF THE  
UNDERSIGNED AFFECTED CREDITOR (the "Affected Creditor") IS TO ATTEND THE  
FEBRUARY MEETING AND VOTE ON THE PLAN OR IF THE AFFECTED CREDITOR  
WISHES TO APPOINT AN OFFICER OF THE MONITOR TO ACT AS THE AFFECTED  
CREDITOR'S PROXY.

The Affected Creditor, as the holder of a Proven Voting Claim and/or an Unresolved Claim that  
may be voted and tabulated separately at the February Meeting in accordance with the Meeting  
Order and the Supplemental Meeting Order, hereby revokes all proxies previously given and  
nominates, constitutes and appoints \_\_\_\_\_ or, instead  
of the foregoing, Mr. John McKenna of the Monitor, or such other person as Mr. John McKenna  
may designate, as proxyholder, with full power of substitution, to attend, vote and otherwise act  
for and on behalf of the Affected Creditor at the February Meeting and any adjournment(s)  
thereof. Without limiting the generality of the power hereby conferred, the persons named as  
proxyholders are specifically directed to vote as follows:

1. (Mark one only)

☐ **VOTE FOR** approval of the Amended Plan; or

☐ **VOTE AGAINST** approval of the Amended Plan;

2. Vote at the proxyholder's discretion and otherwise act for and on behalf of the undersigned Affected Creditor with respect to any amendments or variations to the Amended Plan and to any other matters that may come before the February Meeting or any adjournment thereof.

Dated this \_\_\_\_\_ day of February, 2011

**Name of the Affected Creditor (Please Print)**

\_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of the Affected Creditor or attorney authorized in writing or, if the Affected Creditor is a corporation, signature of a duly authorized signing officer of the corporation

\_\_\_\_\_  
Title of the authorized signing officer of the Affected Creditor

Mailing address and telephone number of the Affected Creditor

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **INSTRUCTIONS FOR COMPLETION OF THE PROXY**

**IF YOU FILED A PROXY TO VOTE AT THE MEETING HELD ON JANUARY 10, 2011, YOUR PREVIOUSLY FILED PROXY WILL BE COUNTED AT THE FEBRUARY MEETING AND YOU DO NOT NEED TO FILE A NEW PROXY TO VOTE AT THE FEBRUARY MEETING UNLESS YOU WISH TO CHANGE OR REVOKE YOUR VOTE.**

1. Each Affected Creditor who has a right to vote at the February Meeting has the right to appoint a person to attend, act and vote for and on behalf of the Affected Creditor and such right may be exercised by inserting in the space provided the name of the person to be appointed. If no name has been inserted in the space provided, the Affected Creditor will be deemed to have appointed Mr. John McKenna of the Monitor as the Affected Creditor's proxyholder.
2. If this Proxy is not dated in the space provided, it shall be deemed to be dated on the date it is received by the Monitor.
3. If an officer of the Monitor is appointed or is deemed to be appointed as proxyholder and the Affected Creditor fails to indicate on the Proxy whether it wishes to vote for or against approval of the Amended Plan, the Affected Creditor will be deemed to have instructed its proxyholder to vote FOR approval of the Amended Plan, including any amendments thereto.
4. If more than one valid Proxy for the same Affected Creditor is received, the Proxy bearing the later date shall govern and the earlier-dated Proxy shall be revoked. If more than one valid Proxy for the same Affected Creditor and bearing or deemed to bear the same date are received with conflicting instructions, such Proxies will be treated as disputed Proxies and shall not be voted.
5. An Affected Creditor's Proxy may also be revoked, unless such Affected Creditor has agreed otherwise, by an instrument in writing executed by such Affected Creditor or by its attorney, duly authorized in writing or, if such Affected Creditor is not an individual, by an officer or attorney thereof duly authorized, and delivering it to the Monitor by 2:00 p.m. (EST) on Monday, February 7, 2011, or 48 hours (excluding Saturday, Sundays and holidays) before the time of any recommencement of the February Meeting if it has been adjourned, or presented to the Monitor at the February Meeting or at the recommencement of the February Meeting if it has been adjourned.
6. This Proxy must be signed by the Affected Creditor or by a person duly authorized (by power of attorney) to sign on the Affected Creditor's behalf or, if the Affected Creditor is a corporation, by a duly authorized officer or attorney of the corporation.
7. In order to appoint the Monitor as your proxy, this Proxy, once completed, dated and signed, should be sent in advance to the Monitor, by mail, delivery, courier, facsimile or email at the address set out below and must be received by the Monitor by no later than 2:00 p.m. (Eastern Standard Time ("EST")) on February 7, 2011, or 48 hours (excluding Saturdays, Sundays and holidays) before the time of any recommencement of the February Meeting if it has

been adjourned, or presented to the Monitor at the February Meeting or at the recommencement of the February Meeting if it has been adjourned.

8. If you wish to appoint any person other than the Monitor as your proxy, you may either send the proxy to the Monitor at the address listed below before February 7, 2011, at 2:00 p.m. (EST), or 48 hours (excluding Saturdays, Sundays and holidays) before the time of any recommencement of the February Meeting if it has been adjourned, or present the Proxy to the Monitor at the February Meeting or at the recommencement of the February Meeting if it has been adjourned.

Address of the Monitor: **PricewaterhouseCoopers Inc.**  
Monitor of Fraser Papers Inc.  
77 King Street West, P.O. Box 82, Suite 3000  
Toronto, ON M5K 1G8  
Attention: Ms. Tracey Weaver  
Facsimile: (416) 814-3219  
Email: [FPclaims@ca.pwc.com](mailto:FPclaims@ca.pwc.com)

**SCHEDULE "C"**  
**NEW NOTICE TO CREDITORS**



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**FRASER PAPERS INC./PAPIERS FRASER INC., FPS CANADA INC.,  
FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED,  
FRASER PAPERS LIMITED and FRASER N.H. LLC (the "Applicants")**

**NOTICE OF FURTHER MEETING OF CREDITORS  
OF THE APPLICANTS**

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**NOTICE IS HEREBY GIVEN** that a further meeting (the "**February Meeting**") of creditors of the Applicants entitled to vote on an amended consolidated plan of arrangement (the "**Amended Plan**") proposed by the Applicants under the *Companies' Creditors Arrangement Act* (the "**CCAA**") will be held at the offices of Thornton Grout Finnigan LLP, Canadian Pacific Tower, Toronto-Dominion Centre, 100 Wellington Street West, Suite 3200, Toronto, Ontario, on **Tuesday, February 8, 2011, at 10:00 a.m. (EST)** for the following purposes:

- (1) to consider and, if deemed advisable, to pass, with or without variation, a resolution to approve the Amended Plan; and
- (2) to transact such other business as may properly come before the February Meeting or any adjournment thereof.

The Amended Plan is being considered pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated December 3, 2010, as amended by the Amending Meeting Order dated December 17, 2010 (collectively, the "**Meeting Order**") as supplemented by the order of the Court dated February 1, 2011 (the "**Supplemental Meeting Order**"). Following approval by the required majorities of the creditors entitled to vote and voting on the Amended Plan, the Amended Plan must also be approved by an order of the Court (the "**Sanction Order**").

**IF YOU FILED A PROXY TO VOTE AT THE MEETING HELD ON JANUARY 10, 2011, YOUR PREVIOUSLY FILED PROXY WILL BE COUNTED AT THE FEBRUARY MEETING AND YOU DO NOT NEED TO FILE A NEW PROXY TO VOTE AT THE FEBRUARY MEETING UNLESS YOU WISH TO CHANGE OR REVOKE YOUR VOTE.**

Only those creditors who are not attending the February Meeting in person and who are entitled to vote on the Amended Plan, or who wish to designate another party to attend the February Meeting and vote on their behalf, **who have not previously filed a Proxy or who wish to change or revoke their vote** are required to date, sign and return the Proxy by mail, delivery, courier, facsimile or email so that it is received by PricewaterhouseCoopers Inc. (the "**Monitor**") by no later than **2:00 p.m. (EST) on Monday, February 7, 2011, or 48 hours (excluding Saturdays, Sundays and holidays) before the time of any recommencement of the February Meeting that has been adjourned, or to present the Proxy to the Monitor at the February Meeting.** Such creditors may designate the Monitor to vote their claims at the February Meeting as per their respective Proxies. A Proxy will not be valid and will not be acted upon, voted or

recorded unless it is completed as specified in the form of proxy enclosed herewith and the related instructions.

A creditor's Proxy may also be revoked (withdrawn), unless such creditor has agreed otherwise, by an instrument in writing executed by such creditor or by its attorney, duly authorized in writing or, if such Affected Creditor is not an individual, by an officer or attorney thereof duly authorized, and delivering it to the Monitor by 2:00 p.m. (EST) on Monday, February 7, 2011, or 48 hours (excluding Saturday, Sundays and holidays) before the time of any recommencement of the February Meeting if it has been adjourned, or presented to the Monitor at the February Meeting or at the recommencement of the February Meeting if it has been adjourned.

The Monitor's address for the purpose of filing forms of proxy and for obtaining any additional information or materials related to the February Meeting is:

PricewaterhouseCoopers Inc.  
Monitor Fraser Papers Inc.  
77 King Street West  
P.O. Box 82, Suite 3000  
Royal Trust Tower, TD Centre,  
Toronto, Ontario M5K 1G8

Attention: Ms. Tracey Weaver  
Facsimile: (416) 814-3219  
Email: FPclaims@ca.pwc.com

Creditors requiring information or copies of the Amended Plan, the Meeting Order, the Supplemental Meeting Order, the Monitor's Report in respect of the Amended Plan, a proxy form with respect to the February Meeting or additional documentation pertaining to the within CCAA proceedings may obtain copies of such documents on the Monitor's website at [www.pwc.com/car-fraserpapers](http://www.pwc.com/car-fraserpapers) by contacting the Monitor at the address above or by phone at 1-877-322-1688.

DATED at Toronto, Ontario, this ► day of February, 2011.

### NOTICE OF SANCTION HEARING

If the creditors approve the Amended Plan, the application for the Sanction Order will be heard on **February 10, 2011 at 10:00 am.** (EST) or such other date as may be set by the Court, before the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, Ontario.

Pursuant to the Supplemental Meeting Order, no other form of notice need be made to any creditor and no other materials need be served on any creditor in respect of the Sanction Hearing unless such creditor has served and filed a Notice of Appearance in these proceedings.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO FRASER PAPERS INC./PAPERS FRASER INC., FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED, FRASER PAPERS LIMITED and FRASER N.H. LLC (collectively, the "Applicants")

Court File No.: CV-09-8241-00CL

<p><b>ONTARIO</b> SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>Proceedings commenced at Toronto</p>	
<p><b>SUPPLEMENTAL MEETING ORDER</b> (FEBRUARY 1, 2011)</p>	
<p><b>Thornton Grout Finnigan LLP</b> Barristers and Solicitors Suite 3200, P.O. Box 329 Canadian Pacific Tower Toronto-Dominion Centre Toronto, ON M5K 1K7</p> <p><b>D.J. Miller</b> (LSUC# 34393P) <b>Kyla E.M. Mahar</b> (LSUC# 44182G)</p> <p>Tel: 416-304-1616 Fax: 416-304-1313</p> <p>Lawyers for the Applicants</p>	

## **SCHEDULE "B" - SERVICE LIST**

### **THORNTON GROUT FINNIGAN LLP**

Barristers and Solicitors  
100 Wellington Street West  
Suite 3200  
Toronto, ON M5K 1K7

#### **D.J. Miller / Kyla Mahar/ Danny Nunes**

Tel: (416) 304-1616  
Fax: (416) 304-1313  
Email: [djmiller@tgf.ca](mailto:djmiller@tgf.ca)  
[kmahar@tgf.ca](mailto:kmahar@tgf.ca)  
[dnunes@tgf.ca](mailto:dnunes@tgf.ca)

Lawyers for the Applicants

### **TORYS LLP**

Suite 3000, 79 Wellington St. W.  
Box 270, TD Centre  
Toronto, ON M5K 1N2

#### **Tony DeMarinis / David Chernos / Natasha De Cicco / Scott Bomhof**

Tel: (416) 865-0040  
Fax: (416) 865-7380  
Email: [tdemarinis@torys.com](mailto:tdemarinis@torys.com)  
[dchernos@torys.com](mailto:dchernos@torys.com)  
[ndecicco@torys.com](mailto:ndecicco@torys.com)  
[sbomhof@torys.com](mailto:sbomhof@torys.com)

Lawyers for Brookfield Asset Management Inc.

### **BLAKE, CASSELS & GRAYDON LLP**

199 Bay St.  
Suite 2800, Commerce Court West  
Toronto, ON M5L 1A9

#### **Pamela Huff / Chris Burr**

Tel: (416) 863-2400  
Fax: (416) 863-2653  
Email: [pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)  
[chris.burr@blakes.com](mailto:chris.burr@blakes.com)

Lawyers for CIT

**PRICEWATERHOUSECOOPERS INC.**

Royal Trust Tower  
20th Floor, 77 King Street West  
Toronto, ON M5K 1K7

**John McKenna / Michelle Pickett / Tracey Weaver / Jonathan Zidel**

Tel: (416) 863 1133  
Fax: (416) 941-8378  
Email: [john.p.mckenna@ca.pwc.com](mailto:john.p.mckenna@ca.pwc.com)  
[michelle.pickett@ca.pwc.com](mailto:michelle.pickett@ca.pwc.com)  
[tracey.weaver@ca.pwc.com](mailto:tracey.weaver@ca.pwc.com)  
[jonathan.d.zidel@ca.pwc.com](mailto:jonathan.d.zidel@ca.pwc.com)

Court-Appointed Monitor of the Applicants

**GOODMANS LLP**

Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

**Robert Chadwick/Derek Bulas**

Tel: (416) 979-2211  
Fax: (416) 979-1234  
Email: [rchadwick@goodmans.ca](mailto:rchadwick@goodmans.ca)  
[dbulas@goodmans.ca](mailto:dbulas@goodmans.ca)

Lawyers for the Monitor

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**

Suite 2600, 130 Adelaide St. W.  
Toronto, ON M5H 3P5

**Peter H. Griffin / Naomi D. Loewith / Peter Osborne**

Tel: (416) 865-9500  
Fax: (416) 865-9010  
Email: [pgriffin@litigate.com](mailto:pgriffin@litigate.com)  
[nloewith@litigate.com](mailto:nloewith@litigate.com)  
[posborne@litigate.com](mailto:posborne@litigate.com)

Lawyers for the Directors of Fraser Papers Inc.

**PAULA TURTLE**

Canadian Counsel, United Steelworkers  
234 Eglinton Ave East, Suite 800  
M4P 1K7

Tel: (416) 487-1571  
Fax: (416) 487-8826  
Email: [pturtle@usw.ca](mailto:pturtle@usw.ca)  
Canadian Counsel, USW

**SACK GOLDBLATT MITCHELL LLP**

20 Dundas Street West, Suite 1100  
Toronto, ON M5G 2G8

**Charles Sinclair**

Tel: (416) 979-4234

Fax: (416) 591-7333

Email: [csinclair@sgmlaw.com](mailto:csinclair@sgmlaw.com)

Lawyers for United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied  
Industrial and Service Workers International Union

**BAKER & HOSTLETTER LLP**

65E. State Street, Suite 2100  
Columbus, Ohio 43215

**Sherri B. Lazear**

Tel: (614) 462-2631

Fax: (614) 462-2616

Email: [slazear@bakerlaw.com](mailto:slazear@bakerlaw.com)

Counsel for Specialty Minerals Inc.

**CALEY WRAY**

1600 – 65 Queen Street West  
Toronto, ON M5H 2M5

**Jesse B. Kugler / Harold Caley / Ken Stuebing**

Tel: (416) 775-4677 / (416) 775-4672

Fax: (416) 366-3292 / (416) 366-3293

Email: [kuglerj@caleywrap.com](mailto:kuglerj@caleywrap.com)

[caleyh@caleywrap.com](mailto:caleyh@caleywrap.com)

[stuebingk@caleywrap.com](mailto:stuebingk@caleywrap.com)

Lawyers for Communications, Energy and Paperworkers Union of Canada

**STEIN MONAST**

70 Dalhousie Street, Suite 300  
Quebec, ON G1K 4B2

**Karine Dionne**

Tel: (418) 640-4438

Fax: (418) 523-5391

Email: [karine.dionne@steinmonast.ca](mailto:karine.dionne@steinmonast.ca)

Lawyers for the municipality of Thurso

**ARAV, ROBILLARD & LANIEL**

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO **FRASER PAPERS INC./PAPIERS FRASER INC.**, FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED, FRASER PAPERS LIMITED and FRASER N.H. LLC (collectively, the "Applicants")

Court File No.: CV-09-8241-00CL

**ONTARIO**  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

**NOTICE OF MOTION**  
(Supplemental Meeting Order)

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## **TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
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AND IN THE MATTER OF A PROPOSED PLAN OF  
COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
**FRASER PAPERS INC. / PAPIERS FRASER INC.**, FPS  
CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER  
TIMBER LIMITED, FRASER PAPERS LIMITED and FRASER  
N.H. LLC (THE "APPLICANTS")

Applicants

**AFFIDAVIT OF GLEN MCMILLAN  
(Sworn January 28, 2011)**

**I, Glen McMillan**, of the City of Toronto, in the Province of Ontario, **MAKE OATH  
AND SAY:**

1. I am the Chief Restructuring Officer of Fraser Papers Inc. ("**Fraser Papers**" or the "**Company**") and Secretary of the other Applicants, and as such I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and believe it to be true.
2. All monetary amounts referred to in this Affidavit are in United States ("**U.S.**") currency unless otherwise stated, and all capitalized terms used herein and not otherwise defined are as defined in the Initial Order of Mr. Justice Morawetz dated June 18, 2009 as amended, or in the Amended Plan, as defined in paragraph 3 herein.
3. This Affidavit is made in support of a motion brought by the Applicants for the relief set out in the Notice of Motion dated January 28, 2011. In particular, this Affidavit is sworn in support of the Applicants' request for a Supplemental Meeting Order (the "**Supplemental**

**Meeting Order**”): (a) accepting the filing of the Applicants’ Amended Consolidated Plan of Compromise and Arrangement dated January 27, 2011 (the “**Amended Plan**”) substantially in the form attached at Tab 1A of the Applicants’ Motion Record; (b) authorizing the Applicants to establish one class of Affected Creditors for the purposes of considering and voting on the Amended Plan, (c) authorizing the Applicants to call, hold and conduct a further meeting of their Affected Creditors (the “**February Meeting**”) to consider and vote on a resolution to approve the Amended Plan, (d) approving the procedures to be followed with respect to the calling and conduct of the meeting, and (e) setting the date for the hearing of the Applicants’ motion seeking an Order sanctioning the Plan (the “**Sanction Hearing**”).

4. Evidence in support of the within motion is also contained in two prior Affidavits I swore in this proceeding: (i) an Affidavit sworn on November 29, 2010 (the “**November Affidavit**”) and (ii) an Affidavit sworn on January 11, 2011 (the “**January Affidavit**”), each of which are contained in this Motion Record again for ease of reference.

5. The November Affidavit described in detail the terms of the Consolidated Plan of Compromise and Arrangement dated November 29, 2010 (the “**Original Plan**”) that the Applicants were authorized to present to their creditors pursuant to a Meeting Order issued by the Honourable Madam Justice Pepall on December 3, 2010, as amended by the Amending Meeting Order dated December 17, 2010 (collectively, the “**Meeting Order**”). The November Affidavit also described the terms of an agreement (the “**Transaction Agreement**”) executed by the Applicants with Brookfield Asset Management Inc. (“**BAM**”) as sponsor of the Original Plan (the “**Plan Sponsor**”), subject to court approval.

6. The January Affidavit described certain events that occurred throughout December, 2010 involving the NB Hourly Plan and the results of the meeting of creditors that occurred on January 10, 2011 (the “**Meeting**”) in connection with the Original Plan.

7. There have been additional developments since the Applicants’ creditors voted to reject the Original Plan on January 10, 2011. This Affidavit describes those developments and the basis upon which the Applicants are prepared to proceed with the filing of an Amended Plan at this time, pursuant to which the Transaction Agreement can be concluded.

8. At the Meeting to vote on the Original Plan, Affected Creditors holding 94.8% of all claims (by number) who voted on the Original Plan voted in favour of acceptance of the Original Plan. However, claims with a significant dollar value filed in respect of the Canadian pension plans voted to reject the Original Plan, and accordingly the dollar threshold required under the CCAA could not be met and the Original Plan was not approved.

9. The largest claims of the Canadian pension plans are represented by the NB Hourly Plan and the NB Salaried Plan (collectively, the “**NB Plans**”), which are in the aggregate amount of \$134,396,343. This is to be considered relative to a total claims pool of \$342 million, comprising all Affected Creditors entitled to vote.

10. Morneau Shepell Inc. (formerly Morneau Sobeco Inc.) (“**Morneau**”) was appointed by the NB Superintendent (as hereafter defined) as Administrator of the NB Plans on March 10, 2010, and filed a Proof of Claim on behalf of each of the NB Plans in this proceeding in that capacity. Morneau voted to reject the Original Plan on behalf of each of the NB Plans. A duplicate claim had been filed on a “placeholder” basis by the Communications, Energy and Paperworkers Union of Canada (“**CEP**”) in respect of the NB Hourly Plan early in this proceeding, prior to the appointment of Morneau as Administrator. CEP also voted this duplicate claim to reject the Original Plan. Pursuant to paragraph 26 of the Meeting Order, since the votes cast in respect of the duplicate claims were the same, the vote was counted as one claim with one vote in the amount represented by the claim filed by Morneau as the pension plan administrator for the NB Hourly Plan.

11. The Applicants have had ongoing discussions with all stakeholders throughout this proceeding. That includes numerous discussions with CEP and Morneau prior to the Meeting in respect of the Original Plan, and since that time. The Applicants continued those discussions notwithstanding the rejection of the Original Plan, with a view to addressing any concerns raised by those parties. The concerns expressed by CEP have not been resolved at the time of swearing this Affidavit, but the Applicants have encouraged ongoing dialogue with that party.

12. I understand that Morneau’s concerns leading to a rejection of the Original Plan stemmed from the increased amount of the deficit in the NB Hourly Plan resulting from the Order issued by the Superintendent of Pensions for the Province of New Brunswick (the “**NB**

**Superintendent**”) on November 25, 2010, which decision was upheld by the New Brunswick Labour and Employment Board pursuant to a decision rendered on January 7, 2011 (the “**Labour Decision**”). In particular, Morneau had expressed a concern regarding a potential claim that might exist against certain third parties in connection with the increased deficit under the NB Hourly Plan resulting from the Labour Decision and the impact of certain releases contained in the Original Plan.

13. The effect of the Labour Decision resulted in new actuarial calculations being performed in respect of the NB Hourly Plan, showing that current service costs in the amount of \$422,369 are payable by the Applicants. Morneau and the NB Superintendent are satisfied with arrangements for the payment of this liability by the Applicants.

14. Morneau’s concerns on the Original Plan have been satisfied and are reflected in an Agreement, resulting in the Applicants having the basis for which to file the Amended Plan with the support of Morneau, the NB Superintendent, the New Brunswick Regional Council of Carpenters, Millwright and Allied Workers (the “**CMAW**”) (which represent some of the beneficiaries under the NB Hourly Plan), certain other key stakeholders, and with the support of the Monitor. The support provided by these parties and other stakeholders will be addressed in detail in an Affidavit to be filed in support of the Sanction Order. Attached hereto and marked as Exhibit “**B**” is a true copy of the Agreement with the above parties confirming their support for the Amended Plan. Schedule “A” to that Agreement is not reproduced again, but is the Amended Plan found at Tab 1A of the Applicants’ Motion Record.

#### **Amended Plan**

15. All capitalized terms used in this section of the Affidavit and not otherwise defined, are as defined in the Amended Plan. Annexed hereto and marked as Exhibit “A” is a true copy of the Amended Plan, black-lined to show all changes made to the Original Plan.

16. The November Affidavit describes the terms of the Original Plan in detail, and except with respect to the amendments to the Original Plan, they are not outlined again in this Affidavit.

17. The Amended Plan represents the result of negotiations with various key stakeholders including court-appointed representative counsel and with the benefit of the Monitor’s input.

Certain of the amendments reflect the fact that, for tax reasons, a separate U.S. Creditor Trust must be established to hold the Distribution Pool that is to be distributed for the benefit of the Applicants' Affected Creditors who are resident in the U.S.

18. The terms of the Amended Plan reflect the Cash and other value that is anticipated to be available under the Transaction Agreement, and the value that has been generated through the Applicants' other restructuring efforts. Completion of the Transaction Agreement is a condition precedent to implementation of the Amended Plan, and vice versa.

19. The Amended Plan continues to provide that, subject to sufficient Cash being available, each Affected Creditor with a Proven Distribution Claim will receive a cash payment of \$500.00 (or the actual amount of such claim if it is less than \$500.00) on the Implementation Payment Date.

20. Two separate outside trusts have been established pursuant to Term Sheets previously approved by the Court, for the claims represented by the two NB Plans. As with the Original Plan, the Amended Plan contemplates the establishment of Creditor Trusts, which will act in respect of all Proven Distribution Claims other than the claims represented by each of the NB Plans. As outlined above, for tax and related reasons it will be necessary to create two separate trusts for the Creditor Trust, one in respect of Affected Creditors other than those resident in the U.S., and one in respect of Affected Creditors who are resident in the U.S.

21. Section 9.01 of the Amended Plan confirms that the release sought does not preclude an action being brought against certain third parties in connection with the NB Plans, as requested by Morneau and the NB Superintendent.

22. As the Applicants will have no ongoing operations after implementation of the Amended Plan, the Amended Plan provides a mechanism for the equitable and efficient transfer of the value produced by the Applicants' restructuring efforts, to the Affected Creditors with Proven Distribution Claims. This is accomplished by firstly repaying all amounts owing to the DIP Lender and satisfying in full all validly secured lien claims, thereby leaving all remaining value for the benefit of the Applicants' unsecured creditors. This result is only possible if the

Transaction Agreement is concluded, as an additional \$3 million of cash will be received by the Applicants that is not available in any other known circumstance.

23. Based on the current amounts outstanding under the DIP facility provided by the DIP Lender and the Applicants' anticipated cash requirements to completion of the CCAA proceeding, the Applicants anticipate having sufficient cash on the Plan Implementation Date to satisfy all terms of the Amended Plan. In particular, provided Plan Implementation can occur within the timeline required by the Transaction Agreement and no significant unexpected fees or expenses are incurred, the Applicants believe there will be sufficient cash to repay the DIP Lender in full, to repay any valid Secured Claims (which are in the aggregate amount of approximately \$100,000.00) and to fund the Plan Implementation Payment to Affected Creditors with Proven Distribution Claims. In addition, the Applicants anticipate that there will be sufficient cash to provide funding for the Creditor Trusts on Plan Implementation.

24. The Applicants and the Monitor have considered the claims of Affected Creditors and the proxies received in connection with the Original Plan, and believe that with Morneau's support confirmed in voting the claims of the NB Plans in favour of acceptance of the Amended Plan, the Amended Plan will receive support of the Required Majority to permit it to be approved.

25. If the Amended Plan is not approved, the Transaction Agreement will not close, as one is conditional upon the other. If that occurs, there is no further or other Plan of Compromise and Arrangement that would be presented by the Applicants to their creditors on a substantively consolidated basis. While it may be feasible for the Applicants to seek to conclude a transaction on substantially similar terms to the transaction contemplated by the Transaction Agreement pursuant to a separate motion seeking an approval and vesting order, the corresponding delay and additional costs would significantly (and negatively) impact the Applicants' creditors. In such a scenario there would not be any Cash available for distribution and the DIP Lender would likely not receive payment in full in Cash, resulting in the Promissory Notes and Common Shares continuing to secure the indebtedness owing to the DIP Lender. Also, without a plan, the Applicants would still have to come back to court to seek approval to distribute any remaining Promissory Notes and Common Shares to its creditors.

26. In addition, in any alternative process it is unlikely that the outside date by which the Transaction Agreement is required to be completed would be met (February 15, 2011), which could have a material impact on the price that BAM or any other purchaser is prepared to pay for the Purchased Companies. The additional time and costs required to continue these proceedings would result in there being no prospect of repaying all amounts owing to the DIP Lender and Secured Creditors so as to allow the Common Shares and Promissory Notes to be available for benefit of the Applicants' unsecured creditors.

#### **Request for Supplemental Meeting Order**

27. As the Applicants have now prepared the Amended Plan, they seek the Supplemental Meeting Order authorizing the calling of a meeting for the purpose of considering and voting on the Amended Plan.

28. The Applicants propose to call for a meeting of their Affected Creditors to consider and vote on the Amended Plan on Tuesday, February 8, 2011 at 10:00 a.m. to be held at the offices of Thornton Grout Finnigan LLP, Canadian Pacific Tower, Toronto Dominion Centre, 100 Wellington Street West, Suite 3200 Toronto, ON M5K 1K7.

29. All Affected Creditors received extensive notice of the Meeting to vote on the Original Plan through various means of communication as detailed in the Monitor's Sixteenth Report. Creditors are generally aware of the fact that the Original Plan was rejected, as reflected in press releases and newspaper coverage in the regions in which the Applicants operate or operated their respective businesses. Due to the overwhelming support of the vast majority in number of Applicants' Affected Creditors as reflected in the results of the Meeting, and the fact that the Amended Plan is not inferior to the Original Plan, we believe that existing support will continue for the Amended Plan.

30. The Supplemental Meeting Order provides for the various means by which notice of the Amended Plan and the February Meeting will be provided. This includes the Monitor sending to each Affected Creditor by email at the e-mail address listed on the Proof of Claim, the Form of Proxy, the Notice to Creditors, and a link to the Monitor's Website where the Supplemental Meeting Materials will be posted as soon as practicable after the granting of the Supplemental



Meeting Order (the Monitor will use best efforts to do so by 5:00 p.m. on Tuesday, February 1, 2011) and, in any event, no later than 10:00 a.m. (EST) on Wednesday, February 2, 2011.

31. The Applicants have a total of 1136 Affected Creditors with Proven Voting Claims and 4 creditors with Unresolved Claims. The Monitor has advised that it has email addresses for 894 of these Affected Creditors with Proven Voting Claims. The creditors holding the Unresolved Claims are all on the Service List.

32. The Supplemental Meeting Order contemplates that the Affected Creditors who voted at the Meeting will be served with the February Meeting Materials by email if the Monitor has an email address for them and by facsimile or courier if the Monitor does not have an email address. 306 Affected Creditors voted at the Meeting. The Monitor has advised that it has email addresses for 230 of these Affected Creditors and regular mailing/courier addresses for the remaining 76.

33. In its report to the Court with respect to the outcome of the February Meeting, the Monitor will advise the Court if the votes cast in respect of the Unresolved Claims would affect the approval or non-approval of the Plan. The Applicants and the Monitor will have the ability to seek the assistance of this Court in valuing any Unresolved Claims that may affect the approval or non-approval of the Plan.

34. If the Plan is accepted by the Required Majority of Affected Creditors as set out in the CCAA, the Applicants propose that the Sanction Hearing be held on Thursday, February 10, 2011, at 10:00 a.m. (EST). A Sanction Recognition Hearing is scheduled to be heard by the U.S. Court on Friday, February 11, 2011 at 2:30 pm. (EST).

35. These tight timelines are necessary due to the significant financial effects of not completing the Amended Plan and Transaction Agreement by February 15, 2011. The Applicants incur approximately \$1 million per month in fees during periods of significant professional involvement as outlined in the November Affidavit. In addition, the cash requirements of the Maine Lumber Mills for the purchase of log inventory does not support any delay in implementation.

#### **DIP Financing and Cash Flow Forecast**

36. The Applicants continue to monitor their cash requirements relative to the Cash Flow Forecast filed with the Court on October 28, 2010, and have made key stakeholders aware of the significant costs that continue to be incurred in this proceeding. Annexed hereto and marked as Exhibit "C" is an updated Cash Flow Forecast for the period ending April 30, 2011 that I have prepared and discussed with the Monitor. This Cash Flow Forecast contains certain assumptions, including the approval of the Amended Plan by the Required Majority of Affected Creditors, the obtaining of the Sanction Order and the Sanction Recognition Order, and Plan Implementation and closing of the Transaction Agreement as contemplated herein.

37. As at the time of swearing this affidavit the DIP balance is \$6.9 million, consisting of \$2.0 million of direct drawings and approximately \$4.9 million in letters credit that have been issued by the DIP Lender. Based on the updated Cash Flow Forecast attached to this Affidavit, the Applicants anticipate that they will be able to repay the DIP in its entirety with the proceeds of the Transaction.

38. As part of the Amended Plan and subject to its implementation by February 11, 2011 or such later date as may be acceptable to the Applicants and the Plan Sponsor (but in all cases prior to February 15, 2011), the Plan Sponsor has agreed to prepay \$0.5 million in cash on the Plan Implementation Date with respect to the reimbursement obligation set out in section 4.3 of the Transaction Agreement. This will provide the Applicants with additional comfort that there will be sufficient cash available to make all payments contemplated by the Amended Plan. This prepayment will satisfy the first \$0.5 million of any obligations that the Plan Sponsor may have to make cash reimbursement payments under section 4.3 of the Transaction Agreement.

39. After repayment of the DIP, paying the Implementation Payment and paying all other amounts contemplated by the Amended Plan, the Applicants estimate they will have approximately \$4.3 million of cash available. The Applicants will require approximately \$2.7 million in cash through April 30, 2011 to implement the Amended Plan. This includes the costs to resolve any Unresolved Claims, complete the closing of the sale of the fishing camp in northern Quebec, deal with related outstanding issues in completing the Applicants' restructuring, facilitate the closing of the Transaction Agreement and Plan Implementation. Provided no unexpected costs and expenses are incurred, this will result in there being

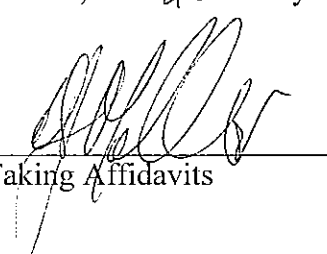
approximately \$1.6 million available to settle the Creditor Trusts and distribute to Affected Creditors.

40. The Transaction Agreement contemplates that the full amount owing to the DIP Lender would be repaid on closing, in order to obtain a release of the DIP Lender's Charge pursuant to the Initial Order. This repayment of the DIP balances would include the face amount of the \$4.9 million of letters of credit that are currently outstanding. As discussed in the November Affidavit, if the aggregate actual liability and costs of the letters of credit amount to less than \$4.4 million, cash would be remitted to the Trusts based on their respective *pro rata* entitlement in relation to one another and in accordance with the Direction provided by the Applicants, for the benefit of the Affected Creditors with Proven Distribution Claims.

41. Pursuant to the DIP Loan Agreement, any Plan presented by the Applicants must be acceptable to the DIP Lender. I am advised by BAM and do verily believe that, subject to and in accordance with the terms of the DIP Loan Agreement, the DIP Lender supports the Applicants' filing of the Amended Plan and the request for the Supplemental Meeting Order.

42. I swear this Affidavit in support of the relief requested in the Applicants' Notice of Motion dated January 28, 2011 and for no other or improper purpose.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 28<sup>th</sup> day  
of January, 2011.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
GLEN MCMILLAN

# EXHIBIT “A”

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED**

**AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR  
ARRANGEMENT WITH RESPECT TO FRASER PAPERS INC./PAPIERS FRASER  
INC., FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER  
LIMITED, FRASER PAPERS LIMITED and FRASER N.H. LLC**

Applicants

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**AMENDED CONSOLIDATED PLAN OF COMPROMISE AND  
ARRANGEMENT**

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**PURSUANT TO THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT* (CANADA)**

**concerning, affecting and involving**

**FRASER PAPERS INC./PAPIERS FRASER INC., FPS CANADA INC.,  
FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED,  
FRASER PAPERS LIMITED and FRASER N.H. LLC**

**~~November 29, 2010~~**

**January 27, 2011**

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# **AMENDED PLAN OF COMPROMISE AND ARRANGEMENT**

## **PURSUANT TO THE COMPANIES' CREDITORS ARRANGEMENT ACT (CANADA)**

### **ARTICLE I INTERPRETATION**

#### **1.01 Definitions**

In the Plan (including the Schedules hereto), unless otherwise stated or unless the subject matter or context otherwise requires:

**“Administration Charge”** means the charge in favour of the Monitor, counsel to the Monitor and the Applicants’ Canadian and U.S. counsel granted pursuant to paragraph 35 of the Initial Order, as more particularly set out therein, as amended and extended to include the Claims Officers;

**“Affected Claim”** means any Claim that is not an Unaffected Claim;

**“Affected Creditor”** means any Person having an Affected Claim and includes the transferee or assignee of a transferred or assigned Affected Claim who is recognized as an Affected Creditor by the Applicants and the Monitor in accordance with the Claims Order;

**“Aggregate Implementation Payment Amount”** has the meaning ascribed to it in Section 4.04 herein;

**“Applicable Law”** means in respect of any Person, property, transaction, event or other matter, any law, statute, regulation, code, ordinance, principle of common law or equity, municipal by-law, treaty or order, domestic or foreign, applicable to that Person, property, transaction, event or other matter and all applicable requirements, requests, official directives, rules, consents, approvals, authorizations, guidelines, and policies, in each case, having the force of law, of any Governmental Authority having or purporting to have the authority over that Person, property, transaction, event or other matter and regarded by such Governmental Authority as requiring compliance;

**“Applicants”** means, collectively, Fraser Papers Inc./Papiers Fraser Inc., FPS Canada Inc., Fraser Papers Holdings Inc., Fraser Timber Limited, Fraser Papers Limited and Fraser N.H. LLC;

**“BAM”** means Brookfield Asset Management Inc.;

**“Brookfield US”** means Brookfield (US) Corporation;

**“Business Day”** means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;

“**Cash**” includes legal tender, cheque, draft or funds received through electronic transfer;

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, in effect as of the date of the Initial Order;

“**CCAA Charges**” means, collectively, the Administration Charge, the DIP Lender’s Charge, the Directors’ Charge and the Inter-Company Charge, in each case as defined in the Initial Order;

“**CCAA Proceedings**” means the proceedings under the CCAA commenced by the Applicants pursuant to the Initial Order;

“**CDN \$**” means Canadian dollars;

“**Chapter 15 Claims Order**” means an order issued by the U.S. Court dated August 5, 2009 within the Chapter 15 Proceedings recognizing and giving full force and effect to the Claims Order;

“**Chapter 15 Proceedings**” means the proceedings commenced by the Applicants on June 18, 2009 in the U.S. Court under Chapter 15 of the United States Bankruptcy Code Case No. 09-12123 (KJC) in which the CCAA Proceedings were recognized as a foreign main proceeding;

“**Claim**” means:

- (a) a Restructuring Claim;
- (b) a Secured Claim; and/or
- (c) the rights of any Person whatsoever, including any Secured Creditor, against one or more of the Applicants and/or Directors, whether or not asserted and however acquired, in connection with any indebtedness, liability or obligation of any kind of one or more of the Applicants and/or Directors in existence on the Filing Date, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, direct or indirect, by guarantee, surety, insurance deductible or otherwise, and whether or not such claim or right arises out of a contract that is executory or anticipatory in nature, and including any claim of negligence or breach of fiduciary duty relating in any way to pension plan administration or any other claims that would have been claims provable in bankruptcy had the applicable Applicant become bankrupt on the Filing Date and whether or not such right or claim resulted in a Proof of Claim being filed against the Applicants or the Directors under the Claims Order;

“**Claims Bar Date**” means 5:00 p.m. (Eastern Standard Time) on September 30, 2009, or such later date as may be ordered by the Court;

“**Claims Officers**” means John D. Ground, Andrew Diamond and such other Persons as may be designated by the Applicants, acceptable to the Monitor and approved by the Court for the purpose of resolving Unresolved Claims in accordance with the Claims Order;

**"Claims Order"** means the Order of the Court dated July 15, 2009 and recognized in the U.S. Court by the Chapter 15 Claims Order, as such Order may be amended, restated or varied by subsequent Order of the Court from time to time;

**"Claims Process"** means the Claims Process for determining the validity of Claims for voting and distribution purposes as set out in the Claims Order;

**"Common Shares"** means two million, four hundred and one thousand nine hundred and sixty (2,401,960) common shares of Twin Rivers issued to Fraser pursuant to a Share Certificate dated April 28, 2010 representing a 49% interest in the capital stock of Twin Rivers and having a notional value of \$24 million as at April 28, 2010;

**"Continuing Obligations"** has the meaning ascribed to it in the Transaction Agreement;

**"Court"** means the Ontario Superior Court of Justice (Commercial List);

**"Creditor"** means any Person having a Claim and includes, without limitation, the transferee or assignee of a Claim or a trustee, liquidator, receiver, receiver and manager, or other Person acting on behalf of such Person;

**"Creditor Trust"** means the trust to be formed on or before the Plan Implementation Date which shall hold any Promissory Notes, Common Shares and any Cash for the benefit of all Affected Creditors with Proven Distribution Claims other than the NB Hourly Claim and the NB Salaried Claim and except those that are resident in the U.S. pursuant to the creditor trust agreements in the proposed form attached hereto as Schedule "A" and as to be confirmed by the Trust Order;

~~**"Creditor Trust Entitlement"** means the Creditor Trust Member's respective interest in any Cash to be distributed under the Creditor Trust determined by reference to the final allocation of the Distribution Pool contemplated herein;~~ **"Trusts"** means, collectively, the Creditor Trust and the U.S. Creditor Trust;

~~**"Creditor Trust Member"** means an Affected Creditor having a Proven Distribution Claim other than the NB Hourly Claim and the NB Salaried Claim;~~

**"DIP Lender"** means, collectively, BAM and Brookfield US;

**"DIP Lender's Charge"** means the charge in favour of the DIP Lender granted pursuant to paragraph 40 of the Initial Order, as more particularly set out therein;

**"Directors"** means, collectively, those individuals who are or were previously directors or officers of any one or more of the Applicants and **"Director"** means, individually, any one of them;

**"Directors' Charge"** means the charge in favour of the Directors created under paragraph 25 of the Initial Order, as more particularly set out therein;

**"Distribution Pool"** means the Promissory Notes, the Common Shares and any Cash available to the Affected Creditors with Proven Distribution Claims pursuant to and in accordance with the

Plan, which shall be held from and after the Plan Implementation Date in trust for the benefit of the Affected Creditors in one of the Trusts or in the Reserve all as more particularly described herein;

**“Encumbrance”** means any interest, charge, lien, claim, mortgage, lease, sublease, hypothecation, deed of trust, pledge, security interest, option, right of use or possession, right of first offer or first refusal, right of way, easement, servitude, restrictive covenant, encroachment, encumbrance, or other restriction or limitation of any kind howsoever erected or arising;

**“Equity Interests”** has the meaning ascribed to it in the Transaction Agreement;

**“Filing Date”** means June 18, 2009;

**“Final Determination Date”** means a date not more than seven business (7) days after all Unresolved Claims have been finally determined for distribution purposes pursuant to the Claims Order;

**“FPHI”** means Fraser Papers Holdings Inc.;

**“FPHI Shares”** has the meaning ascribed to it in the Transaction Agreement;

**“Fraser”** means Fraser Papers Inc./Papiers Fraser Inc., a corporation governed by the *Canada Business Corporations Act*;

**“Government Priority Claims”** means all Claims that fall within Section 18.2 of the CCAA;

**“Governmental Authority”** means any domestic or foreign government, including any federal, provincial, state, territorial or municipal government, and any government department, body, ministry, agency, tribunal, commission, board, court, bureau or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government;

**“Implementation Payment”** has the meaning ascribed to it in Section 4.04 herein;

**“Implementation Payment Date”** means a date not more than seven (7) days after the Plan Implementation Date or such other date as may reasonably be determined by the Applicants in consultation with the Monitor after the Plan Implementation Date;

**“Included Property”** has the meaning ascribed to it in the Transaction Agreement;

**“Initial Order”** means the Order of the Court dated June 18, 2009, as amended, extended, restated or varied by subsequent Order of the Court from time to time;

**“Inter-Company Claim”** means a Claim of an Applicant against one or more of the other Applicants;

**“Meeting”** means the meeting of Affected Creditors to be called and held pursuant to the Meeting Order for the purpose of considering and voting on the Plan pursuant to the CCAA, and includes any adjournment of such meeting;

**“Meeting Order”** means an Order to be obtained in the CCAA Proceedings establishing the terms and procedure for calling the Meeting of Affected Creditors to vote on the Plan and setting the date of the Plan Sanction Hearing, as same may be amended, modified, supplemented, restated or varied by the Court from time to time;

**“Monitor”** means PricewaterhouseCoopers Inc., in its capacity as Court-Appointed Monitor pursuant to the Initial Order;

**“NB Hourly Claim”** means the Claim filed by Morneau Sobeco Limited Partnership (now Morneau Shepell Inc.) in its capacity as Administrator of the NB Hourly Plan in respect of the windup deficit of the NB Hourly Plan as of March 31, 2010 ~~when such Claim becomes 2010,~~ which has been accepted as a Proven Distribution Claim in the amount of \$110,139,269;

**“NB Hourly Plan”** means the Pension Plan for New Brunswick Hourly Paid Employees of Fraser Papers Inc., New Brunswick Registration #0251264;

**“NB Hourly Trust”** means the trust created by the NB Hourly Trust Agreement;

**“NB Hourly Trust Agreement”** means the declaration and agreement of trust made as of April 28, 2010 between Fraser as settler of the trust, Communications, Energy and Paperworkers Union of Canada as the union, and Doris Lavoie, Jean Clavette and Mario Theriault collectively as trustees, as same may be amended from time to time in accordance with its terms;

**“NB Salaried Claim”** means the Claim filed by Morneau Sobeco Limited Partnership (now Morneau Shepell Inc.) in its capacity as Administrator of the NB Salaried Plan in respect of the windup deficit of the NB Salaried Plan as of March 31, 2010 ~~when such Claim becomes 2010,~~ which has been accepted as a Proven Distribution Claim in the amount of \$24,257,074;

**“NB Salaried Plan”** means the Pension Plan for New Brunswick Salaried Employees of Fraser Papers Inc., New Brunswick Registration #0251256;

**“NB Salaried Trust”** means the trust created by the NB Salaried Trust Agreement;

**“NB Salaried Trust Agreement”** means the declaration and agreement of trust made as of December 2, 2010 between Fraser as settler of the trust, and Don Corey, Rino Girard and Mark Fitzherbert collectively as trustees, as same may be amended from time to time in accordance with its terms;

**“Non-Released Claims”** has the meaning given to that term in Section 9.01 herein;

**“Non-Released Parties”** has the meaning given to that term in Section 9.01 herein;

**“Order”** means any order of the Court in the CCAA Proceedings;

**“Permitted Encumbrance”** has the meaning ascribed to it in the Transaction Agreement;

**“Person”** means any individual, corporation, limited or unlimited liability company, general or limited partnership, income fund, association, trust, pension fund, union, unincorporated organization, joint venture, government or any agency, regulatory body or instrumentality thereof, legal personal representative or litigation guardian, pension plan administrator, or any other entity howsoever designated or constituted;

**“Plan”** means this plan of compromise and arrangement filed by the Applicants pursuant to the CCAA, including the Schedules hereto, as same may be amended, varied or supplemented hereinafter and from time to time in accordance with the terms hereof;

**“Plan Implementation Date”** means the Business Day on which the conditions precedent to implementation of the Plan have been satisfied, fulfilled or waived, as applicable, and the Monitor has completed and filed its certificate with the Court in accordance with Section 7.03 of the Plan;

**“Plan Sanction Hearing”** means the Court hearing at which the Applicants’ motion for the Sanction Order will be heard;

**“Plan Sponsor”** means BAM or such other Person or Person as it may designate on or prior to the Closing Date (as defined in the Transaction Agreement), in its capacity as Purchaser and Plan Sponsor under the Transaction Agreement;

**“Post-Filing Claims”** means any indebtedness, liability or obligation of any kind that arises after the Filing Date from or in respect of: (a) any executory contract or unexpired lease that has not been terminated or repudiated by an Applicant; (b) the supply of services, delivery of goods, or monies advanced to any of the Applicants on or after the Filing Date; (c) all amounts to be remitted to a tax authority pursuant to paragraph 9 of the Initial Order during the period from the Filing Date to, but excluding, the Plan Implementation Date; provided that “Post Filing Claim” shall not include any Restructuring Claim;

**“Prior Repayments”** has the meaning given to that term in Section 4.04 herein;

**“Pro Rata Share”** means, in respect of any Affected Creditor of the Unsecured Creditor Class, on the Plan Implementation Date and the Final Determination Date, as applicable, the ratio determined on the date by the following formula:

Pro Rata Share = 
$$\frac{\text{Proven Distribution Claim of Affected Creditor in Unsecured Creditor Class} - \text{the Implementation Payment received by that Affected Creditor}}{\text{Aggregate amount of Proven Distribution Claims of all Affected Creditors in Unsecured Creditor Class} + \text{the Unresolved Claims of Affected Creditors in Unsecured Creditor Class} - \text{the cumulative amount of all Implementation Payments}};$$

**“Promissory Notes”** means, collectively, a Promissory Note in the principal amount of U.S. \$30 million from Twin Rivers in favour of Fraser dated April 28, 2010 and a Promissory Note in the

principal amount of U.S. \$10 million from Twin Rivers in favour of Fraser dated April 28, 2010 as may be adjusted in accordance with the Twin Rivers APA;

**“Proof of Claim”** means the form to be completed and filed by a Creditor setting forth its purported Claim in accordance with the Claims Order;

**“Proven Distribution Claim”** means an Affected Claim in respect of which a Proof of Claim has been or is deemed to have been filed in a proper and timely manner in accordance with the Claims Order and which has been accepted or finally determined for distribution purposes in accordance with the Claims Order;

**“Proven Voting Claim”** means an Affected Claim in respect of which a Proof of Claim has been or is deemed to have been filed in a proper and timely manner in accordance with the Claims Order and which has been accepted for voting purposes in accordance with the Claims Order;

**“Purchased Companies”** has the meaning ascribed to it in the Transaction Agreement;

**“Released Claims”** has the meaning given to that term in Section 9.01 herein;

**“Released Parties”** has the meaning given to that term in Section 9.01 herein;

**“Representative Counsel”** means Davies Ward Philips & Vineberg LLP appointed as counsel to the Fraser Papers’ Committee of Salaried Employees and Retirees pursuant to the Order of the Court dated September 17, 2009, as amended, extended, restated or varied by subsequent Order of the Court from time to time.

**“Required Majority”** means a majority in number of Affected Creditors who represent at least two-thirds in value of the Proven Voting Claims of Affected Creditors who actually vote on the resolution approving the Plan (in person, by proxy or by ballot) at the Meeting;

**“Reserve”** has the meaning given to that term in Section 4.09 herein;

**“Restructuring Claim”** means any right of any Person against one or more of the Applicants in connection with any indebtedness, liability or obligation of any kind owed to such Person arising out of the restructuring, repudiation or termination after the Filing Date of any contract, lease or other agreement whether written or oral, provided however, a **“Restructuring Claim”** shall not include an Unaffected Claim;

**“Restructuring Claims Bar Date”** means 5:00 p.m. (Eastern Standard Time) on the date which is the earlier of thirty (30) calendar days after the event giving rise to the Restructuring Claim or fourteen (14) calendar days after the Plan Implementation Date;

**“Sanction Order”** means an Order made by the Court under the CCAA to, among other things, sanction, authorize and approve the Plan, in a form and substance satisfactory to the Plan Sponsor, acting reasonably, as such Order may be amended by the Court from time to time;

**“Sanction Recognition Order”** means the order to be sought from the U.S. Court recognizing and giving effect to the Sanction Order in the Chapter 15 Proceedings including, without limitation, enforcing the Plan;

**“Secured Claim”** means the portion of a Claim that is: (i) secured by security validly charging or encumbering property or assets of any of the Applicants (including statutory and possessory liens that create security interests) up to the value of such collateral; (ii) duly and properly perfected in accordance with the relevant legislation in the appropriate jurisdiction as of the Filing Date or subsequently in accordance with the Initial Order; and (iii) not an Unaffected Claim;

**“Secured Creditor”** means any Creditor holding a Secured Claim;

**“Share Certificate”** means the share certificate of Twin Rivers issued to Fraser dated April 28, 2010 evidencing the issuance of the Common Shares to Fraser;

**“Substantive Consolidation Order”** means the Order of the Court dated November 3, 2010 authorizing and directing the Applicants to prepare the Plan on the basis of substantive consolidation of all of the Applicants, as recognized and approved by the order of the U.S. Court dated November 3, 2010;

**“Taxes”** means any and all taxes, duties, fees, pending assessments, reassessments and other governmental charges, duties, impositions and liabilities of any kind whatsoever (including any Claims by Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any Province or Territory of Canada, the Canada Revenue Agency and any similar revenue or taxing authority, including any municipality, of any Province or Territory of Canada), including all interest, penalties, fines and additions with respect to such amounts;

**“Transaction Agreement”** means the Transaction Agreement among the Applicants and the Plan Sponsor dated November 26, 2010 attached hereto as Schedule “BA”, as the same may be amended, restated and varied from time to time in accordance with the terms thereof;

**“Terminated Pension Plans”** means the NB Hourly Plan, the NB Salaried Plan, the Fraser Papers Inc. Defined Contribution Pension Plan, the Régime de retraite des salaires de Papiers Fraser Inc. Pates Thurso, the Régime de retraite des syndiques de Papiers Fraser Inc. Pates Thurso and the Pension Plan for Eligible Employees of Fraser Papers Limited;

**“Trust Order”** means an Order made by the Court within the CCAA Proceedings authorizing Fraser to settle the Creditor ~~Trust~~, Trusts, approving the form and authorizing the execution of the ~~Trust Agreement~~creditor trust agreements and confirming the appointment of the ~~trustee~~trustees of each of the Creditor TrustTrusts;

**“Trusts”** means, collectively, the Creditor ~~Trust~~Trusts, the NB Hourly Trust and the NB Salaried Trust;

**“Twin Rivers”** means Twin Rivers Paper Company Inc., a corporation governed by the *Business Corporations Act* (Ontario);



**“Twin Rivers APA”** means the asset purchase agreement between the Applicants and BAM and/or such other Person(s) as it may designate, namely Twin Rivers and Twin Rivers Paper Company LLC dated as of December 22, 2009, as amended;

**“Unaffected Claim”** has the meaning given to that term in Section 2.04 herein;

**“Unaffected Creditor”** means a Person who has an Unaffected Claim, but only in respect of such Unaffected Claim;

**“Unresolved Claim”** means an Affected Claim that was filed on a timely basis in accordance with the Claims Order but that is in dispute for voting and/or distribution purposes as at the date of the Meeting or as at the Plan Implementation Date, as the case may be, pursuant to the Claims Order;

**“Unsecured Creditor Class”** means a class of Persons consisting of all Affected Creditors with an Affected Claim;

**“U.S.”** means United States of America;

**“U.S. \$”** means U.S. dollars;

**“U.S. Court”** means the United States Bankruptcy Court for the District of Delaware having jurisdiction over the Chapter 15 Proceedings;

**“U.S. Creditor Trust”** means the U.S. trust to be formed on or before the Plan Implementation Date which shall hold any Promissory Notes, Common Shares and any Cash for the benefit of all Affected Creditors with Proven Distribution Claims other than the NB Hourly Claim and the NB Salaried Claim that are resident in the U.S. pursuant to the creditor trust agreements in the proposed form to be confirmed by the Trust Order;

**“U.S. Sale Order”** means the order to be sought from the U.S. Court recognizing and giving effect to the Vesting Order in the Chapter 15 Proceedings and approving such sale, in a form and substance satisfactory to the Plan Sponsor, acting reasonably;

**“Vesting Order”** means one or more Orders made by the Court under the CCAA as contemplated under the Plan and the Transaction Agreement to approve and give effect to the Transaction Agreement and the transactions contemplated therein and, among other things, (i) vesting the FPHI Shares in the Plan Sponsor free and clear of all Encumbrances, (ii) vesting the Included Property in the Purchased Companies free and clear of any and all Encumbrances except Permitted Encumbrances, and (iii) extinguishing and forever barring any and all liabilities, obligations and claims of the Purchased Companies other than the Continuing Obligations, in a form and substance satisfactory to the Plan Sponsor; and

**“Website”** means the website of the Monitor, [www.pwc.com/car-fraserpapers](http://www.pwc.com/car-fraserpapers).

## **1.02 Certain Rules of Interpretation**

In the Plan:

- (a) the division of the Plan into Articles, Sections, subsections and clauses and the use of headings and a table of contents are for convenience of reference only and do not affect the construction or interpretation of the Plan, nor are the descriptive headings of Articles and Sections intended as complete or accurate descriptions of the contents thereof;
- (b) the terms “the Plan”, “hereof”, “hereunder”, “herein” and similar expressions refer to the Plan and not to any particular Article, Section, subsection, clause or Schedule of or to the Plan;
- (c) words importing the singular include the plural and *vice versa* and words importing any gender include all genders;
- (d) where any reference is made to a Person, including but not limited to the Applicants, Directors, DIP Lender, Plan Sponsor and Monitor, such reference shall be deemed to include all officers, directors, affiliates, employees and agents of such Person;
- (e) the words “includes” and “including” and similar terms of inclusions shall not, unless expressly modified by the words “only” or “solely”, be construed as terms of limitation but rather shall mean “includes without limitation”, “including without limitation”, “includes but is not limited to” and “including but not limited to”, as applicable, so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- (f) the word “or” is not exclusive;
- (g) unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;
- (h) all references to the CCAA are references to the CCAA as it existed on the date of the Initial Order;
- (i) all accounting terms not otherwise defined herein shall have the meanings ascribed to them, from time to time, in accordance with the Canadian generally accepted accounting principles, including those prescribed by the Canadian Institute of Chartered Accountants;
- (j) unless otherwise indicated, all references to currency and to “\$” are U.S. dollars;
- (k) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day;

- (l) unless otherwise specified, the time periods within or following which any act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day; and
- (m) whenever any action is to be taken under the Plan on a day other than a Business Day, such action shall be taken on the next succeeding Business Day.

### **1.03 Currency Conversion**

All Affected Claims dominated in a currency other than U.S. dollars shall, for the purposes of the Plan be converted to and shall constitute obligations in U.S. dollars, such calculation to be effected using the Bank of Canada noon spot rate on the Filing Date (exchange rate conversation on such date was: U.S. \$1.00 = CAD \$1.1273).

### **1.04 Interest**

Interest shall not accrue or be paid on any Affected Claims after the Filing Date, and no Affected Claims shall be entitled to interest accruing after or on the Filing Date.

### **1.05 Schedules**

The following are the Schedules to the Plan:

Schedule "A" – ~~Proposed Form of Creditor Trust Agreement;~~ Schedule "B" – Transaction Agreement, without schedules;

Schedule "~~C~~B" – Promissory Notes; and

Schedule "~~D~~C" – Share Certificate.

## **ARTICLE II PURPOSE AND EFFECT OF PLAN**

### **2.01 Purpose**

The purpose of the Plan is to implement the consummation of the Transaction Agreement and to settle Affected Claims and effect a compromise and arrangement of all Affected Claims against the Applicants in a manner that provides consistent and equitable treatment among the Affected Creditors of the Applicants and allows for the orderly allocation of the Distribution Pool to the Affected Creditors. Affected Creditors with Proven Distribution Claims will be allocated their Pro Rata Share from the Distribution Pool. The Affected Creditors' allocated assets of the Distribution Pool will be delivered to one of the Trusts, which have been or will be established on the Plan Implementation Date. The purpose of each of the Trusts is to hold, administer and (subject to the terms of the Common Shares and the Promissory Notes) realize upon the allocated assets of the Distribution Pool held by each trust, to facilitate a future distribution of Cash to the beneficiaries of each trust.

The Plan is presented to the Affected Creditors in the expectation that all Persons with an interest in the Applicants will derive a greater benefit from the implementation of the Plan, with the support of the DIP Lender and the creation and funding of the Creditor ~~Trust~~Trusts, than would result from a bankruptcy of the Applicants.

## **2.02 Substantively Consolidated Plan**

The Plan is presented by the Applicants to the Affected Creditors on a substantively consolidated basis in accordance with the Substantive Consolidation Order for the sole purpose of permitting Affected Creditors having Proven Voting Claims to vote on the Plan and Affected Creditors having Proven Distribution Claims to receive distributions under the Plan in accordance with the terms hereof.

Affected Creditors under the substantively consolidated Plan will have one Claim for voting and distribution purposes against the Applicants and will not have individual Claims against each Applicant.

## **2.03 Affected Persons**

The Plan will become effective on the Plan Implementation Date and shall be binding on and enure to the benefit of the Applicants, the Directors, the Plan Sponsor, the Affected Creditors and all other Persons named or referred to in, or subject to the Plan, in accordance with its terms but, subject to Article V herein as it relates only to the transactions contemplated under the Transaction Agreement, shall not affect Unaffected Creditors with respect to and to the extent of their Unaffected Claims.

## **2.04 Unaffected Claims**

Subject to Article V herein as it relates only to the transactions contemplated under the Transaction Agreement, the Plan does not compromise or affect the following Claims and any rights that may exist in respect thereof (collectively, the “**Unaffected Claims**”):

- (a) Claims secured by the CCAA Charges other than in respect of the Inter-Company Charge;
- (b) Claims of the Directors pursuant to an indemnity from any Applicant which are not otherwise covered by the Directors’ Charge;
- (c) any Claim against any Director that cannot be compromised due to the provisions of Section 5.1(2) of the CCAA;
- (d) Government Priority Claims;
- (e) Secured Claims; and
- (f) Post-Filing Claims.

**ARTICLE III**  
**CLASSIFICATION OF CREDITORS AND PROCEDURAL MATTERS**

**3.01 Classes of Creditors**

For the purposes of considering and voting on the Plan, the Affected Creditors shall constitute a single class, the “**Unsecured Creditor Class**”.

**3.02 Claims Procedure**

Creditors shall prove their Claims, vote in respect of the Plan and receive distributions provided for under and pursuant to the Plan in accordance with the Claims Order, the Meeting Order and the Plan, as applicable.

**3.03 Claims Bar Date and Restructuring Claims Bar Date**

Nothing in the Plan extends or shall be interpreted as extending or amending the Claims Bar Date or the Restructuring Claims Bar Date, or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Order, the Meeting Order, the Plan and/or the Sanction Order.

**3.04 No Vote or Distribution in Respect of Unaffected Claims**

Notwithstanding anything to the contrary herein, no Unaffected Creditor shall be entitled to vote or receive any distributions under the Plan in respect of such Unaffected Claim. Nothing in the Plan shall affect the Applicants’ rights and defences with respect to any Unaffected Claim.

**3.05 Approval by Creditors**

In order to be approved by the Affected Creditors, the Plan must receive an affirmative vote by the Required Majority.

**3.06 Inter-Company Claims**

Notwithstanding anything to the contrary herein, the Applicants shall not be entitled to vote in respect of the Plan and shall not receive any distributions pursuant to the Plan in respect of any Inter-Company Claims or otherwise.

**3.07 Meeting of Creditors**

The Meeting shall be held in accordance with the Meeting Order, the Claims Order and any further Order of the Court.

**3.08 Voting**

Each Affected Creditor who is entitled to vote at the Meeting, pursuant to and in accordance with the Meeting Order, shall be entitled to one vote equal to the dollar value of its Affected Claim determined as a Proven Voting Claim.

### **3.09 Voting of Unresolved Claims**

Subject to Section 3.10, each Affected Creditor holding an Unresolved Claim shall be entitled to attend the Meeting and shall be entitled to one vote as such Meeting. The Monitor shall keep a separate record of votes cast by Affected Creditors holding Unresolved Claims and shall report to the Court with respect thereto at the Plan Sanction Hearing. The votes cast in respect of any Unresolved Claim shall not be counted for any purposes unless, until and only to the extent that such Unresolved Claim is finally determined to be a Proven Voting Claim in accordance with the Claims Order, the Meeting Order, the Plan and any further Order of the Court.

### **3.10 Procedure for Valuing Voting Claims**

The procedure for resolving Unresolved Claims for voting purposes shall be as set forth in the Claims Order, the Meeting Order, the CCAA and the Plan. The Applicants and the Monitor shall have the right to seek the assistance of the Court in valuing any Unresolved Claim in accordance with the Claims Order, the Meeting Order, the CCAA and the Plan, if required, to ascertain the result of any vote on the Plan.

## **ARTICLE IV TREATMENT OF CREDITORS**

### **4.01 Compromise of Affected Claims**

For the purposes of the Plan, Affected Creditors shall receive the treatment as provided in the Plan on account of their Affected Claims and on the Plan Implementation Date all Affected Claims shall be compromised, settled, released and otherwise affected in accordance with the terms of the Plan.

### **4.02 Unaffected Creditors**

Subject to Article V herein as it relates only to the transactions contemplated under the Transaction Agreement, all Unaffected Claims shall be unaffected by the Plan.

### **4.03 Payment of Government Priority Claims**

The Government Priority Claims shall be paid in full in Cash by the Applicants other than the Purchased Companies to Her Majesty in Right of Canada or the applicable province within six (6) months of the date of the Sanction Order, in accordance with the CCAA.

### **4.04 Implementation Payment**

Subject to the Applicants having sufficient Cash available (the “**Aggregate Implementation Payment Amount**”) after repayment of all amounts owing to (i) the DIP Lender and secured under the DIP Lender’s Charge (including a reserve to conclude the CCAA Proceedings) and (ii) the Secured Creditors, (collectively, the “**Prior Repayments**”), a payment shall be made by the Applicants to each Affected Creditor with a Proven Distribution Claim in an amount equal to the lesser of: (i) the full amount of the Affected Creditor’s Proven Distribution Claim (if less than \$500.00); or (ii) \$500.00. If the Applicants have insufficient Cash to fund the Aggregate

Implementation Payment Amount in full after repaying the Prior Repayments, the Implementation Payment to each Affected Creditor with a Proven Distribution Claim shall be reduced on an equal basis to ensure that the Aggregate Implementation Payment Amount does not exceed the Cash available to the Applicants to make such payment. If the Cash available to the Applicants to fund a reduced Aggregate Implementation Payment Amount would result in an Implementation Payment of less than \$100.00 to each Affected Creditor with a Proven Distribution Claim, the Applicants shall not be required to incur the cost to make such distribution (such distribution made under this Section **4.04**, referred to as the “**Implementation Payment**”).

#### **4.05 Delivery of Implementation Payment**

The Implementation Payment to Affected Creditors with Proven Distribution Claims shall be made by prepaid ordinary mail by the Monitor as follows:

- (a) to the addresses set forth in the Proofs of Claim filed by such Affected Creditors in accordance with the Claims Order;
- (b) if applicable, to the addresses set forth in any written notices of address change delivered to the Monitor after the date on which any corresponding Proof of Claim was filed, provided such notice is received by the Monitor at least five (5) Business Days prior to the Plan Implementation Date; or
- (c) if applicable, and to the extent differing from the foregoing, to the address of such Affected Creditors’ respective legal representatives, in trust for such Affected Creditors.

#### **4.06 Unclaimed Distributions**

If any Person entitled to a Implementation Payment cannot be located on the Plan Implementation Date or at any time thereafter or otherwise fails to claim his Implementation Payment hereunder, then such Cash shall be segregated and set aside by the Monitor on behalf of such Person. If such Person is located within two (2) months of the Implementation Payment Date, such Cash shall be distributed to such Person by the Monitor. If such Person cannot be located within two (2) months of the Implementation Payment Date, any segregated Cash shall be added to the Reserve held by the Monitor in respect of Unresolved Claims and such Person shall be deemed to have released its Claim to such Cash and such portion of the Affected Creditors’ Claim shall be discharged and forever barred. Nothing contained in the Plan shall require the Monitor to take any steps to attempt to locate any Affected Creditor.

If any Implementation Payment is not negotiated or deposited by such Affected Creditor within the time period permitted by the Canadian Payment Association rules or other clearing rules applicable to Canadian bank accounts such that the item becomes stale-dated or otherwise not capable of being negotiated, the Applicant shall be under no obligation to re-issue a Implementation Payment to that Affected Creditor. In such event, the Affected Creditor shall be deemed to have released its interest in such Implementation Payment, and the amount of that Affected Creditor’s distribution shall be remitted to the Creditor ~~Trust~~Trusts.

#### **4.07 Allocation of Distribution Pool to Affected Creditors and Delivery to the Trusts**

On the Plan Implementation Date, the Monitor shall, after establishing the Reserve as contemplated in Section 4.09(2) herein, allocate to each Affected Creditor in the Unsecured Creditor Class with a Proven Distribution Claim its Pro Rata Share of assets remaining in the Distribution Pool, in full and final satisfaction, compromise, settlement, release and discharge of and exchange for each such Proven Distribution Claim. The Applicants, in consultation with the Monitor, shall deliver the allocated assets from the Distribution Pool in respect of the Affected Creditors with Proven Distribution Claims in the Unsecured Creditor Class in the manner contemplated in Section 4.08 herein as follows:

- (a) in respect of the NB Hourly Claim to the NB Hourly Trust;
- (b) in respect of the NB Salaried Claim to the NB Salaried Trust; and
- (c) in respect of all other Proven Distribution Claims to the Creditor ~~Trust~~Trusts in accordance with the terms of the Trust Order and the creditor trust agreements to be confirmed therein.

#### **4.08 Delivery of Allocated Assets from Distribution Pool to the Trusts**

On the Plan Implementation Date, upon being advised by the Monitor of the allocation of the Distribution Pool among the NB Hourly Trust, the NB Salaried Trust and the Creditor ~~Trust~~Trusts as contemplated in Section 4.07 herein, and establishing the amount of the Reserve as contemplated by Section 4.09 herein, the Applicants shall cause Twin Rivers to exchange the Share Certificate and the Promissory Notes for share certificates and promissory notes in the amount of the allocation in the name of the Trustee for each of the NB Hourly Trust, the NB Salaried Trust and the Creditor ~~Trust~~Trusts for the benefit of the beneficiaries of such Trusts and in the amount of the Reserve in the name of the Applicants. On the Final Determination Date, upon being advised by the Monitor of the allocation of the Reserve among the NB Hourly Trust, the NB Salaried Trust and the Creditor ~~Trust~~Trusts, the Applicants shall cause Twin Rivers to exchange the share certificates and promissory note in respect of the Reserve for share certificates and promissory notes in the amount of the allocation in the name of the Trustee for each of the NB Hourly Trust, the NB Salaried Trust and the Creditor ~~Trust~~Trusts for the benefit of the beneficiaries of the Trusts.

#### **4.09 Unresolved Claims**

(1) A Creditor holding an Unresolved Claim will not be entitled to receive an allocation, delivery or distribution under the Plan in respect thereof unless and until such Unresolved Claim becomes a Proven Distribution Claim.

(2) In the case of any Claim that is an Unresolved Claim on the Plan Implementation Date, the Applicants and the Monitor both acting reasonably (and subject to their rights to seek directions from the Court), will establish a reserve for such Unresolved Claims from the Distribution Pool and the Cash for the Implementation Payment (the “**Reserve**”). The Applicants and the Monitor shall continue to hold the Reserve for the benefit of the Affected



Creditors ultimately determined to have Proven Distribution Claims as of the Final Determination Date.

(3) If an Unresolved Claim is ultimately disallowed in whole or in part in accordance with the Claims Order after the Plan Implementation Date, any portion of the Reserve in respect of such Unresolved Claim will become available for allocation to the Affected Creditors with Proven Distribution Claims by making a further allocation to the Affected Creditors with Proven Distribution Claims in accordance with Section 4.07 herein of their Pro Rata Share of the Distribution Pool from the portion of the Reserve for such Unresolved Claims on the Final Determination Date and deliver it to the Trusts in accordance with Section 4.08 herein.

(4) On the Final Determination Date, the Monitor shall (i) allocate to the Affected Creditors with Unresolved Claims that become Proven Distribution Claims, their Pro Rata Share of the Distribution Pool from the Reserve and deliver it to the Creditor ~~Trust~~Trusts in accordance with Section 4.08 herein, (ii) pay the Implementation Payment to such Affected Creditor, and (iii) remit any remaining Cash in the Reserve to the Creditor ~~Trust~~Trusts.

#### **4.10 Withholding Requirements**

In connection with the Plan, any Implementation Payment made hereunder by the Applicants or the Monitor shall be made net of all applicable Taxes. Notwithstanding any other provision of the Plan, each Affected Creditor that is to receive an Implementation Payment pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed by any Governmental Authority (including income, withholding and other Tax obligations on account of such distribution). The Applicants and the Monitor, as necessary, shall be authorized to take any and all actions as may be necessary or appropriate to comply with such withholding and reporting requirements. All amounts withheld on account of Taxes shall be treated for all purposes as having been paid to the Affected Creditor in respect of which such withholding was made, provided such withheld amounts are remitted to the appropriate Governmental Authority.

## **ARTICLE V TRANSACTION AGREEMENT**

### **5.01 Incorporation of Transaction Agreement**

The Plan is to be implemented, and all Court orders and other actions relating to this Plan are to be made or taken, in conjunction with the implementation of the transactions contemplated by the Transaction Agreement. The Plan shall be deemed to incorporate the terms and conditions of the Transaction Agreement as they relate to the Applicants and their respective: (a) property, assets and undertaking; and (b) debts, obligations, claims and liabilities of any kind whatsoever.

### **5.02 Included Property**

For greater certainty, and notwithstanding any other provision of the Plan, upon implementation of the Plan and the Transaction Agreement all right, title and interest in and to: (a) the Included

Property shall be held by and vest in the Purchased Companies; and (b) the Equity Interests of FPHI shall be transferred to and vest in the Plan Sponsor; in each case free and clear of any and all charges, liens and encumbrances whatsoever.

### **5.03 Continuing Obligations & Release**

For greater certainty, and notwithstanding any other provision of the Plan, upon implementation of the Plan and the Transaction Agreement: (a) the Purchased Companies shall have no debts, obligations, claims or liabilities whatsoever other than the Continuing Obligations; and (b) any and all debts, obligations, claims or liabilities of the Purchased Companies other than Continuing Obligations, whenever and howsoever incurred or arising, shall be deemed to have been released, waived, extinguished and forever barred as against the Purchased Companies, the Plan Sponsor, and the Plan Sponsor's Affiliates (as defined in the Transaction Agreement).

## **ARTICLE VI SANCTION ORDER AND VESTING ORDER**

### **6.01 Application for Sanction Order and Vesting Order**

A motion shall be brought by the Applicants seeking the Sanction Order and the Vesting Order that is to be heard by the Court as soon as reasonably practicable following the approval of the Plan by the Required Majority of the Affected Creditors.

### **6.02 Effect of Sanction Order and Vesting Order**

In addition to approving and sanctioning the Plan, and subject to the discretion of the Court, the Sanction Order and Vesting Order shall, among other things and without limitation:

- (a) declare that (i) the Plan has been approved by the Required Majority of Affected Creditors in conformity with the CCAA; (ii) the Applicants have complied with the provisions of the CCAA and the Orders made in the CCAA Proceedings in all respects; (iii) the Court is satisfied that the Applicants have not done nor purported to do anything that is not authorized by the CCAA; and (iv) the Plan and the transactions contemplated thereby are fair and reasonable;
- (b) direct and authorize the Applicants and the Monitor to fulfill the obligations under the Plan, including to complete the transactions and distributions contemplated under the Plan free and clear of all Claims;
- (c) confirm the effect of the Claims Order, including , without limitation, the effect of the Claims Bar Date, the Restructuring Claims Bar Date and the releases, injunctions and prohibitions provided thereunder;
- (d) confirm the effect of the Meeting Order;
- (e) effective on the Plan Implementation Date, permanently stay all Claims and declare that the compromises effected hereby are approved, binding and effective as herein set out upon all Creditors and other Persons affected by the Plan;

- (f) effective on the Plan Implementation Date, declare that the compromises, releases and injunctions effected hereby are approved, binding and effective as of the Plan Implementation Date upon all Affected Creditors and all other Persons affected by the Plan and shall inure to the benefit of the Applicants, the Directors, the Plan Sponsor, the Monitor and all Persons affected by the Plan;
- (g) continue the stay of proceedings under the Initial Order until the CCAA Proceedings are terminated by Order of the Court;
- (h) effective on the Plan Implementation Date, declare that each of the Charges and the Unaffected Claims shall be terminated, discharged and released as against the FPHI Shares, the Purchased Companies and Included Property;
- (i) effective on the Plan Implementation Date, declare that all right, title and interest of the Applicants in and to the FPHI Shares shall vest in the Plan Sponsor free and clear of all Encumbrances;
- (j) effective on the Plan Implementation Date, declare that all right, title and interest of the Applicants (other than the Purchased Companies) in and to the Included Property shall vest in the Purchased Companies, free and clear of all Encumbrances (other than Permitted Encumbrances);
- (k) effective on the Plan Implementation Date, discharge and extinguish all Encumbrances (other than Permitted Encumbrances) on the Purchased Companies and the Included Property;
- (l) subject to Section 5.1(2) of the CCAA, effective on the Plan Implementation Date, stay any and all steps or proceedings, including, without limitation, administrative orders, declarations or assessments, commenced, taken or proceeded with against the Directors or that could have been commenced, taken or proceeded with against the Directors save for the stay of proceedings, and discharge the Directors from any liability arising as a result of their acting as a director and/or officer of any of the Applicants;
- (m) confirm the releases contemplated by Section 9.01 of the Plan;
- (n) effective on the Plan Implementation Date, permanently enjoin the commencement or prosecution, whether directly, derivatively or otherwise, of any demands, claims, actions, counterclaims, suits, judgments, or other remedy or recovery with respect to any indebtedness, liability, obligation or cause of action released, discharged or terminated pursuant to the Plan;
- (o) confirm that the Monitor and the Applicants' advisors shall continue to have the benefit of the Administration Charge and the Directors shall continue to have the benefit of the Directors Charge, as provided in the Initial Order until such time as the CCAA Proceedings are terminated and all obligations secured thereby are paid in full; and

- (p) effective on the Plan Implementation Date, discharge the Inter-Company Charge and the DIP Lender Charge and, except as against the FPHL Shares and the Purchased Companies, continue the Administration Charge and the Directors' Charge until the CCAA Proceedings are terminated and all obligations secured thereby are paid in full.

## ARTICLE VII CONDITIONS PRECEDENT

### 7.01 Conditions Precedent to Implementation of Plan

The implementation of the Plan is conditional upon the fulfilment, satisfaction or waiver by the Applicants, the Plan Sponsor and the DIP Lenders, as applicable, of the following conditions on or before the Plan Implementation Date:

- (a) the Plan being approved by the Required Majority;
- (b) the Plan terms being acceptable to the Plan Sponsor;
- (c) the Sanction Order and Vesting Order being issued by the Court on or before ~~January 13,~~February 10, 2011 or such later date as may be agreed by the Applicants and the Monitor;
- (d) the Sanction Recognition Order and the U.S. Sale Order being issued by the U.S. Court on or before ~~January 14,~~February 11, 2011 or such later date as may be agreed by the Applicants and the Monitor;
- (e) all applicable appeal periods in respect of the Sanction Order, the Sanction Recognition Order, the Vesting Order and the U.S. Sale Order having expired and any appeals therefrom having been finally disposed of by the applicable appellate tribunal;
- (f) the transactions, events and actions contemplated under the Transaction Agreement having been completed and the Applicants and the Plan Sponsor being in compliance with all of their obligations and agreements under the Transaction Agreement, the Plan, the Sanction Order, the Sanction Recognition Order, the Vesting Order and the U.S. Sale Order;
- (g) arrangements satisfactory to the Applicants and the DIP Lender having been made for the repayment of all amounts secured under the DIP Lender's Charge;
- (h) the resolution of Secured Claims on terms acceptable to the Applicants and the Monitor or pursuant to an Order of the Court;
- (i) the issuance of replacement Promissory Notes and the resolution and release of the holdback in accordance with the Twin Rivers APA;

- (j) the establishment and funding of the Creditor ~~Trust~~Trusts to hold the Promissory Notes and the Common Shares for the benefit of the Affected Creditors with Proven Distribution Claims (other than in respect of the NB Hourly Claim and the NB Salaried Claim) from and after the Plan Implementation Date as contemplated under ~~Schedule A hereto~~the Trust Order; and
- (k) the execution of releases satisfactory to the Applicants and the Directors by the administrators of the Terminated Pension Plans, the Superintendent of Pensions for New Brunswick and the Regie des rentes du Quebec; and
- (l) all relevant Persons having executed, delivered and filed all documents and other instruments and the Applicants having obtained all consents and approvals that, in the opinion of the Applicants, acting reasonably, are necessary to implement the provisions of the Plan.

### **7.02 Waiver**

Any waiver of the conditions in Section 7.01 hereof capable of being waived shall be in writing by the Applicants, the Plan Sponsor or the DIP Lender, as applicable.

### **7.03 Monitor's Certificate**

Upon being advised by the Applicants and the Plan Sponsor that the conditions set out in Section 7.01 hereof have been satisfied or waived, the Monitor shall file with the Court a certificate that states that all conditions precedent set out in Section 7.01 of the Plan have been satisfied or waived.

## **ARTICLE VIII EFFECT OF PLAN**

### **8.01 Effect of Plan Generally**

The Plan (including, without limitation, the releases and injunctions contained in the Plan), upon being sanctioned and approved by the Court pursuant to the Sanction Order and the Sanction Order being recognized by the U.S. Court pursuant to the Sanction Recognition Order, shall be binding as of the Plan Implementation Date on all Persons irrespective of the jurisdiction in which the Persons reside or in which the Claims arose and shall constitute:

- (a) a full, final and absolute settlement of all rights of the holders of all Claims; and
- (b) an absolute release and discharge of all indebtedness, liabilities and obligations of the Applicants of or in respect of the Claims.

### **8.02 Consents, Waivers and Agreements**

On the Plan Implementation Date, each Affected Creditor shall be deemed to have consented and to have agreed to all of the provisions of the Plan in its entirety. In particular, each Affected Creditor shall be deemed:

- (a) to have executed and delivered to the Monitor and the Applicants all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety; and
- (b) to have waived any and all defaults then existing or previously committed by the Applicants in any covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in any contract, agreement, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto, existing between any such Affected Creditor and the Applicants and any and all notices of default and demands for payment under any instrument, including, without limitation any guarantee, shall be deemed to have been rescinded.

## ARTICLE IX RELEASES AND INJUNCTIONS

### 9.01 Release and the Released Parties

For good and valuable consideration, including, without limitation, the settlement by the Applicants of the Creditor ~~Trust~~Trusts and the distributions to be made pursuant to the Plan, every Person, (regardless of whether or not such person is a Creditor), and save and except for Unaffected Creditors with respect to their Unaffected Claims (other than as it relates to the Included Property or the Purchased Companies pursuant to the Transaction Agreement), on the Person's own behalf and on behalf of the Person's respective affiliates, present and former officers, directors, employees, associated individuals, auditors, ~~actuaries~~, beneficiaries, financial advisors, legal counsel, other professionals, sureties, insurers, indemnities, agents, dependents, heirs, representatives and assigns, as applicable, hereby fully, finally, irrevocably and unconditionally releases and forever discharges each of the Applicants, the Directors, the Monitor, the Plan Sponsor, the DIP Lender, Representative Counsel and all current and former members of all pension committees together with each of their and their affiliates' respective current and former legal representatives, directors, officers, predecessors, heirs, spouses, dependants, administrators, executors, subsidiaries, affiliates, related companies, member companies, partners, shareholders, employees, solicitors, attorneys, auditors, contractors, ~~actuaries~~, ~~third-party administrators~~, consultants, financial advisors, servants, agents and assigns (collectively, the "**Released Parties**" and individually, a "**Released Party**")~~, as applicable~~, of and from any and all claims, including, without limitation, all claims in respect of statutory liabilities of Directors and any alleged fiduciary (whether acting as a director, officer, member of pension committee or acting in any other capacity in connection with the administration of the Terminated Pension Plans or any other pension or benefit plans or trusts of any of the Applicants) and any and all past, present and future claims, rights, interests, actions, rights of indemnity, liabilities, demands, duties, injuries, damages, expenses, fees (including solicitors' fees and liens), costs, compensation, or causes of action of whatsoever kind or nature whether foreseen or unforeseen, known or unknown, asserted or unasserted, contingent or actual, liquidated or unliquidated, whether in tort or contract, whether statutory, at common law or in equity, based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, any act, inaction or omission existing or taking place on or prior to the Plan

Implementation Date relating to or otherwise in connection with the Applicants including, without limitation, the business and operations of the Applicants, the property of the Applicants, the CCAA Proceedings, the Chapter 15 Proceedings, all pension plans administered by the Applicants, including the Terminated Pension Plans, or in respect of which the Released Parties had any role, whether in their capacity as Directors or in any other capacity, including as or on behalf of the administrators of the Terminated Pension Plans and any other employee benefit or retirement savings plan, including without limitation any post-employment benefits and as trustees of the health and welfare trust, and all agreements with the DIP Lender (collectively, the “**Released Claims**”); and each Person shall not make or continue any claims or proceedings whatsoever based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, the substance of the facts giving rise to any matter herein released (including, without limitation, any action, cross-claim, counter-claim, third party action or application) against any Person who claims or might reasonably be expected to claim in any manner or forum against one or more of the Released Parties, including, without limitation, by way of contribution or indemnity, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation, and that in the event that any of the Released Parties are added to such claim or proceeding, it will immediately discontinue any such claim or proceeding. Notwithstanding the foregoing, nothing herein shall release or discharge a Released Party from its obligations, if any, under the Plan. This Section 9.01 does not release: (i) any Unaffected Claims—or; (ii) any claim referred to in Section 5.1(2) of the CCAA or (iii) any claim against any actuarial firm or record keeper/third party administrator affiliated with such actuarial firm, whether such firm operates as a partnership, limited partnership or corporation (which for greater certainty shall not include the Released Parties) of the Terminated Pension Plans (the “Non-Released Parties”) solely for the several liability for such Non-Released Party’s contribution to any loss or damages (those matters included in subparagraphs (i), (ii) and (iii) being collectively referred to herein as the “Non-Released Claims”). For greater certainty, and notwithstanding anything else contained herein, any Non-Released Claim that may be asserted by any Person against any Non-Released Parties expressly excludes any right of such Non-Released Party to claim over, claim against or otherwise assert or pursue any rights or any claim against any of the Released Parties at any time, all of which are hereby released.

## 9.02 Injunction

All Persons, along with their respective affiliates, present and former officers, directors, employees, associated individuals, auditors, actuaries, financial advisors, legal counsel, other professionals, sureties, insurers, indemnities, agents, dependents, heirs, representatives and assigns, as applicable, are permanently and forever barred, estopped, stayed and enjoined, on and after the Plan Implementation Date, with respect to the Released Claims, from:

- (a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties;

- (b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Released Parties or their property;
- (c) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation, by way of contribution or indemnity or other relief, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative, regulatory or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim in any manner or forum, against one or more of the Released Parties;
- (d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind; or
- (e) taking any actions to interfere with the implementation or consummation of the Plan, the Transaction Agreement or rights under the Trusts.

This Section 9.02 does not apply to ~~Unaffected~~any Non-Released Claims, ~~to any claim referred to in Section 5.1(2) of the CCAA or to the enforcement of any obligations under the Plan. For greater certainty, and notwithstanding anything else contained herein, any Non-Released Claim that may be asserted by any Person against any Non-Released Parties expressly excludes any right of such Non-Released Party to claim over, claim against or otherwise assert or pursue any rights or any claim against any of the Released Parties at any time, all of which are hereby enjoined.~~

### 9.03 Carve Out to Release and Injunction

~~Notwithstanding Sections 9.01 and 9.02 herein,~~For greater certainty: (i) nothing in the Plan shall release, enjoin or compromise claims against Directors of the Applicants that are described in Section 5.1(2) of the CCAA~~the Non-Released Claims; and (ii) any Non-Released Claim that may be asserted by any Person against any Non-Released Parties expressly excludes any right of such Non-Released Party to claim over, claim against or otherwise assert or pursue any rights or any claim against any of the Released Parties at any time.~~

### 9.04 Inter-Company Claims

For greater certainty and for good and valuable consideration including, without limitation, the terms of the Plan and the release of all Claims as against the Applicants, each of the Applicants has agreed and shall be deemed to have agreed that, conditional only upon the implementation of the Plan on the Plan Implementation Date:

- (a) it shall not prove, nor vote, nor receive a distribution under the Plan on account of its Inter-Company Claims, if any; and



- (b) its Inter-Company Claims, if any, are hereby fully, finally, irrevocably and unconditionally waived and released and each of the other Applicants stands fully and finally released, remised and forever discharged of any and all liability in connection with such Inter-Company Claims.

## **ARTICLE X PLAN AMENDMENTS OR TERMINATION**

### **10.01 Plan Amendment**

Prior to and during the Meeting, the Applicants, in consultation with the Monitor, may at any time and from time to time (subject to the approval of the Plan Sponsor) amend, modify and/or supplement the Plan by written instrument, and the Monitor shall post such amendment on the Website. The Applicants will give reasonable written notice to all Affected Creditors present at the Meeting of the details of any such amendment prior to the vote being taken to approve the Plan.

Following the Sanction Order, any amendment, modification or supplement to the Plan may be made by the Applicants by written instrument with the consent of the Monitor and the Plan Sponsor or approved by the Court provided that it concerns a matter which, in the opinion of the Applicants, the Monitor and the Plan Sponsor, each acting reasonably, is of an administrative nature required to better give effect to the implementation of the Plan and to the Sanction Order and is not adverse or prejudicial to the financial or economic interests of the Affected Creditors. The Monitor shall post such amendment on the Website and the Applicants shall file the amendment to the Plan with the Court, but no additional vote of the Affected Creditors will be necessary in order to give effect to such amendment to the Plan.

Any amended, modified or supplementary plan or plans of compromise or arrangement filed with the Court and, if required by this Section **10.01**, approved by the Court, shall, for all purposes, be and be deemed to be a part of, and be incorporated in the Plan.

### **10.02 Termination of the Plan**

At any time prior to the Plan Implementation Date, the Applicants may, subject to further order of the Court, determine not to proceed with the Plan notwithstanding any prior approvals given at the Meeting or the obtaining of the Sanction Order.

If the conditions precedent to implementation of the Plan are not satisfied or waived, if the Applicants determine not to proceed with the Plan, or if the Sanction Order are not issued by the Court: (a) the Plan shall be null and void in all respects; (b) any document or agreement executed pursuant to the Plan shall be deemed null and void; and (c) nothing contained in the Plan, and no act taken in preparation of the consummation of the Plan, shall constitute or be deemed to constitute a waiver or release of any Claims or any defences thereto by or against any of the Applicants or any other Person.

## **ARTICLE XI GENERAL PROVISIONS**

### **11.01 Severability of Plan Provisions**

If, prior to the Plan Implementation Date, any term or provision of the Plan is held by the Court to be invalid, void or unenforceable, the Court, at the request of the Applicants, may: (a) sever such term or provision from the balance of the Plan and provide the Applicants with the option to proceed with the implementation of the balance of the Plan as of and with effect from the Plan Implementation Date; or (b) alter or interpret such term or provision to make it valid and enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such severing, holding, alteration or interpretation, and provided the Applicants proceed with the implementation of the Plan, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such severing, holding, alteration or interpretation. Notwithstanding the foregoing, no such severance, alteration or interpretation shall affect Unaffected Claims and the rights of Creditors with Unaffected Claims.

### **11.02 Advice and Directions**

The Applicants and the Monitor shall each be entitled to apply to the Court from time to time for advice and directions concerning the implementation, operation and administration of the Plan.

### **11.03 Paramountcy**

From and after the Plan Implementation Date, any conflict between the Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, credit document, agreement for sale, by-laws of the Applicants, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between one or more of the Creditors and the Applicants as at the Plan Implementation Date will be deemed to be governed by the terms, conditions and provisions of the Plan and the Sanction Order, which shall take precedence and priority.

### **11.04 Responsibilities of the Monitor**

The Monitor is acting solely in its capacity as Monitor in the CCAA Proceedings and shall not be responsible or liable for any obligations of the Applicants hereunder. The Monitor shall have those powers and protections granted to it by the Plan, the CCAA and by any Order of the Court in the CCAA Proceedings, including the Initial Order, the Claims Order, the Meeting Order and the Sanction Order.

### **11.05 Deeming Provisions**

In the Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

### 11.06 Notices

Any notice or communication to be delivered hereunder shall be in writing and shall reference the Plan and may, subject as hereinafter provided, be made or given by personal delivery, mail or by facsimile addressed to the respective parties as follows:

(i) if to the Applicants:

Fraser Papers Inc.  
Box 762, Suite 200  
Brookfield Place, 181 Bay Street  
Toronto, ON M5J 2T4

Attention: Glen McMillan, CRO  
Facsimile: (416) 359-8606

with a copy to:

Thornton Grout Finnigan LLP  
Suite 3200, Canadian Pacific Tower,  
100 Wellington St. West, P.O. Box 329  
Toronto Dominion Centre  
Toronto, ON M5K 1K7

Attention: D.J. Miller  
Facsimile: 416-304-1313

(ii) if to the Monitor:

PricewaterhouseCoopers Inc.  
Royal Trust Tower  
20th Floor, 77 King Street West  
Toronto, ON M5K 1G8

Attention: John McKenna  
Facsimile: (416) 941-8378

with a copy to:

Goodmans LLP  
333 Bay Street, Suite 3400  
Toronto ON M5H 2S7

Attention: Robert Chadwick  
Facsimile: (416) 979-1234

or to such other address as any party may from time to time notify the others in accordance with this Section **11.06**. All such notices and communications that are hand delivered shall be deemed to have been received on the date of delivery, provided same is a Business Day. Any such notices and communications that are faxed shall be deemed to be received on the date faxed if sent before 5:00 p.m. on a Business Day and otherwise shall be deemed to be received on the Business Day next following the day upon which such fax was sent. Any notice or other communication sent by mail shall be deemed to have been received on the fifth Business Day after the date of mailing if mailed within Canada and on the ninth Business Day after the date of mailing if mailed outside of Canada. The unintentional failure by the Applicants to give a notice contemplated hereunder shall not invalidate any action taken by any Person pursuant to the Plan.

#### **11.07 Successors and Assigns**

The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, trustee, administrator, successor or assign of such Person.

#### **11.08 Further Assurances**

Notwithstanding that the transactions and events set out in the Plan shall be deemed to occur without any additional act or formality other than as set out herein, each of the Persons affected hereby shall make, do and execute or cause to be made, done or executed all such further acts, deeds, agreements, transfers, assurances, instruments, documents or discharges as may be reasonably required by the Applicants in order to implement and give effect to the Plan.

#### **11.09 Governing Law**

The Plan shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. In the event of any dispute or issue in connection with, or related to, the interpretation, application or effect of the Plan, such dispute or issue shall be subject to the exclusive jurisdiction of the Court.

~~Date~~Dated at **Toronto, Ontario** this ~~29~~27<sup>th</sup> day of ~~November, 2010~~January, 2011.

Document comparison by Workshare Professional on January 27, 2011 7:39:42 PM

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Document 2 ID	interwovenSite://TGF-VMWORKSITE/Client/541319/6
Description	#541319v6<Client> - Amended Plan of Arrangement [January 27-11]
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Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	122

# **EXHIBIT “B”**

## AGREEMENT

**WHEREAS** on June 18, 2009 Fraser Papers Inc./Papiers Fraser Inc., FPS Canada Inc., Fraser Papers Holding Inc., Fraser Timber Limited., Fraser Papers Limited, and Fraser N.H. LLC (collectively, the “**Applicants**”) commenced proceedings (the “**CCAA Proceedings**”) in the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies Creditors’ Arrangement Act* R.S.C. 1985, c. C-36, as amended (the “**CCAA**”);

**AND WHEREAS** on June 19, 2009, the Applicants sought and obtained recognition and provisional relief in an ancillary proceeding (the “**Chapter 15 Proceedings**”) pursuant to Chapter 15 of Title 11 of the *United States Code* 11 U.S.C. §§ 101-1532C, as amended in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”);

**AND WHEREAS** pursuant to an Order of the Court dated December 3, 2010 as amended by an Order of the Court dated December 17, 2010 (collectively, the “**Meeting Order**”) the Applicants filed a Consolidated Plan of Compromise and Arrangement dated November 29, 2010 (the “**Plan**”) and held a meeting of their creditors (the “**Meeting**”) on January 10, 2011 to consider and vote on a resolution to approve the Plan;

**AND WHEREAS** Morneau Shepell Inc. (formerly Morneau Sobeco Inc.) (“**Morneau**”) as pension plan administrator holds one Proven Voting Claim in the amount of \$24,257,074 in respect of the Pension Plan for New Brunswick Salaried Employees of Fraser Papers Inc., New Brunswick Registration #0251256 (the “**NB Salaried Plan**”) and one Proven Voting Claim in the amount of \$110,139,269 in respect of the Pension Plan for New Brunswick Hourly Paid Employees of Fraser Papers Inc., New Brunswick Registration #0251264 (the “**NB Hourly Plan**”) and collectively with the NB Salaried Plan, the “**NB Pension Plans**”), each of which has been accepted as Proven Distribution Claims pursuant to this Agreement;

**AND WHEREAS** Morneau voted their Proven Voting Claims against the Plan at the Meeting and the Plan did not obtain the required two-thirds in value of the Proven Voting Claims of creditors who actually voted on the resolution to approve the Plan, such that the Plan was rejected at the Meeting;

**AND WHEREAS** since the rejection of the Plan, each of the undersigned parties (each a “**Party**” and collectively, the “**Parties**”) have resolved any and all issues between them and are prepared to proceed in accordance with the terms of this Agreement including supporting the Applicants proceeding with an Amended Consolidated Plan of Compromise and Arrangement dated January 27, 2011 substantially in the form attached hereto as Schedule “A” (the “**Amended Plan**”);

**NOW THEREFORE**, for consideration received, the receipt and sufficiency of which is hereby irrevocably acknowledged by each Party, each of the undersigned Parties agree to the following:

1. All monetary amounts referred to herein, unless otherwise stipulated, are in United States currency.

2. All capitalized terms that are not otherwise defined herein are as defined in the Amended Plan.
3. All references to Morneau in this Agreement shall refer to Morneau in its capacity as Administrator of the NB Plans, and not in its personal capacity.
4. Each of the undersigned Parties confirms and agrees that they are bound by the terms of the April 6, 2010 Order of the Honourable Madam Justice Pepall (and all other Orders issued in the CCAA Proceedings), and that they will take no steps, nor permit or support any other Person in taking any steps to attack, modify, amend or seek to set aside or vary same at any time.
5. None of Morneau, CMAW or the NB Superintendent will commence any litigation or any other proceedings, appeals or claims, cross-claims, third party claims or otherwise at any time against the Released Parties (as such term is defined under the Plan) for anything whatsoever, including without limitation in respect of or relating to the NB Pension Plans, whether directly, or indirectly in permitting or supporting any other Person in doing so. This Agreement represents a complete bar to any proceedings, at any time, for any cause of action whatsoever and applies notwithstanding any terms of the Amended Plan. None of the Released Parties shall be brought in as a party to any litigation commenced by anyone at any time against the Non-Released Parties listed on Schedule "B" hereto. The only litigation that may proceed against the Non-Released Parties relates solely to their several liabilities, and not any liability that may be attributable to any other person including the Released Parties. Without limiting the generality of the foregoing, if a claim is brought by or on behalf of any Party to this Agreement against a Non-Released Party and the Non-Released Party brings a claim against a Released Party and the Released Party objects to being added as a party to the litigation, then Morneau shall take all necessary steps at no cost to the Released Party to secure the dismissal of the claim against the Released Party. Morneau shall be entitled to obtain reimbursement of legal costs incurred in connection with securing the dismissal of a claim against a Released Party up to the amount of CDN\$100,000 (the "**Litigation Amount**") from cash made available by the Applicants for that purpose on or prior to the Plan Implementation Date to Pink Larkin in trust, subject to such cash remaining following the Employee / Trade Payments contemplated by paragraph 10 herein. Any costs incurred by Morneau in taking these steps in excess of the Litigation Amount shall be the sole responsibility of Morneau. If the Litigation Amount or any portion thereof remains on the second anniversary date of the Plan Implementation Date, then such amount shall be paid by Pink Larkin to the Trusts as part of the Distribution Pool, unless the steps being taken to dismiss the litigation against the Released Party remain active at that time, in which case the Litigation Amount shall remain available to fund such steps and any balance remaining at the conclusion of such steps shall be paid by Pink Larkin to the Trusts as set out above. If efforts to have the claim dismissed against the Released Party are unsuccessful for any reason, Morneau agrees that it will take all necessary steps at no expense to the Released Party to cause the claim against the Non-Released Party to be dismissed or discontinued. The terms of this Agreement are not conditional upon any party's ability to successfully proceed against the Non-Released Parties, and any inability



to pursue such claim as a result of the releases contained herein shall not impair or affect in any manner the terms of this Agreement.

6. The claim amounts set out in the recitals to this Agreement in respect of each of the NB Salaried Plan (\$24,257,074) and the NB Hourly Plan (\$110,139,269) will be accepted by the Applicants and the Monitor as Proven Distribution Claims, shall be capped at these amounts and shall be final and binding in all respects and for all purposes including for the purposes of the Amended Plan. Neither Morneau, the NB Superintendent or anyone else by, or on behalf of the NB Pension Plan beneficiaries or otherwise, will have any other claim whatsoever against the Released Parties, or anyone claiming by or through them for any other amount, claim or cause of action whatsoever.
7. The Applicants confirm that, subject to the Amended Plan receiving all approvals and being implemented, they will not seek judicial review or appeal of the decision of the New Brunswick Labour and Employment Board (the "**NB Labour Board**") in respect of its decision dated January 7, 2011 (the "**Labour Decision**"), nor will they encourage or provide support to any other party to do so except as described in the following sentence. The Applicants will be at liberty to take any steps in connection with any aspect of the Labour Decision as it relates to statements concerning the jurisdiction of the CCAA Court contained in any orders, reasons, or decisions issued by the NB Labour Board, provided that such steps do not amount to a challenge, judicial review or appeal of the decision of the Labour Board.
8. The Applicants confirm their goal of minimizing the impact of the restructuring on pensioners and current and former employees, as set out in paragraph 9 of the NB Hourly Agreement. Morneau, in its capacity as successor administrator of the NB Pension Plans, hereby ratifies and confirms the Term Sheet for the NB Hourly Plan dated February 24, 2010 and the Term Sheet for the NB Salaried Plan dated March 16, 2010, and agrees to be bound by the terms set out therein.
9. The Applicants believe that, subject to the Amended Plan being implemented by February 11, 2011 or such later date as may be acceptable to the Applicants and the Plan Sponsor (but in all cases prior to February 15, 2011), up to \$1.0 million will be available to fund the payments set out in paragraph 10 herein as follows:
  - (a) up to \$0.5 million anticipated to be available from the net proceeds of the Transaction Agreement, after repaying amounts contemplated by the Amended Plan including the DIP facility, paying all costs, establishing the Reserve, and funding the Creditor Trusts; and
  - (b) \$0.5 million through the DIP Lender's agreement to prepay \$0.5 million in cash on the Plan Implementation Date with respect to the reimbursement obligation set out in section 4.3 of the Transaction Agreement annexed as Schedule "B" to the Amended Plan. The first \$0.5 million in subsequent reductions to the outstanding Brookfield Letters of Credit will result in no reimbursement by Brookfield to the Trusts.

10. The \$1.0 million referred to in paragraph 9 is expected to permit the Implementation Payment in the amount of \$500 to be made in respect of each Proven Distribution Claim (but not to exceed the total dollar value of any claim) (the “**Employee / Trade Payments**”) and payment of the Litigation Amount. Any amount remaining after these payments will be distributed to the Trusts as part of the Distribution Pool.
11. All parties who are represented by the signatories below shall:
  - (a) vote all Proven Voting Claims they hold in favour of the Amended Plan presented by the Applicants;
  - (b) work expeditiously towards the most efficient, cost-effective means of having the Amended Plan implemented by no later than February 12, 2011 or such later date as may be acceptable to the Applicants and the Plan Sponsor (but in all cases prior to February 15, 2011); and
  - (c) consent to the Sanction Order, the Vesting Order, the Trust Order and any other Order that may be required to reflect or approve these terms or implement the Amended Plan and complete the Transaction Agreement, and agree not to appeal, or in any way support any other person in appealing or challenging any such Orders.
12. This Agreement shall be governed by the laws of Ontario and the laws of Canada applicable therein.
13. Upon execution, paragraphs 6 and 11 of this Agreement shall be binding upon the Parties and the remainder of this Agreement shall become binding and effective upon the Plan Implementation Date as defined in the Amended Plan.

[BALANCE OF PAGE LEFT INTENTIONALLY BLANK]

This Agreement may be executed in counterparts. Each part, when taken together shall constitute one and the same Agreement.

Dated at Toronto this 27th day of January, 2011.

**FRASER PAPERS INC./PAPIERS FRASER INC., FPS CANADA INC., FRASER  
PAPERS HOLDINGS INC., FRASER TIMBER LIMITED., FRASER PAPERS  
LIMITED, FRASER N.H. LLC**

**by their counsel,**

**THORNTON GROUT FINNIGAN LLP**



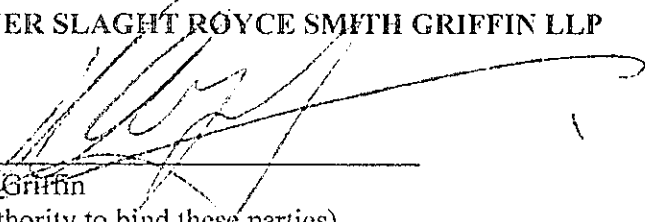
Per: D.J. Miller

(I have authority to bind these parties)

**THE DIRECTORS, as defined in the Amended Plan**

**by their counsel**

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**



Per: Peter Griffin

(I have authority to bind these parties)

**MORNEAU SHEPPEL INC. (FORMERLY MORNEAU SOBECO INC.), IN ITS  
CAPACITY AS ADMINISTRATOR OF THE NB PENSION PLANS**

**by its counsel**

**KOSKIE MINSKY LLP**

Per: Andrew Hatnay

(I have authority to bind this party)

This Agreement may be executed in counterparts. Each part, when taken together shall constitute one and the same Agreement.

Dated at Toronto this 27th day of January, 2011.

**FRASER PAPERS INC./PAPIERS FRASER INC., FPS CANADA INC., FRASER  
PAPERS HOLDINGS INC., FRASER TIMBER LIMITED., FRASER PAPERS  
LIMITED, FRASER N.H. LLC**  
by their counsel,  
**THORNTON GROUT FINNIGAN LLP**

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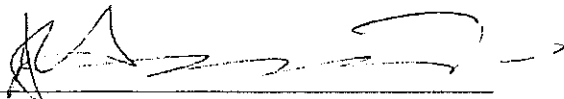
Per: D.J. Miller  
(I have authority to bind these parties)

**THE DIRECTORS, as defined in the Amended Plan**  
by their counsel  
**LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**

---

Per: Peter Griffin  
(I have authority to bind these parties)

**MORNEAU SHEPPEL INC. (FORMERLY MORNEAU SOBECO INC.), IN ITS  
CAPACITY AS ADMINISTRATOR OF THE NB PENSION PLANS**  
by its counsel  
**KOSKIE MINSKY LLP**



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Per: Andrew Hatnay  
(I have authority to bind this party)

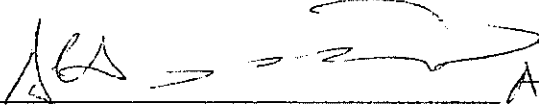
THE SUPERINTENDENT OF PENSIONS FOR THE PROVINCE OF NEW  
BRUNSWICK

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Per: Angela Mazerolle Stephens  
(I have authority to bind this party)

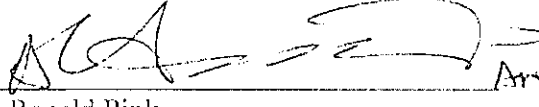
NEW BRUNSWICK REGIONAL COUNCIL OF CARPENTERS,  
MILLWRIGHTS AND ALLIED WORKERS, Local 2450 (Plaster Rock) in respect  
of all active employees  
by its counsel,  
PINK LARKIN

---

 ANDREW HATNAY / per  
Per: Joel Michaud  
(I have authority to bind these parties)

PINK LARKIN, as holder of the  
Litigation Amount in trust pursuant to  
the terms of this Agreement

---

 ANDREW HATNAY / per  
Per: Ronald Pink

**THE SUPERINTENDENT OF PENSIONS FOR THE PROVINCE OF NEW  
BRUNSWICK**



Per: Angela Mazerolle Stephens  
(I have authority to bind this party)

**NEW BRUNSWICK REGIONAL COUNCIL OF CARPENTERS,  
MILLWRIGHTS AND ALLIED WORKERS, Local 2450 (Plaster Rock) in respect  
of all active employees  
by its counsel,  
PINK LARKIN**

\_\_\_\_\_  
Per: Joel Michaud  
(I have authority to bind these parties)

**PINK LARKIN, as holder of the  
Litigation Amount in trust pursuant to  
the terms of this Agreement**

\_\_\_\_\_  
Per: Ronald Pink

**Schedule "A"**

**Amended Consolidated Plan of Compromise and Arrangement**

**Schedule "B"**

**(Non-Released Parties)**

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# EXHIBIT “C”

[illegible]

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO **FRASER PAPERS INC./PAPIERS FRASER INC.**, FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED, FRASER PAPERS LIMITED and FRASER N.H. LLC

Court File No. CV-09-8241-00CL

**ONTARIO**  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

**AFFIDAVIT OF GLEN MCMILLAN**  
**SWORN JANUARY 28, 2011**

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# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED  
AND IN THE MATTER OF A PROPOSED PLAN OF  
COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
**FRASER PAPERS INC. / PAPIERS FRASER INC., FPS  
CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER  
TIMBER LIMITED, FRASER PAPERS LIMITED and FRASER  
N.H. LLC (THE "APPLICANTS")**

Applicants

**AFFIDAVIT OF GLEN MCMILLAN  
(Sworn November 29, 2010)**

**I, Glen McMillan, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:**

1. I am the Chief Restructuring Officer ("CRO") of Fraser Papers Inc. ("Fraser Papers" or the "Company") and Secretary of the other Applicants, and as such I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and believe it to be true.
2. All monetary amounts referred to in this Affidavit are in United States ("U.S.") currency unless otherwise stated, and all capitalized terms used herein and not otherwise defined are as defined in the Initial Order of Mr. Justice Morawetz dated June 18, 2009, as amended.
3. This Affidavit is made in support of a motion brought by the Applicants for the relief set out in the Notice of Motion dated November 29, 2010. In particular, this Affidavit is sworn in support of the Applicants' request for an Order: (a) accepting the filing of the Applicants' Consolidated Plan of Compromise and Arrangement dated November 29, 2010 (the "Plan"), (b)

authorizing the Applicants to establish one class of Affected Creditors for the purposes of considering and voting on the Plan, (c) authorizing the Applicants to call, hold and conduct the meeting of their Affected Creditors (the "Meeting") to consider and vote on a resolution to approve the Plan, (d) approving the procedures to be followed with respect to the calling and conduct of the meeting, (e) setting the date for the hearing of the Applicants' motion seeking an Order sanctioning the Plan (the "Sanction Hearing"), and (f) establishing a revised Restructuring Claims Bar Date.

4. This Affidavit also provides an update as to the Applicants' remaining mills, the status of claims being determined pursuant to the claims process, the cash position and drawings under the DIP facility, the terms of an agreement executed by the Applicants (subject to court approval) with Brookfield Asset Management Inc. ("BAM") as sponsor of the Plan (the "Plan Sponsor") and the terms of the Plan.

#### **Sale of Gorham Mill**

5. I previously swore an affidavit in this proceeding on November 16, 2010 (the "November Gorham Affidavit") outlining the Applicants' continuing efforts to sell the paper mill located in Gorham, New Hampshire (the "Gorham Mill") in view of the fact that the first sale transaction approved by the Court on July 7, 2010 was not completed. All capitalized terms used in this section of my Affidavit that are not otherwise defined, are as defined in the November Gorham Affidavit.

6. On November 22, 2010 an Approval and Vesting Order was issued by the Court (the "M&M Approval Order") authorizing and directing the Applicants to proceed in concluding a sale transaction for the Gorham Mill with M&M Consulting and Contracting LLC ("M&M"). Paragraph 33 of the November Gorham Affidavit also referred to an expression of interest received by the Applicants' counsel and the Monitor from another party, subsequently identified as Counsel RB Capital LLC ("Counsel RB"). The Monitor's 14<sup>th</sup> Report to the Court dated November 17, 2010 provided further details as to the interest expressed by Counsel RB in the Gorham Mill.

7. As a result of the “no solicitation” term in the Asset Purchase Agreement executed by the Applicants with M&M, the Applicants did not undertake any discussions with this party and remained committed to close the sale transaction with M&M pursuant to the Asset Purchase Agreement that had been signed.

8. On Friday, November 19, 2010 immediately prior to the hearing of the motion for approval of the M&M sale transaction, the Monitor received an Asset Purchase Agreement from Counsel RB (the “Preliminary Counsel APA”). The Preliminary Counsel APA was provided to the Applicants prior to the hearing. Time did not permit review of the Preliminary Counsel APA prior to the hearing by other stakeholders including the USW, the DIP Lender and court-appointed representative counsel for the employees and retirees (“Davies”).

9. Representatives of the State of New Hampshire and representatives of Counsel RB, together with Toronto counsel for Counsel RB, attended at the hearing for the Applicants’ motion for approval of the M&M sale transaction.

10. In view of the concerns expressed by certain stakeholders that they had not had an opportunity to review the Preliminary Counsel APA, as to the possibility of a sale transaction not closing as scheduled on November 30, 2010 and in view of the substantial costs to be incurred by the Applicants if they were required to continue to heat the Gorham Mill during the winter months, the Applicants’ motion was adjourned by the Court and the hearing continued at 7:00 a.m. on Monday, November 22, 2010.

11. Over the course of that weekend, Counsel RB determined that it did not wish to make a competing bid where the stakeholders and the Court would have to decide between a transaction with M&M or a sale transaction with Counsel RB. Rather, Counsel RB and M&M were each content to proceed with Counsel RB being permitted to provide a “back-up” bid that would only be pursued in the event the sale transaction with M&M did not close as scheduled on November 30, 2010. On November 22, 2010 the M&M Approval Order was issued and an Endorsement was made by the Honourable Madam Justice Pepall confirming that the Applicants were authorized to negotiate and execute an Asset Purchase Agreement with Counsel RB as a back-up bid for a sale of the Gorham Mill.

12. On November 22, 2010 the U.S. Court issued an Order recognizing the M&M Approval Order.

13. Discussions took place among the Monitor, the Applicants, Counsel RB and their respective counsel, to determine whether acceptable terms could be reached for a sale of the Gorham Mill in the event the M&M sale transaction was not concluded. On Saturday, November 27, 2010 the Applicants executed an Asset Purchase Agreement with Counsel RB (the "Counsel APA") by way of a back-up bid. The Counsel APA is on substantially the same terms as the Asset Purchase Agreement that had been executed with M&M.

14. The Counsel APA is for a purchase price of \$2,695,722.00, which is the same amount as that contained in the M&M sale agreement. Counsel RB provided a deposit in the amount of \$200,000.00, the return of which is subject to only two conditions in Counsel RB's favour, each of which must be waived or satisfied by 9:00 p.m. on Wednesday, December 1, 2010. The first condition relates to Counsel RB's ability to obtain a covenant not to sue from the State of New Hampshire, and the second relates to its ability to obtain an acceptable memorandum of agreement with the USW union on behalf of the hourly employees.

15. If those conditions are satisfied or waived, and the M&M transaction does not close as scheduled, the Counsel APA provides for a closing on December 8, 2010.

16. Having obtained the M&M Approval Order the Applicants remained ready, willing and able to close the sale transaction with M&M as scheduled on November 30, 2010.

17. Today I received written confirmation from Daniel P. Luker, attorney with Preti Flaherty, New Hampshire counsel for M&M, indicating that M&M would not be closing the sale transaction for the Gorham Mill.

18. The Applicants have not yet responded to this communication from M&M's counsel. However, we intend to reserve all rights including retaining the deposit paid by M&M, issuing a demand for payment under the letter of guarantee provided by Republic Textile Equipment Co. of South Carolina, Inc. and reserving the Applicants' right to pursue M&M for any damages suffered as a result of its failure to close the sale transaction.



19. Pursuant to the Counsel APA, the Applicants have agreed to provide site access at the Gorham Mill on Wednesday, December 1, 2010 for the purpose of Counsel RB reviewing the information and documents it deems necessary to satisfy itself as to the two conditions in its favour. Provided those two conditions are waived or satisfied by 9:00 p.m. on December 1, 2010, the Applicants intend to bring a motion, on short notice, returnable Friday, December 3, 2010 (at the return of the within motion) seeking an approval and vesting order and permitting the Applicants to close the Counsel APA sale transaction on December 8, 2010.

20. The Transaction Agreement (as defined below) with BAM provides that if the Gorham Mill is not sold to a third party prior to the closing of the Transaction Agreement, BAM will purchase the Gorham Mill (as it is purchasing the entity that carries on those operations) and provide value in the same amount that the third party purchasers were prepared to pay, pursuant to the Transaction Agreement and the Plan. This represents a final, definitive "fall-back" position for the Applicants as they will have been unable, in that case, to have closed three sale transactions for the Gorham Mill with three different third party purchasers.

#### **Transaction Agreement with BAM**

21. As referenced in paragraphs 110 to 112 of an Affidavit I swore on October 28, 2010 in this proceeding (the "October Affidavit"), on October 15, 2010 the Applicants were approached by BAM with a proposal to sponsor a Plan of Arrangement that would, among other things, include the acquisition of the lumber mills in Ashland and Masardis, Maine (the "Lumber Mills") and the Gorham Mill, if it was not otherwise sold to a third party. In view of the sales process undertaken by the Applicants in connection with the Lumber Mills, it was agreed that information flow to BAM would be cut-off in respect of the Gorham Mill and Lumber Mills sales activity and the Monitor would take the lead in all discussions and negotiations concerning BAM's proposal and the terms of any sale of the Lumber Mills to a third party.

22. At the time of my swearing the October Affidavit and the Monitor filing its Thirteenth Report to the Court, discussions had not sufficiently advanced to permit the Applicants or the Monitor to determine whether to recommend one potential path (proceeding with third party sales) over another (potential BAM transaction), as no written offer had yet been received from BAM.

23. The Monitor and the Applicants had several meetings with BAM with a view to determining what price and other consideration might be offered as part of an overall transaction with BAM as Plan Sponsor. On November 16, 2010 the Monitor received an offer in the form of an unsigned, draft Transaction Agreement from BAM.

24. Following negotiations among the Applicants and the Monitor on the one hand, and BAM on the other, a final form of Transaction Agreement was negotiated and settled among the parties. On November 26, 2010, with the support of the Monitor and the approval of the independent members of Fraser Papers' board of directors, the Applicants executed a Transaction Agreement with BAM, subject to court approval and subject to finalizing the schedules (the "Transaction Agreement"). The Transaction Agreement, without schedules, is attached as Schedule "B" to the Plan.

25. In considering the Transaction Agreement relative to other options available to the Applicants for realizing upon the residual assets, the Monitor and the Applicants considered the aggregate cash consideration that could be obtained in each scenario, the likelihood of concluding a transaction with BAM or several other parties within a timeframe that was financially feasible for the Applicants, the assumption of liabilities in any scenario and any non-cash consideration that might be available. In considering the price offered under the Transaction Agreement relative to all other options, the Applicants and the Monitor also considered the process and negotiations undertaken with third party purchasers.

*(i) Sales Process for the Lumber Mills*

26. On July 7, 2010 an Order was issued in this proceeding approving a process for a sale of the Lumber Mills. The process was conducted by the Company with the assistance and oversight of the Monitor and included the following steps:

- (a) contacting approximately 61 potential bidders to purchaser the Lumber Mills including 43 strategic buyers and 18 financial buyers;
- (b) executing confidentiality agreements with 27 potential bidders and providing each of those parties with access to a data room populated by the Applicants and the Monitor; and

(c) receiving non-binding letters of intent (“LOIs”) from 5 potential bidders.

27. Upon receiving non-binding LOIs, and following discussions among the Applicants and the Monitor, the Applicants chose the three LOIs with the highest indicative purchase price.

28. On September 15, 2010, the Applicants sent a form of Asset Purchase Agreement to each of those three parties with a request that each party submit a completed Offer to Purchase, substantially in the form of the Asset Purchase Agreement provided to them, by September 30, 2010. The Applicants received one offer on September 30, 2010 and a second offer on October 18, 2010 (collectively, the “Offers”).

29. Based on the Applicants’ and the Monitor’s review and consideration of the Offers and the Transaction Agreement, the Transaction Agreement is more comprehensive than the other Offers received for the Lumber Mills in several respects, and provides for a number of other benefits to the Applicants, including the following:

- completes the sale of all of the Applicants’ assets and operations in the U.S. and assumes certain landfill maintenance obligations, reducing the financial burden on the Applicants in the future
- facilitates the administration of outstanding workers compensation claims and establishes a mechanism by which the Applicants can capture the benefit of excess collateralization of workers’ compensation obligations
- provides a higher likelihood that the DIP loan balance will be repaid in full and provides cash consideration to facilitate a payment to unsecured creditors
- provides for sponsorship of the Plan and facilitates the timely realization of the Applicants’ remaining assets
- provides higher cash consideration and total consideration than each of the other offers received

30. The Applicants and the Monitor considered the terms of the Transaction Agreement, and the Monitor led the negotiations with BAM in an effort to improve its terms for the benefit of the

Applicants' stakeholders. The Applicants, the Monitor, BAM and their respective counsel held several meetings to negotiate the terms, the value to be obtained, the means by which various issues raised by the Applicants and the Monitor could be addressed and the desire for certainty in the ability to close such a transaction.

31. On that date the Applicants' counsel, D.J. Miller of Thornton Grout Finnigan LLP ("TGF") sent an electronic mail message to counsel for the CEP, Davies, internal counsel and primary contact with Pension Benefit Guarantee Corporation ("PBGC") in the U.S., Morneau Sobeco (the administrator appointed in respect of the New Brunswick Pension Plans) ("Morneau") and the Superintendent of Pensions for the Province of New Brunswick (the "NB Superintendent"). Annexed hereto and marked as Exhibit "A" is a true copy of the electronic mail message (without attachments), on which I was copied, delivered by Ms. Miller to those stakeholder representatives.

(i) *Considerations as to Value*

32. The Transaction Agreement represents more than an Asset Purchase Agreement for specific assets. It outlines the terms upon which BAM is prepared to act as Plan Sponsor to allow the Applicants to conclude this restructuring. The terms of the Transaction Agreement will provide finality and certainty for the Applicants' stakeholders by providing a full "back stop" to any uncertainty surrounding the completion of a sale of the Gorham Mill, by providing full cash consideration in the same amount as the highest third party purchaser was prepared to pay, in the event a third party sale ultimately closes. The Transaction Agreement also provides the opportunity for the highest recovery for creditors of the Applicants compared to all other Offers, by providing total proceeds that are in excess of the Offers made by unrelated third parties.

33. Based on the marketing of the Gorham Mill and the Lumber Mills, the Applicants and the Monitor have determined that the Transaction Agreement provides cash consideration of approximately \$3 million in excess of what could be achieved if the remaining U.S. operations were sold separately to another party or parties.

34. The other assets that are included in the Transaction Agreement are as follows:

(1) *Katahdin Preferred Interest*

35. Fraser Papers Limited holds a preferred interest in Katahdin Paper Company LLC ("KPC"), a wholly owned subsidiary of BAM, with a face amount of \$13 million, including unpaid dividends. This interest was acquired by Fraser Papers Limited in 2003. The preferred equity interest in KPC ranks behind all outstanding debt of KPC. KPC has generated significant operating losses for the past six years and currently has liabilities significantly in excess of the book value of its assets. As of October 30, 2010, KPC has total debt which is substantially in excess of the value of the operating assets of KPC. The majority of the debt is secured against the assets of KPC. During 2009, Fraser Papers Limited recorded a provision equal to the full carrying value of this interest as it determined that it was unlikely to recover any value from this preferred interest.

36. This preferred equity interest has not been marketed due to the restrictions on transferability, including the fact that Fraser Papers Limited can only assign it to an affiliate. In my discussions with John McKenna of the Monitor, I believe that the Monitor considers that it is highly unlikely that, in the circumstances, any sale of KPC's assets would result in any significant value accruing to this preferred interest. As such, this interest has been ascribed a value of nil.

(2) *Income Tax Matters*

37. The Applicants' operations have generated significant income tax losses since 2004. I estimate that these losses are approximately CDN \$100 million in Canada and USD \$330 million in the U.S. These income tax losses belong to the company that generated them and are generally are not transferrable to any other company. Fraser Papers has not been subjected to income tax audits from the Canada Revenue Agency or the Internal Revenue Service and the determination of these losses is based exclusively on the companies' income tax filings in each jurisdiction. There exists a potential for the Applicants' tax returns to be audited. This, together with potential debt forgiveness income that may arise on the settlement of various creditor claims, creates material uncertainty in the amount of tax losses that could ultimately be available.

38. At my request, the Monitor has worked with its Corporate Finance and Taxation departments to assess what value, if any, could be realized from the shares of the U.S.

companies, including any income tax benefits. The Monitor has advised that there is very little market information available on any value to be ascribed to income tax losses in U.S. merger and acquisition transactions, as “tax loss transactions” are uncommon in the U.S.

39. I understand that the main reason for this is that the ability of an acquired company to utilize these losses is highly restricted after a change of control of the acquired company.

40. The Monitor has suggested to me that, based on its internal review and the limited market for such transactions, it is unlikely that any effort to realize value from these losses would be successful where this effort resulted in an acquisition of control. Under the Transaction Agreement, BAM, the controlling shareholder of Fraser Papers Inc., or another person designated by it, is acquiring the shares of the U.S. Applicants.

41. Based on an analysis of the proceeds of sale to be realized through a sale transaction with a third party for the Gorham Mill, and a sale transaction with a third party for the Lumber Mills, the net cash proceeds to be received from BAM under the Transaction Agreement provide for additional cash of approximately \$3 million.

42. The Monitor has advised me that the tax attributes of these common shares of the U.S. Applicants cannot be realized from a separate sale of the shares to an unrelated third party. The Applicants and the Monitor have therefore determined that the Transaction Agreement does provide value for the common shares of the U.S. Applicants, which is not being offered by the 3<sup>rd</sup> party purchasers.

43. As the Transaction Agreement involves a related party to the Applicants, the independent directors of Fraser Papers have reviewed and considered the terms of the transaction and have sought input from the Monitor and its counsel as to considerations as to process, terms and value to be obtained. The Monitor has also conducted its own detailed analysis and will be reporting to the Court and all stakeholders separately in its Fifteenth Report to the Court.

44. The Applicants executed the Transaction Agreement subject to Court approval and will be seeking Court approval of the Transaction Agreement from the Canadian Court on December 22, 2010 and the U.S. Court on December 23, 2010. An overview of the terms of the Transaction Agreement are provided at this time in order to allow stakeholders to understand

how the terms affect the Plan presented by the Applicants, since completion of the Transaction Agreement is an important element of the Applicants' ability to implement the Plan.

45. The Applicants support completion of the Transaction Agreement in connection with the Plan, as it provides the opportunity for the highest recovery for creditors compared to all other Offers received. The transaction is expected to result in a full repayment of all secured claims including all amounts owing to the DIP Lender, leaving all other consideration from previous asset sales (including common shares representing a 49% equity interest in Twin Rivers Paper Company Inc. ("Twin Rivers") (the "Common Shares") and promissory notes having a face amount of approximately \$44 million owing by Twin Rivers (which might be subject to further changes once the net working capital balances on closing have been finalized) (the "Promissory Notes"), received on the sale of the specialty papers business) and any residual cash for the benefit of the Applicants' unsecured creditors.

46. The Applicants and the Monitor are aware of no other entity that would be prepared to act as Plan Sponsor of the Applicants' Plan of Arrangement.

#### **Plan of Arrangement**

47. All capitalized terms used in this section of the Affidavit and not otherwise defined, are as defined in the Plan.

48. The October Affidavit provided an overview of the Applicants' restructuring efforts as at that date. The October Affidavit also outlined, in paragraphs 120 to 130, the Applicants' intention to circulate a Plan within thirty (30) days and outlined the terms that would be included in the Plan.

49. At paragraph 125 of the October Affidavit I indicated that the Applicants did not anticipate any scenario where cash would be available for distribution to unsecured creditors. In addition, I advised that there could be a shortfall in the repayment of all amounts owing under the DIP Loan Agreement. Since the time of swearing that Affidavit, the Applicants and the Monitor have received the Transaction Agreement which provides a clear path forward for the Applicants' creditors, and additional cash that was not previously or otherwise available.

50. The October Affidavit was sworn in support of a motion brought by the Applicants for, among other things, an Order authorizing and directing the Applicants to prepare a Plan on the basis of substantive consolidation of all Applicants. On November 3, 2010 an Order was issued authorizing the Applicants to prepare a plan on a substantively consolidated basis, and a Plan has been prepared by the Applicants. Attached hereto and marked as Exhibit "B" is a copy of the Plan filed by the Applicants dated November 29, 2010.

51. The terms of the Plan reflect the cash and other value that is available under the Transaction Agreement, and the value that has been generated through the Applicants' other restructuring efforts. Completion of the Transaction Agreement is a condition precedent to implementation of the Plan, and vice versa.

52. The Plan contemplates that, subject to sufficient Cash being available, each Affected Creditor with a Proven Distribution Claim will receive a cash payment of \$500.00 (or the actual amount of such claim if it is less than \$500.00) on the Plan Implementation Date.

53. The Plan contemplates the establishment of a Creditor Trust to hold, administer, realize upon and ultimately distribute cash proceeds to Affected Creditors. The proceeds generated by the Applicants during the restructuring include the Common Shares and Promissory Notes. The Promissory Notes have an 8 year term, and are subject to certain restrictions including as to transferability. Similarly, the Common Shares are subject to various restrictions including the fact that they cannot be widely distributed, sold or transferred except in very limited circumstances and subject to the provisions of the terms governing the shares.

54. Pursuant to negotiations facilitated by the Monitor in February, 2010 involving various stakeholder groups including the NB Superintendent, Morneau (which subsequently was appointed as administrator of the two New Brunswick pension plans), the CEP and Davies, term sheets were executed (the "Term Sheets") in respect of the New Brunswick pension plan for hourly employees and the New Brunswick pension plan for salaried employees (collectively, the "NB Plans").

55. An outside trust was established pursuant the Term Sheets for the claims represented by each of the NB Plans. The Plan prepared by the Applicants therefore contemplates the



establishment of a third trust, referred to as the Creditor Trust, which will act in respect of all Proven Distribution Claims other than the claim represented by each of the NB Plans.

56. A trust agreement has been drafted by the Applicants, with input from the Monitor, and will be subject to further input from the stakeholders. The trust agreement will be subject to Court approval, and an Order will be sought establishing the trust, defining the duties and powers of the trustee, and providing such protection to the trustee in exercising its powers and duties as the Court deems appropriate. Approval as to the final form of trust agreement and Order appointing the trustee will be sought on December 22, 2010 at the Canadian Sanction Hearing. The draft Trust Agreement proposed by the Applicants attached as Schedule "A" to the Plan.

57. As the Applicants will have no ongoing operations after implementation of the Plan, the Plan provides a mechanism for the equitable and efficient transfer of the value produced by the Applicants' restructuring efforts, to the Affected Creditors with Proven Distribution Claims. This is accomplished by firstly repaying all amounts owing to the DIP Lender and satisfying in full all validly secured lien claims, thereby leaving all remaining value for the benefit of the Applicants' unsecured creditors. This result is only possible if the Transaction Agreement is concluded, as an additional \$3 million of cash will be received by the Applicants that is not available in any other circumstance.

58. Based on the current amounts outstanding under the DIP financing and the Applicants' anticipated cash requirements to completion of the CCAA proceeding, the Applicants anticipate having sufficient cash on the Plan Implementation Date to satisfy all terms of the Plan. In particular, provided the meeting of creditors and scheduled Court attendances are maintained in accordance with the Timeline, the Applicants believe there will be sufficient cash to repay the DIP Lender in full, to repay any validly secured lien claims (which are in the aggregate amount of approximately \$100,000.00) and to fund the Plan Implementation Payment to Affected Creditors with a Proven Distribution Claims. In addition, the Applicants anticipate that there will be sufficient cash to provide funding for the Creditor Trust on Plan Implementation.

59. However, the Applicants are not generating positive cash flow and all costs and expenses incurred in the restructuring must be paid from the DIP facility. To the extent that there is a delay in the voting on the Plan, the obtaining of a Sanction Order, a Sanction Recognition Order

or in the implementation of the Plan, the costs in the restructuring could be significantly increased, resulting in insufficient cash being available to fund all of these payments on the Plan Implementation Date. The Applicants have considered that possibility and have provided for it in the Plan and the Transaction Agreement.

60. The Transaction Agreement provides a mechanism whereby the Applicants will be able to benefit to the extent that letters of credit securing obligations under worker' compensation policies in the U.S. are in excess of the actual liability associated with those claims. As described in prior affidavits, letters of credit having a face amount of \$5.2 million have been issued under the DIP facility (previously under the CIT facility) to secure the Applicants' obligations under the insurance policies. Although the face amount of the letters of credit are \$5.2 million, the Applicants believe that the actual obligations under the workers' compensation insurance policies are less than \$1.5 million.

61. Various workers compensation claims have been paid, resolved or settled over the past several months. However, to date there has been no corresponding reduction in the outstanding letters of credit. The Applicants have been working with the beneficiaries under the letters of credit to determine whether, when, and on what terms the aggregate amount of the letters of credit can be reduced.

62. The Applicants are considering all means that might be available to monetize the outstanding obligations on terms and in an amount that is appropriate, to allow a corresponding benefit for the Applicants' creditors on a timely basis. These discussions are ongoing, but may take some time to complete.

63. Under the Transaction Agreement, BAM has agreed to facilitate the return of or reduction in the letters of credit on terms acceptable to the Applicants and the Monitor, and discussions as to the detailed mechanics of this arrangement are continuing. The Transaction Agreement provides that repayment of all amounts owing under the DIP Loan Agreement will include an amount equal to outstanding letters of credit issued by BAM as DIP Lender. As the amount of the actual liability (as estimated by the Applicants) is less than the amount of the posted letters of credit, the Transaction Agreement provides a means whereby BAM will return any portion of the amount paid to it that is in excess of the actual aggregate liability (any such payment being an

“LC Reduction Payment”). Any LC Reduction Payments will be made to the trustees of the three trusts, based on a Direction to be delivered by the Applicants to BAM on the Final Determination Date, as such term is defined in the Plan.

64. If the Applicants have insufficient cash on the Plan Implementation Date to make all the payments contemplated to be made on that date under the Plan, upon the trustee of the Creditor Trust receiving its *pro rata* portion of any LC Reduction Payment, it will facilitate the issuance of the Plan Implementation Payment to each Affected Creditor with a Proven Distribution Claim. Attached hereto and marked as Exhibit “C” is a schematic drawing showing the intended allocation, delivery and distribution under the Plan.

65. If the Applicants’ creditors do not vote in favour of a Plan, this would result in further efforts having to be made to sell the Gorham Mill (if not sold to a third party by December 8, 2010) and the Lumber Mills. In my view, the additional time required and the costs that would be incurred in maintaining and selling those assets would result in there being no prospect of repaying all amounts owing to the DIP Lender and secured creditors so as to allow the Common Shares and Promissory Notes to be fully available for benefit of the Applicants’ unsecured creditors. In addition, there would be no cash available to fund a Plan Implementation Payment.

#### **Status of Claims**

66. There are currently 849 Proven Voting Claims against the Applicants. In addition, there are 13 Unresolved Claims. The Proven Voting Claims are comprised of the following:

- (a) 814 trade claims in the aggregate amount of \$32,539,553;
- (b) 5 pension claims in the aggregate amount of \$289,723,458; and
- (c) 30 employee claims filed in the aggregate amount of \$12,253,339.

67. The Unresolved Claims are comprised of the following:

- (a) 3 trade claims in the aggregate amount of \$27,485,895;

- (b) 2 employee claims relating to OPEB entitlements, in the aggregate amount of \$141,223,862;
- (c) 2 employee claims relating to SERP entitlements, in the aggregate amount of \$9,701,833; and
- (d) 6 other employee claims in the aggregate amount of \$9,176,973.

68. The maximum number of claims comprising the employee claims (if all employee claims were to be accepted or determined in favour of the claimant pursuant to the claims process) is 811 claims.

69. The number of Claims set out in this section does not include duplicate claims filed in respect of the same claim by more than one party. The Applicants have received duplicate claims (i) in respect of the funding deficiency and related amounts relating to the defined benefit pension plan for hourly employees in Quebec and in New Brunswick, and (ii) in respect of amounts owing to a few current or former employees of the Applicants (collectively, the "Duplicate Claims").

70. The Applicants propose to address the voting of Duplicate Claims at the Meeting in the following manner. Each party that has filed a Proof of Claim in respect of a Duplicate Claim will be entitled to vote such Affected Claim as a Proven Voting Claim at the Meeting provided however that the votes cast in respect of such Proven Voting Claim shall only be counted by the Monitor in the event that the votes in respect of such Duplicate Claim are not contradictory. For the purposes of determining whether the required majority has voted to accept the Plan, the Proven Voting Claims for a Duplicate Claim will be counted collectively as one (1) vote in number at the Meeting, which vote shall have the dollar value: (i) as filed by the pension plan administrator and agreed to by the Applicants and the Monitor for Duplicate Claims in respect of a funding deficiency and related amounts in connection with a defined benefit pension plan; and (ii) as filed by representative counsel and agreed to by the Applicants and the Monitor in respect of amounts owing to a current or former employee.

#### **Request for Meeting Order**

71. As the Applicants have now prepared a Plan, they seek an Order (the "Meeting Order") authorizing the calling of a meeting for the purpose of considering and voting on the Plan in the form located at Tab 3 of the Applicants' Motion Record.

72. The Applicant proposes to call for a meeting of their Affected Creditors to consider and vote on the Plan on Monday, December 20, 2010, at 10:00 a.m. to be held at the Regency A Room at the Hyatt Regency Toronto, 370 King Street West, Toronto, ON M5K 1J9. A Notice of Meeting and Information Summary (the "Information Summary") to be circulated with the Plan is attached as Schedule "C" to the Meeting Order located at Tab 3 of the Applicants' Motion Record.

73. The Meeting Order provides that the Monitor will post on its website [www.pwc.com/car-fraserpapers](http://www.pwc.com/car-fraserpapers) (the "Website") and send electronically or provide access to, through the Monitor's website, the following documents (the "Meeting Materials") to each party on the Service List in this proceeding as soon as practicable after the granting of the Meeting Order and, in any event, no later than 5:00 p.m. (EST) on Monday, December 6, 2010:

- (i) the Plan (in English and French) with the Schedules to the Plan including the Transaction Agreement and the Trust Agreement (in English only);
- (ii) the form of proxy and instruction letter (the "Form of Proxy") (in English and French), attached to the Meeting Order as Schedule "A";
- (iii) a notice of the Meeting and the Sanction Hearing (as defined herein) (the "Notice to Creditors") (in English and French), attached to the Meeting Order as Schedule "B";
- (iv) a Notice of the Meeting and Information Summary (the "Information Summary") (in English and French), attached to the Meeting Order as Schedule "C";

- (v) an executive plan summary (the "Plan Summary") (in English and French), attached to the Meeting Order as Schedule "D";
- (vi) the Monitor's Fifteenth Report (in English only); and
- (vii) a copy of the Meeting Order (in English only).

74. The Meeting Order also provides that the Monitor will send to each Affected Creditor by email at the e-mail address listed on the Proof of Claim submitted by such Affected Creditor or such other e-mail address subsequently provided to the Monitor by such Affected Creditor, or where such Affected Creditor is represented by legal counsel in these proceedings, to such Affected Creditor's legal counsel at the e-mail address listed on the Service List the Form of Proxy, the Notice to Creditors, the Plan Summary and a link to the Monitor's Website where the Meeting Materials will be posted as soon as practicable after the granting of the Meeting Order and, in any event, no later than 5:00 p.m. (EST) on Monday, December 6, 2010.

75. Of the 863 trade claims and employee claims that potentially fall within the categories of Proven Voting Claims or Unresolved Claims, 837 of those creditors either included an email address on the Proof of Claim filed with the Monitor or the Monitor was able to obtain an email address for such creditor. I am advised by Michelle Pickett of the Monitor, and do verily believe, that an electronic mail message was sent by the Monitor to all trade creditors for which the Monitor had an email address on November 24, 2010. In response to that email and as at the time of swearing this Affidavit, 53 parties advised the Monitor that they wished to receive the Meeting Materials by regular mail rather than by email, and 451 confirmed that they wished to receive the Meeting Materials by email. Of the email messages returned to the Monitor as "undeliverable", the Monitor (as at the time of my swearing this Affidavit) has been unable to confirm a valid email address for 51 creditors. If successful email transmission cannot be made, those parties will receive any materials by regular mail. In all other cases, the Applicants propose to have the Monitor deliver the Meeting Materials to and communicate with such parties by email.

76. The Applicants and the Monitor also have email contact with (i) Davies, which has filed claims on behalf of approximately 776 employees and (ii) representatives and counsel for each of

the 5 pension claims. Parties who are not otherwise represented or for whom the Applicants and the Monitor have no email address, will receive materials by regular mail.

77. The Applicants supported the appointment by the Court of representative counsel in this proceeding, on the basis that it would bring increased efficiencies to the process for the benefit of all parties. As such, the Applicants would not be dealing directly with numerous individual employees or retirees. The Order appointing Davies, and the subsequent Order confirming the scope and authority of the committee advising Davies dated March 30, 2010, provide Davies with the mandate and authority to act on behalf of their constituents efficiently, and on a timely basis.

78. I am concerned that if the necessary steps to Plan Implementation and termination of the CCAA proceeding cannot be achieved within the timeframe proposed by the Applicants, the cash that is contemplated to be distributed under the Plan will not be available. The Applicants continue to monitor their cash requirements relative to the Cash Flow Forecast filed with the Court on October 28, 2010, and have made key stakeholders aware of the significant costs that continue to be incurred in this proceeding.

79. Accordingly, while the Timeline does not contemplate lengthy periods between various dates, the Applicants and the Monitor have the ability to communicate with creditors on an efficient and timely basis.

80. In addition, the Meeting Order directs the Monitor to cause a notice to creditors advising of the Meeting to be published in each of *The Globe and Mail* (National Edition), *The Wall Street Journal* (U.S. Edition) and in the following local newspapers: (a) *Telegraph Journal*; (b) *Bangor Daily News*; (c) *Berlin Daily Sun*; and (d) *Le Droit*. This will provide another method of notice of the Meeting in addition to the delivery of the Meeting Materials as contemplated in the Meeting Order.

81. Only Affected Creditors with Proven Voting Claims or Unresolved Claims (both as defined in the Plan) or their respective proxyholders, representatives of the Monitor, the Applicants, the Plan Sponsor, any financial or legal advisors to the aforementioned parties, the

Meeting secretary and scrutineers may attend the Meeting. Any other party wishing to attend the Meeting may only do so upon invitation of the Chair.

82. Any Affected Creditor who is entitled to vote at the Meeting may appoint a proxyholder to attend, act and vote for and on behalf of such Affected Creditor at the meeting by executing a Proxy and delivering it to the Monitor by no later than noon (EST) on Friday, December 17, 2010.

83. Only Affected Creditors with Proven Voting Claims (or their duly appointed proxyholders) and Affected Creditors with Unresolved Claims (or their duly appointed proxyholders) are entitled to vote at the Meeting. The resolution to approve the Plan and any amendments thereto to be voted on at the meeting is annexed to the Notice of Meeting and Information Summary as Schedule "A".

84. Pursuant to the Meeting Order, Affected Creditors holding Unresolved Claims as at the date of the Meeting will be entitled to one vote at the Meeting which vote will have the dollar value as determined by the Applicants and the Monitor. The Monitor will tabulate the votes in respect of Unresolved Claims separately and such votes will not be counted for any purpose unless, until and only to the extent that such Unresolved Claim is ultimately determined to be a Proven Voting Claim.

85. In its report to the Court with respect to the outcome of the Meeting, the Monitor will advise the Court if the votes cast in respect of the Unresolved Claims would affect the approval or non-approval of the Plan. The Applicants and the Monitor will have the ability to seek the assistance of this Court in valuing any Unresolved Claims that may do so.

86. If the Plan is accepted by the required majority of Affected Creditors as set out in the CCAA, the Applicants propose the Sanction Hearing be held on Wednesday, December 22, 2010, at 9:00 a.m.(EST). A Sanction Recognition Hearing is scheduled to be heard by the U.S. Court on Thursday, December 23, 2010 at 10:00 a.m. (EST).

#### **DIP Financing**



87. As at the time of swearing this affidavit the DIP balance is \$7.9 million, consisting of \$2.7 million of direct drawings and approximately \$5.2 million in letters credit that have been issued by the DIP Lender. Based on the cash flow forecast filed by the Applicants on October 28, 2010, attached as Exhibit "B" to the October Affidavit, the Applicants anticipate that they will require approximately \$3.5 million in funding to February 28, 2011. This includes the costs to determine any unresolved claims, complete the sale of any miscellaneous assets such as the fishing camp in northern Quebec, deal with related outstanding issues in completing the Applicants' restructuring, facilitate the closing of the Transaction Agreement and Plan implementation and establish the Creditor Trust.

88. The Transaction Agreement contemplates that the full amount owing to the DIP Lender would be repaid on closing, in order to obtain a release of the DIP Lender's Charge pursuant to the Initial Order. This repayment of the DIP balances would include the face amount of the \$5.2 million of letters of credit that are currently outstanding,. As discussed above, if the aggregate actual liability amounts to less than the face amount of the letters of credit, cash would be remitted to the three trusts based on their respective *pro rata* entitlement in relation to one another and in accordance with the Direction provided by the Applicants, for the benefit of the Affected Creditors whose Proven Distribution Claims are held in each trust. Pursuant to the DIP Loan Agreement, any Plan presented by the Applicants must be acceptable to the DIP Lender. I am advised by BAM and do verily believe that, subject to and in accordance with the terms of the DIP Loan Agreement, the DIP Lender supports the Applicants' filing of the Plan and the request for the Meeting Order.

#### **Timeline to Completion of Restructuring**

89. As the Applicants are not generating positive cash flow from operations, and continue to require funding by the DIP Lender, it is imperative that this proceeding be concluded as quickly and efficiently as possible, in order to provide the greatest possible opportunity for recovery for unsecured creditors.

90. The Applicants have prepared a timeline for concluding all outstanding aspects of the restructuring, including presentation of a Plan at a meeting of creditors, seeking a Sanction Order and Sanction Recognition Order in the event the Plan is accepted, and closing the Transaction

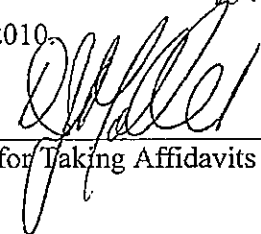
Agreement and implementing the Plan as soon as possible following the expiry of applicable appeal periods. Attached hereto and marked as Exhibit "D" is a timeline that outlines the steps required to complete this restructuring proceeding and the dates by which various steps are to be completed (the "Timeline").

91. The Applicants' ability to meet this Timeline and achieve the objectives set out in the Plan depends upon the willingness of the Applicants' creditors to use all reasonable efforts to minimize costly delays and disputes. In short, the Applicants' ability to implement the Plan and conclude the Transaction Agreement in a way that maximizes value for their unsecured creditors will depend in large part on the willingness of their creditors to do so.

92. Based on costs incurred by the Applicants to date at various times throughout this proceeding, and the fees and expenses incurred at times when significant negotiations or disputes with stakeholders were required, I believe that any delay in concluding the Transaction Agreement and implementing the Plan will result in additional costs of approximately \$1 million per month, with no corresponding inflow to offset it. This represents value that would otherwise be available for the Applicants' creditors. In addition, if the Gorham Mill is not sold to the third purchaser on December 8, 2010, the Applicants will continue to incur costs of approximately \$400,000 per month to maintain it. Any delay beyond the Timeline proposed by the Applicants would include this additional cost, and corresponding detriment to the Applicants' Creditors.

93. I swear this Affidavit in support of the relief requested in the Applicants' Notice of Motion dated November 29, 2010 and for no other or improper purpose.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 29<sup>th</sup> day  
of November, 2010.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
GLEN MCMILLAN

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO **FRASER PAPERS INC./PAPIERS FRASER INC.**, FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED, FRASER PAPERS LIMITED and FRASER N.H. LLC

Court File No. CV-09-8241-00CL

**ONTARIO**  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

**AFFIDAVIT OF GLEN McMILLAN**  
(Sworn November 29, 2010)

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Lawyers for the Applicants

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Court File No. CV-09-8241-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED  
AND IN THE MATTER OF A PROPOSED PLAN OF  
COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
FRASER PAPERS INC./PAPIERS FRASER INC., FPS  
CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER  
TIMBER LIMITED, FRASER PAPERS LIMITED and FRASER  
N.H. LLC

Applicants

AFFIDAVIT OF GLEN McMILLAN  
(Sworn on January 11, 2011)

I, Glen McMillan, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am the Chief Restructuring Officer ("CRO") of Fraser Papers Inc. ("Fraser Papers" or the "Company") and Secretary of the other Applicants, and as such I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and believe it to be true.
2. All monetary amounts referred to in this Affidavit are in United States (US) currency unless otherwise stated, and all capitalized terms used herein and not otherwise defined are as defined in the Consolidated Plan of Compromise and Arrangement filed by the Applicants on November 29, 2010, as same may be amended (the "Plan").
3. This Affidavit was originally intended to be sworn and filed in support of a Motion brought by the Applicants for the relief set out in the Notice of Motion dated January 5, 2011 (the "Notice of Motion") and the Applicants' request for:

- (a) an Order approving and sanctioning the Plan and granting certain ancillary relief set out therein (the “Sanction Order”);
- (b) an Order approving the Creditor Trust Agreement and appointing the initial trustee to act in respect of the Creditor Trust (the “Trust Order”); and
- (c) an Order, among other things, vesting the Applicants’ right, title and interest in and to (i) the FPHI Shares in the Plan Sponsor; and (ii) the Included Property in the Purchased Companies (the “Vesting Order”).

4. In accordance with an Order of this Court dated December 3, 2010, as amended by Order dated December 16, 2010 (collectively, the “Meeting Order”), a meeting of Affected Creditors to vote on the Plan was held on January 10, 2011 (the “Meeting”). At the Meeting, Affected Creditors holding 94.8% of all claims (by number) who were entitled to vote on the Plan voted in favour of acceptance of the Plan. However, large claims filed in respect of the Canadian pension plans voted to reject the Plan, and accordingly the dollar threshold required under the CCAA could not be met and the Plan was not approved.

5. The Applicants are not seeking any relief on January 12, 2011. This Affidavit is filed for the purpose of providing the Applicants’ stakeholders and this Honourable Court with an update as to recent developments and the status of the CCAA proceeding.

## I. KEY ASPECTS OF RESTRUCTURING

6. Early in the CCAA Proceedings, the Applicants, in consultation with the Monitor, determined that they would be unable to continue their operations over the long term in their present form. The integrated nature of the Applicants’ operations, whereby all steps required for the production of paper were undertaken through inter-related companies and operations, was not viable and did not provide sufficient flexibility to address changing market conditions. In addition, due to the ongoing significant losses experienced by the Applicants over several years, there was virtually no access to the additional financing necessary to continue operations, even if the substantial pre-filing liabilities and long-term obligations could be addressed through a Plan.

7. The Applicants therefore focussed their efforts on finding ways to maximize value for the benefit of their stakeholders. These efforts were not limited to realizing upon all assets and making a distribution of net proceeds to creditors. Rather, the Applicants considered the overall interests of their stakeholders including employees, retirees, pension regulators, customers, suppliers, trade creditors, and the social and economic interests of the provincial, state and local communities in which they had operated for many years. Those interests required a more comprehensive solution.

8. The Applicants faced an additional challenge at the time of filing, in that they had not generated positive cash flow for many years, and have not done so during the CCAA Proceedings. This required a significant commitment of new financing, and ongoing support from existing lenders and the DIP Lender.

9. The Applicants had limited options to offer creditors through a Plan, in view of the fact that there would be no ongoing operations that continued to be owned by the Applicants following implementation of the Plan.

10. In addition to the cash consideration received through various going-concern sales concluded by the Applicants, the value created for the Applicants' stakeholders in the CCAA Proceedings includes the following:

- Future employment for the Applicants' hourly and salaried employees at all locations in Quebec, New Brunswick and Maine with the prospect for future employment in New Hampshire;
- Ability for certain employees to continue making contributions to a registered pension plan on a defined contribution basis through ongoing employment;
- A 49% common equity interest in Twin Rivers, the purchaser of the Applicants' specialty papers business (the "Common Shares");
- An active role in Twin Rivers' future operations through two representatives on the five-person board of directors nominated by each of: (i) the Communications, Energy,



Paperworkers Union of Canada (the "CEP") and (ii) the Applicants' other unsecured creditors;

- Promissory notes payable by Twin Rivers in the aggregate amount of approximately \$44 million (the "Promissory Notes"), adjusted in accordance with the Twin Rivers APA;
- Mitigation of the impact of pension deficits in the pension plan for salaried employees and the pension plan for hourly employees (the "NB Salaried Plan" and the "NB Hourly Plan", respectively and collectively, the "NB Plans") through the negotiation of a comprehensive settlement involving a legislative amendment and an extended period of plan wind-up over 8 years to permit the possibility of market recovery of the pension plan assets;
- Negotiation of agreements with the New Brunswick Superintendent of Pensions (the "NB Superintendent"), the Administrator appointed over the NB Plans and the Ontario Pension Benefit Guaranty Fund to ensure a seamless administration of benefits, regardless of the location of the employee or retiree;
- Negotiation of the termination of the U.S. pension plan on a consensual basis to ensure that affected beneficiaries could access protections afforded by the Pension Benefit Guarantee Corporation ("PBGC") on a timely basis;
- Negotiation of the return of letters of credit posted in favour of the Wisconsin Department of Natural Resources having a face value of \$2,722,475, secured by a charge in priority to unsecured creditors, for no cash consideration payable by the Applicants;
- Negotiation of the conversion of approximately CAD\$38 million in secured debt ranking ahead of unsecured creditors, to preference shares in Twin Rivers; and
- The transfer of significant liabilities, including long-term environmental obligations and benefits obligations to employees and retirees, to the purchasers of various operations.

11. The various sale transactions undertaken by the Applicants have been described in prior Affidavits and Monitor's Reports filed in the CCAA Proceedings, and are discussed later in this Affidavit.

*A. Representation Orders*

12. Early in the Proceedings motions were brought by various parties seeking Orders to represent the interest of employees, former employees and retirees. Three separate Orders were issued on September 17, 2009, wherein:

- (i) a Committee ("CESAR") was formed for the purpose of representing the interests of all salaried employees and retirees and all other employees and retirees who were not covered by other Orders issued on that date and Davies Ward Phillips and Vineberg LLP was appointed by the Court as representative counsel of CESAR ("Representative Counsel");
- (ii) the CEP was authorized to continue to represent its active union members and to represent the interests of all the CEP union retirees and pensioners (the "CEP Representation Order"); and
- (iii) the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union (the "USW") was authorized to continue to represent its active union members and to represent the interests of USW union retirees and pensioners.

13. In support of its motion for the CEP Representation Order, the CEP filed an affidavit sworn by David Coles, President of the CEP, on August 28, 2009 (the "Coles Affidavit"). Annexed hereto and marked as Exhibit "A" is a true copy of the Coles Affidavit (with only Exhibit "H" attached, as all other exhibits are lengthy collective agreements).

14. Multiple motions were before the Court early in this proceeding as to which firms and parties were best suited to represent the interests of persons whose interests may otherwise be vulnerable, if they were not represented by counsel. Consideration was also given by the Applicants and the Monitor as to whether it would be appropriate for a union to represent the

interests of both active employees and retirees. As set out in paragraphs 26 and 27 of the Monitor's Fourth Report to the Court dated September 3, 2009, the Monitor noted as follows:

26. As noted above, the Monitor understands that existing legal counsel for each of the three unions proposes to represent the interests of the former members of each respective union, as well as each union's active members. The Applicants and the Monitor support such positions, subject to matters relating to the payment of costs.

27. The Monitor also notes that, as illustrated in Table 1 above, the number of retirees in all five DB Pension Plans outnumber the active members in each plan, such that in any vote of DB Pension Plan members which requires a majority, the active members cannot "out vote" the retirees.

15. I have been actively involved in negotiations with representatives of the CEP and their counsel on behalf of the CEP active members and the CEP retirees and pensioners, including in the execution of the NB Hourly Agreement (as defined and described in detail below).

16. Until very recently I believed that the CEP and its counsel Caley Wray was, in fact, representing the interests of the CEP retirees and pensioners, in addition to the active members. In mid-December, 2010, I spoke with Conrad Pelletier, a retired CEP member residing in New Brunswick, who advised that the CEP took the position that they were not representing the interests of the CEP retirees and pensioners in respect of a decision of the NB Superintendent issued on November 25, 2010 (the "November Pension Decision"). A copy of the November Pension Decision is annexed hereto and marked as Exhibit "B". The impact of this issue is addressed later in this Affidavit.

### *B. Wind-Up of Pension Plans*

#### *(i) New Brunswick Pension Plans*

17. Since the commencement of the CCAA Proceedings, the Applicants have worked closely with the NB Superintendent with the goal of minimizing the impact of the deficits under the NB Plans. This included discussions and meetings among the NB Superintendent, the Deputy Minister of Justice and Consumer Affairs/Office of the Attorney General (the "NB Deputy Minister"), the Applicants' counsel Thornton Grout Finnigan LLP ("TGF"), the

Applicants' pension and employment counsel Hicks Morley Hamilton Stewart Storie LLP ("Hicks Morley") and Morneau Sobeco, the actuarial firm retained by the NB Superintendent that was ultimately appointed as Administrator of the NB Plans on March 10, 2010 by the NB Superintendent.

18. An asset purchase agreement for the sale of the specialty papers business was approved by the Court on December 10, 2009 as a stalking horse bid (the "SPB Transaction"). A condition to the completion of the SPB Transaction was the termination of the defined benefit NB Plans and the establishment of new defined contribution pension plans by the purchaser.

19. An agreement was reached on February 24, 2010 among the Applicants, the CEP (which included national representatives and locals in the Provinces of Quebec and New Brunswick), the New Brunswick Regional Council of Carpenters, Millwrights and Allied Workers (the "CMAW"), the NB Superintendent and the NB Deputy Minister (the "NB Hourly Agreement"). Paul Chang of Morneau Sobeco attended with the NB Superintendent at TGF's offices in Toronto for the "around the clock" negotiation that led to the execution of the NB Hourly Agreement. Annexed hereto and marked as Exhibit "C" is a true copy of the final fully-executed NB Hourly Agreement in respect of the NB Hourly Plan, without lengthy schedules.

20. The terms of the NB Hourly Agreement were approved by the Court pursuant to an Order dated February 24, 2010 and, by consent of the parties, certain corrections to the form of the agreement was approved by further Order dated March 22, 2010.

21. A similar agreement was also reached among the Applicants, the NB Superintendent, the NB Deputy Minister, and Representative Counsel on March 17, 2010 in respect of the NB Salaried Plan (the "NB Salaried Agreement" and collectively with the NB Hourly Agreement, the "Pension Agreements"). By Order dated March 30, 2010 the NB Salaried Agreement was also approved by the Court.

22. In order to satisfy the conditions precedent under the asset purchase agreement for the SPB Transaction and to facilitate the implementation of the terms of the Pension Agreements,

the Province of New Brunswick passed Bill 51, being an Act to amend that Province's *Pension Benefits Act*, which received Royal Assent on March 26, 2010.

23. The NB Plans were then wound-up in their entirety by Order issued by the NB Superintendent in accordance with the terms of the Pension Agreements.

24. The timing of the final wind-up of the NB Plans pursuant to an Order issued by the NB Superintendent was closely coordinated between the Applicants and the NB Superintendent to ensure that the effective date of wind-up of the NB Plans was one day prior to the closing of the SPB Transaction, as the closing of the SPB Transaction would be effective as at 12:01 a.m. on the date of closing. Annexed hereto and marked as Exhibit "D" is a true copy of certain emails exchanged between the Applicants' counsel TGF and the NB Superintendent to coordinate the wind-up of the NB Plans to coincide with the closing of the SPB Transaction on April 28, 2010. Annexed hereto and marked as Exhibit "E" is a true copy of the Order of the NB Superintendent dated April 28, 2010 providing for a full wind-up of the NB Plans effective on April 27, 2010.

25. Court approval of the Pension Agreements was obtained and the wind-up of the NB Plans was completed to satisfy the conditions precedent necessary for completion of the SPB Transaction, as described above. Morneau Sobeco had been appointed as Administrator of the NB Plans by the NB Superintendent on March 10, 2010, as contemplated by the Pension Agreements.

26. Separate outside trusts were established for each of the NB Hourly Plan and the NB Salaried Plan in accordance with the Pension Agreements. These two trusts, together with the Creditor Trust for which court approval had originally been sought on this motion, were to comprise the three trusts that would hold all consideration available for the Applicants' Affected Creditors on implementation of the Plan, other than the Aggregate Implementation Payment Amount.

27. Due to the deficits under the NB Plans and in accordance with the Pension Agreements, pension benefits payable from the NB Plans were reduced from 100% to approximately 69% effective May 1, 2010, taking into account the estimated consideration to be received by the

Applicants under the SPB Transaction, thereby mitigating the more severe reduction that would have otherwise been experienced by retirees receiving a pension.

28. Proceedings in New Brunswick relating to the deficit under the NB Hourly Plan are discussed in further detail later in this Affidavit.

(ii) *U.S. Pension Plan*

29. The terms upon which the pension plan for U.S. employees and retirees (the “US Plan”) would be wound up and taken over by the PBGC were negotiated by the Applicants with the PBGC. Pursuant to a Notice of Determination issued by the PBGC terminating the Plan and appointing the PBGC as the Trustee, and the execution of an Agreement for the Appointment of the Trustee and Termination of Plan by the Applicants on August 26, 2010, the US Plan was terminated effective April 28, 2010 and assumed by PBGC effective August 31, 2010.

(iii) *Quebec Pension Plans*

30. The Applicants had engaged in efforts to negotiate an arrangement with the Régie des Rentes du Quebec (the “Régie”) with respect to the pension plans registered in the Province of Quebec for the hourly and salaried employees (the “Quebec Hourly Plan” and the “Quebec Salaried Plan”, respectively and collectively, the “Quebec Plans”). Those efforts included a consensus pension proposal submitted to the Régie by the Applicants, the authorized representative for the beneficiaries of the Quebec Hourly Plan (the CEP), and the court-appointed representative counsel for the Quebec Salaried Plan (Representative Counsel).

31. The Régie advised by letter dated July 8, 2010, that the Minister has indicated that only the Bill 1 arrangements (extended to the Nortel retirees) would apply to retirees in the Quebec Plans.

32. On July 12, 2010, the Applicants received notice from counsel to the Régie that the Quebec Plans were to be terminated immediately, but in no event later than July 16, 2010. After further discussions between the Applicants and the Régie, the Quebec Plans were ultimately terminated as required on July 23, 2010 and the Applicants provided notice to the Quebec Plans and the Quebec Plans’ pension committees of the termination.

33. The Régie subsequently required the Applicants to revise the effective date of the termination of the Quebec Plans retroactively to April 30, 2010. The Applicants were uncertain as to whether they could legally terminate the Quebec Plans to a retroactive date, notwithstanding this request by the Régie. Accordingly, the Applicants and the Monitor agreed to lift the stay of proceedings and consent to an Order issued by the Régie requiring an amended notice of termination reflecting a termination date of April 30, 2010. The Applicants then issued an amended notice of termination on that basis.

*C. Sale of Specialty Papers Business*

34. Pursuant to an Order dated April 6, 2010 (the "April Order"), the Applicants completed the SPB Transaction with Twin Rivers. The consideration received by the Applicants on closing of the SPB Transaction totalled approximately \$193 million following settlement of the purchase price adjustment and closing balance sheet.

35. In the Monitor's Thirteenth Report to the Court dated November 1, 2010, the Monitor advised that there were two outstanding matters to be resolved in order to finalize the closing balance sheet and determine the final principal amount of the Promissory Notes payable by Twin Rivers to the Applicants. I have confirmed with John McKenna of the Monitor and Wayne Johnson of Twin Rivers that these two issues were resolved to the satisfaction of all parties.

36. On January 4, 2011, a final version of the closing balance sheet reflecting the resolution of these previously outstanding issues was sent to Twin Rivers for approval. Based on the final closing balance sheet, the Promissory Notes payable by Twin Rivers will be increased from an original principal amount of \$40 million to approximately \$44 million.

37. In addition to permitting the Applicants to repay significant secured debt owing to CIBC, CIT and realty taxes owing to various municipalities, the closing of the SPB Transaction provided real value and consideration including:

- (i) the Promissory Notes in the principal amount of approximately \$44 million; and

- (ii) the Common Shares having a face value ascribed on closing of the SPB Transaction of approximately \$24 million.

38. Since the closing of the SPB Transaction, Twin Rivers has been providing certain transitional services to the Applicants in order for the Applicants to maintain their accounting systems and to meet the Applicants' statutory reporting obligations at minimal cost. In addition, Twin Rivers is providing lumber sales support services.

39. In addition, the Applicants have performed certain services for Twin Rivers, the costs of which are recoverable under the Pulp and Paper Green Transformation Program sponsored by the Government of Canada ("PPGTP"). I am advised by Johanne Levesque Murray, an employee of Twin Rivers and do verily believe, that the amount of the credit owing by Twin Rivers to the Applicants is approximately CAD \$115,000 related to these services. These amounts are expected to be paid to the Applicants once Twin Rivers receives the related refund under the PPGTP.

40. In accordance with the asset purchase agreement for the SPB Transaction, \$10 million of the Promissory Notes received on closing were to be held by the Monitor in escrow until the earlier of (i) implementation of a plan of compromise and arrangement by the Applicants; or (ii) one year following the closing of the SPB Transaction (April 28, 2011).

41. The completion of the SPB Transaction provided considerable benefits to the Applicants' stakeholders, including employment for approximately 1,150 hourly and salaried employees. In addition, the ongoing operations provide a continuing source of business for many suppliers and significant benefits to the communities in the region.

#### *D. Sale of Thurso, Quebec Mill*

42. Pursuant to an agreement of purchase and sale between the Applicants and Fortress Specialty Cellulose Inc. ("Fortress") dated March 18, 2010 the facility in Thurso, Quebec (the "Thurso Facility") was sold to Fortress, with a closing on April 30, 2010.

43. Cash proceeds in the amount of CDN\$3 million were received on closing. From these proceeds the Applicants paid property taxes including arrears for the period up to the closing



date in the aggregate amount of CDN\$1.4 million, vacation pay owed to the Applicants' employees at the Thurso Facility in the amount of CDN\$175,694 and other related amounts payable on closing.

44. In addition to the net proceeds, the Applicants also received payment of CDN\$1.7 million representing reimbursement by the Province of Quebec for the care and maintenance costs associated with keeping the Thurso Facility available for a potential re-start during the months of January, 2010 to April 30, 2010. This reimbursement was in accordance with an agreement negotiated by the Applicants with the Province of Quebec.

45. As a result of the Applicants' sale, almost all of the existing employees at the Thurso Facility received offers of employment from Fortress.

*E. Sale of Gorham, New Hampshire Mill*

46. As noted in my prior Affidavits filed with this Court, the Applicants made three separate attempts to sell the mill in Gorham, New Hampshire (the "Gorham Mill"). Each of the first two agreements were terminated as a result of the purchaser's inability or unwillingness to complete the transaction.

47. On November 27, 2010, the Applicants executed an agreement of purchase and sale with Counsel RB Capital LLC. On December 3, 2010, the Applicants obtained an Order authorizing and directing them to complete the sale of the Gorham Mill, and on December 16, 2010 the transaction was completed.

48. On closing, the Applicants received cash in the amount of \$2,695,722 together with an additional \$50,000 in consideration for an extension of the closing date by one week. After paying approximately \$81,800 for property taxes, net cash proceeds received by the Applicants on the sale of the Gorham Mill was approximately \$2.6 million.

49. The Applicants understand that the purchaser intends to restart the Gorham Mill, thereby providing an opportunity for future employment for the Gorham Mill employees.

*F. Sale of U.S. Companies and Maine Lumber Mills*

50. On November 25, 2010, the Applicants executed the Transaction Agreement with the Plan Sponsor, which was incorporated into the Plan. This transaction involves the purchase of the shares of Fraser Papers Holdings Inc. that are currently owned by Fraser Papers Inc. Fraser Papers Holdings Inc. owns directly or indirectly 100% of the Applicants' U.S. operating subsidiaries, including the Applicant that owns the lumber mills in Ashland and Masardis, Maine (the "Maine Lumber Mills").

51. The Monitor's Fifteenth Report dated December 2, 2010 (the "Fifteenth Report"), and an Affidavit I previously swore on November 29, 2010 that was filed in this proceeding, each describe in detail the terms of the Transaction Agreement, the consideration payable to the Applicants, and the basis upon which the Applicants and the Monitor supported approval of the Plan and completion of the Transaction Agreement as being in the best interests of the Applicants' creditors.

52. Acceptance of the Plan and completion of the Transaction Agreement would have provided an opportunity for continuation of the operations at the Maine Lumber Mills and was a critical feature to the Applicants' ability to repay amounts owing to the DIP Lender. It was also expected that the proceeds received under the Transaction Agreement would permit a distribution of cash to Affected Creditors under the Plan in the form of the Implementation Payment.

53. On January 4, 2011, I received a letter from Bill Manzer, the Senior Vice President Business Strategy and Projects of Fraser Papers tendering his resignation effective January 14, 2011. Bill Manzer is the only remaining officer and employee of Fraser Papers other than myself and is responsible for the operations at the Maine Lumber Mills. As the Plan was rejected and will not be implemented by January 14, 2011 as had originally been contemplated, I will now take over responsibility for overseeing the operations of the Maine Lumber Mills.

## II. NB HOURLY PLAN

### *A. NB Hourly Agreement*

54. As described earlier in this Affidavit, the NB Hourly Agreement was executed to address all aspects of the NB Hourly Plan, the manner in which the deficit under the NB Hourly Plan would be addressed, and to provide a complete and final release in respect of, among other things, the NB Hourly Plan as a condition precedent to the completion of the SPB Transaction.

55. The NB Hourly Agreement was executed after extensive negotiations which culminated in around-the-clock meetings involving all parties at the offices of TGF, in the 48 hours leading directly into the February 24, 2010 court hearing. Representatives of the national CEP as well as its local unions were in attendance with the Applicants and their counsel, as was the NB Superintendent and Paul Chang of Morneau Sobeco, the Monitor and its counsel and Representative Counsel.

### *B. Prior Court Orders and Releases*

56. The April Order was issued in connection with a sale of the SPB Transaction following extensive negotiation of its terms among various parties, which negotiations lasted throughout the day and into the evening on the date of the court hearing. The April Order also contained releases in favour of various parties. Annexed hereto and marked as Exhibit "F" is a true copy of the April Order, without lengthy schedules.

57. The April Order was issued as a condition of the SPB Transaction which, if completed, would provide significant benefits to the Applicants' creditors and others. As with the Pension Agreements, the releases in favour of the Applicants, their directors and officers and others who could claim through or against them, were intended to ensure that no claim whatsoever (save and except for fraud or gross negligence), relating to any facts or circumstances whether known or unknown, could subsequently be brought by anyone at any future time, relating to anything including the NB Plans.

58. The obtaining of full and final releases in favour of the Applicants, their directors and officers and others was a fundamental term of the NB Hourly Agreement, which was approved

by Order dated February 24, 2010, and a fundamental term of the April Order, which permitted a closing of the SPB Transaction.

59. I am advised by D.J. Miller of TGF and can also attest, based on my attendance during the negotiations at court on April 6, 2010, that extensive input was received from various parties in connection with the wording of the April Order. Notice of the Order to be sought by the Applicants had been provided to the NB Superintendent, and comments were invited from the NB Superintendent and Morneau Sobeco, including relating to the releases.

60. On December 2, 2010, on the eve of the Applicants' motion to obtain the Meeting Order, the Applicants' counsel, D.J. Miller of TGF, received a letter from the law firm Pink Larkin who identified themselves for the first time as counsel for Morneau Sobeco. The letter was previously annexed as "F" to my Affidavit sworn on December 2, 2010 and for ease of reference is annexed hereto and marked as Exhibit "G".

61. To my knowledge, this letter represented the first time that any concern had been raised by Morneau Sobeco as to the terms of any releases in favour of the Applicants or its directors and officers, including in connection with: (i) the NB Hourly Agreement negotiated in February 2010 in the presence of Paul Chang of Morneau Sobeco; and (ii) the April Order, a draft of which had been provided to Morneau Sobeco by the NB Superintendent and which the Applicants had specifically requested comments from Morneau Sobeco and the NB Superintendent.

62. I am advised by D.J. Miller of TGF and do verily believe that the law firm Pink Larkin has been on the Service List since the commencement of the CCAA proceeding as counsel for the active members of the CMAW, but not the retirees. Pink Larkin now also represents Morneau Sobeco, the Administrator of the NB Plans. I am also advised by D.J. Miller of TGF that Pink Larkin has not filed a Notice of Appearance on behalf of Morneau Sobeco at any time in this proceeding.

63. In response to Pink Larkin's letter dated December 2, 2010, the Applicants' counsel, TGF, corresponded with Pink Larkin by letter dated December 2, 2010 a true copy of which is

annexed hereto and marked as Exhibit "H" and which was previously annexed as Exhibit "G" to my Affidavit sworn on December 2, 2010.

64. TGF's letter dated December 2, 2010 requested that Pink Larkin confirm whether Morneau Sobeco was alleging fraud or gross negligence on the part of any party who was previously released pursuant to the April Order. I am advised by D.J. Miller of TGF and do verily believe that to date no response has been received to that question.

65. I am advised by Elizabeth Brown of Hicks Morley and D.J. Miller of TGF that on December 17, 2010 they had a telephone discussion with Ron Pink and Betina Quistgaard of Pink Larkin regarding, among other things, the releases in favour of the Applicants and its directors and officers under the Plan.

66. Following that telephone discussion, on December 20, 2010 the Applicants received a letter from Pink Larkin in the form annexed hereto and marked as Exhibit "I".

67. On December 20, 2010 the Applicants' counsel TGF corresponded with Pink Larkin with respect to the issues raised in that correspondence, a true copy of which is annexed hereto and marked as Exhibit "J".

68. Morneau Sobeco attended with and assisted the NB Superintendent during the negotiations among all parties leading to the execution and implementation of the NB Hourly Agreement which has been approved or confirmed by three Court Orders issued in this proceeding. Morneau Sobeco attended meetings in Toronto with the NB Superintendent, representatives of the CEP, the Monitor, the Applicants and all relevant counsel in connection with the NB Hourly Agreement.

69. Morneau Sobeco had actual notice of the relief sought by the Applicants on the April 6, 2010 motion, as they had received from the NB Superintendent a draft of the Order sought by the Applicants, prior to the motion materials being served on the Service List in this proceeding. Morneau Sobeco raised no concerns at any time prior to December 2, 2010 with respect to the releases in favour of any party under the NB Hourly Agreement, the February 24, 2010 Court Order, or the April Order.

*C. NB Pension Proceedings*

70. As set out earlier in this Affidavit, on November 25, 2010 the NB Superintendent issued the November Pension Decision revoking the registration of a portion of the most recently restated text of the NB Hourly Plan.

71. The restated NB Hourly Plan was filed with the NB Superintendent on April 29, 2008 and was effective as of January 1, 2005. The NB Superintendent issued a Notice of Registration for the restated NB Hourly Plan on April 1, 2010, almost two years after it was filed with the NB Superintendent for registration.

72. The issuance of the November Pension Decision followed what I now understand to have been a lengthy review of the past administration of the NB Hourly Plan conducted by Morneau Sobeco in its capacity as current pension plan Administrator.

73. Over the course of many months, Morneau Sobeco contacted Bernie LeBlanc, Director of Pensions for the Applicants, on numerous occasions seeking documentation, information and answers to questions about the NB Hourly Plan's historical administration. I am advised by Bernie LeBlanc that Paul Chang requested information relating to the benefits provided to specific individual plan members without informing Bernie LeBlanc that he was conducting a review. I was not made aware of this ongoing review by Morneau Sobeco until November 1, 2010 through my discussions with Bernie LeBlanc.

74. On November 4, 2010, the NB Superintendent advised me that Morneau Sobeco had been conducting a review into the past administrative practices of the NB Hourly Plan and that she was expecting to issue an order within a few days.

75. Through these discussions with Bernie LeBlanc and the NB Superintendent, I learned that Morneau Sobeco's review was pursuant to their interpretation of plan text prior to a 2005 restatement. In Morneau Sobeco's opinion, the restated pension plan text, which had been restated to clarify any ambiguity in the termination section of the prior plan text, may have had the effect of taking away a vested entitlement.

76. The Applicants' position was that the pre-2005 pension plan text had been unclear in describing the termination entitlement for deferred vested members but that the Applicant's intentions, and those of the CEP whose members were beneficiaries under the NB Hourly Plan, had always been consistent since the inception of the particular termination provisions in 1992. In short, the Applicants' position was that the restated NB Hourly Plan clarified the prior wording and that the intention of the provisions had been made clear and had been implemented on that very clear basis for many years.

77. On December 3, 2010 Morneau Sobeco provided the Superintendent with an update of its preliminary valuation results of the NB Hourly Plan windup position at March 31, 2010 in light of the November Pension Decision. The effect of Morneau Sobeco's interpretation was reflected in the November Pension Decision, and produced calculations that resulted in an increase in the quantum of the wind-up deficit in the NB Hourly Plan by approximately \$30 million.

78. There are approximately 240 active CEP unionized employees who will be affected positively by the November Pension Decision. There are approximately 640 pensioners who are receiving a pension under the NB Hourly Plan whose pension amount is expected to decrease by a further 4.4% from the current level of 69% as a result of the November Pension Decision. In addition, there are a further approximately 240 additional Ontario retirees whose pensions will decrease based on the November Pension Decision.

79. In the Applicants' view, the interpretation of the NB Hourly Plan which resulted in the issuance of the November Pension Decision is contrary to the intention of the Applicants and the unions who bargained for the termination provisions under the relevant collective agreements and the NB Hourly Plan, which results in an improved benefit for the 240 active employees to the significant detriment of the retirees.

80. The Applicants disagreed with the November Pension Decision and on December 6, 2010 requested an appeal of that decision through a referral to the New Brunswick Labour and Employment Board (the "Board"), in accordance with the provisions of the *Pension Benefits Act*.

The Applicants requested that the hearing of the appeal be expedited, in view of the potential implications of the November Pension Decision being upheld.

81. I am advised by Elizabeth Brown of Hicks Morley and D.J. Miller of TGF that on the afternoon of Friday, December 17, 2010 they had a telephone discussion with Ron Pink, counsel to Morneau Sobeco, during which time Ron Pink indicated that a date had been set for the appeal of the November Pension Decision for December 29 and 30, 2010. Notwithstanding the Applicants' request for an expedited hearing, we received no notice from the NB Superintendent, the Board or Morneau Sobeco of any expedited date prior to that discussion with Ron Pink, and did not receive notice of the hearing from the Board until December 21, 2010.

82. After the Applicants requested that the November Pension Decision be referred to the Board, I read an on-line newspaper article which stated that Conrad Pelletier, who is the Chairman of the Edmundston Retirees Association had also requested that the November Pension Decision be referred to the Board for review.

83. I contacted Conrad Pelletier who advised me that:

- an executive of the CEP local 29 confirmed that the CEP and its counsel would not be representing the interests of its retirees at the Board hearing relating to the November Pension Decision;
- he contacted Fred Wilson, Assistant to the President of the CEP to request that the CEP represent the retirees at the Board hearing scheduled for December 29 and 30, 2010. Fred Wilson advised him that the hearing on December 29 and 30, 2010 was not a CCAA matter and the CEP would not be representing the retirees at the hearing.

84. In a subsequent conversation with Conrad Pelletier he also advised me that the Former Member Retainer Agreement annexed as Exhibit "H" to the Coles Affidavit and referred to in paragraph 13 of this Affidavit, was never provided to Mr. Pelletier or, to his knowledge, to the other members of the Edmundston Retirees Association who are former members of the CEP and retirees under the NB Hourly Plan.



85. I attended the Board hearing on December 29 and 30, 2010 in New Brunswick. The law firm Pink Larkin represented (i) the CEP active employees (but not retirees), (ii) the CMAW active employees (but not retirees), as well as (iii) Morneau Sobeco as administrator of the NB Hourly Plan. The retirees under the NB Hourly Plan were the only parties whose interests were not represented by counsel.

86. On December 30, 2010 the Monitor corresponded with the Vice-Chairperson of the Board to ensure that he was aware of the various court Orders and the NB Hourly Agreement. Annexed hereto and marked as Exhibit "K" is a true copy of the Monitor's letter to the Vice-Chairperson dated December 30, 2010.

87. On January 7, 2011 the Board issued a decision upholding the November Pension Decision. The Applicants disagree with the decision reached by the Board, and take particular issue with comments regarding the jurisdiction of this Honourable Court made by the Vice-Chairperson of the Board in paragraph 74 thereof. Annexed hereto and marked as Exhibit "L" is a true copy of the decision of the Board dated January 7, 2011.

### III. THE PLAN

88. On November 3, 2010, an Order was issued authorizing and directing the Applicants to prepare a Plan on a substantively consolidated basis and the Applicants have done so.

#### *A. The Plan*

89. In developing the Plan, the Applicants sought to maximize the recovery available for their Affected Creditors in a manner that addresses the Affected Claims in a consistent and equitable manner.

90. The purpose of the Plan was to:

- (i) settle Affected Claims and to achieve a compromise and arrangement of all Affected Claims against the Applicants in a manner that provides consistent and equitable treatment among the Applicants' Affected Creditors;
- (ii) complete the Transaction Agreement; and

- (iii) allow for the orderly allocation of the Distribution Pool to the Affected Creditors.

91. The Plan would have become effective on the Plan Implementation Date and it was contemplated that the Plan would have been implemented by the Applicants by no later than February 4, 2011, subject to the conditions precedent under the Plan being satisfied on or before that date.

92. Pursuant to the Plan, Affected Creditors with Proven Distribution Claims were to have received the Implementation Payment and be allocated their Pro Rata Share from the Distribution Pool. The Distribution Pool would be comprised of the Promissory Notes, the Common Shares and any Cash available to the Affected Creditors.

93. The Applicants and the Monitor had considered all alternative scenarios to the Plan and believed that Affected Creditors would derive a greater benefit from the implementation of the Plan supported by the DIP Lender, the Plan Sponsor and the Monitor, as being the best source of recovery for the Applicants' stakeholders.

#### *B. Distributions under the Plan*

94. Prior to making any distributions under the Plan, the Monitor would have been responsible for establishing a Reserve for any Unresolved Claims. The Monitor would then allocate to each of the Applicants' Affected Creditors with a Proven Distribution Claim, their Pro Rata Share of the assets in the Distribution Pool. The Applicants, in consultation with the Monitor, would then deliver the Pro Rata Share of the Distribution Pool to the Affected Creditors with Proven Distribution Claims as follows:

- (a) in respect of the NB Hourly Claim, to the NB Hourly Trust;
- (b) in respect of the NB Salaried Claim, to the NB Salaried Trust; and
- (c) in respect of all other Proven Distribution Claims, to the Creditor Trust.

95. Creditors with Unresolved Claims would only receive a distribution from the Distribution Pool if and when their Unresolved Claims were determined to be Proven Distribution Claims in accordance with the Claims Order.

96. Subject to the Applicants having the Aggregate Implementation Payment Amount after repaying the Prior Repayments, the Plan provided that the Applicants would make an Implementation Payment to each Affected Creditor with a Proven Distribution Claim on the Implementation Payment Date in the amount of the lesser of: (i) the full amount of the Affected Creditor's Proven Distribution Claim; or (ii) \$500.00. The Plan contemplated that the Implementation Payment Date would be January 21, 2011. In the event that the Applicants did not have sufficient Cash to fund the Aggregate Implementation Payment Amount in full after repaying the Prior Repayments, the Implementation Payment to each of the Affected Creditors with a Proven Distribution Claim would be reduced equitably to ensure that Aggregate Implementation Payment Amount did not exceed the Cash available to the Applicants to make the Implementation Payments.

97. At the time of the Meeting the Applicants expected to have sufficient Cash on the Plan Implementation Date to pay the Implementation Payments without reduction.

98. After determination, on the Final Determination Date of all Unresolved Claims, the Monitor would have: (i) allocated to the Affected Creditors with Unresolved Claims that have become Proven Distribution Claims, their Pro Rata Share of the Distribution Pool from the Reserve and shall deliver it to the Creditor Trust; (ii) paid the Implementation Payment to such Affected Creditors; and (iii) remitted any Cash remaining in the Reserve to the Creditor Trust.

99. In so doing, as at the Final Determination Date, the Applicants would have allocated to the Trusts, all of their assets for the benefit of their Affected Creditors with Proven Distribution Claims.

### *C. Releases Under the Plan*

100. The Releases under the Plan were drafted as an integral component of the Plan and were necessary to the success of the Plan.

101. The Released Parties (as defined under the Plan) are, and have been essential to the Applicants' restructuring efforts culminating in the Plan. Without their support and assistance, the Applicants would have been unable to present a Plan to their Affected Creditors that provides for the distribution of Cash in the form of the Implementation Payment, in addition to the allocation and delivery of the Promissory Notes and Common Shares to the Trusts. Without the support and assistance of the Released Parties, the Applicants may very well have been unable to even commence the CCAA Proceedings and to enter into the various transactions that have, in addition to maximizing recovery for the Applicants' Affected Creditors, preserved employment or the prospect of future employment for the Applicants' hourly and salaried employees in Quebec, New Brunswick and Maine, thereby benefitting those communities.

102. The releases contained in Article 9.01 of the Plan recognize the contribution that the Released Parties have made to the CCAA Proceedings, the Applicants' restructuring efforts and the Plan that was presented to the Applicants' Affected Creditors for consideration.

*D. Meeting Order and Notice*

103. The Meeting Order authorizing the Applicants to proceed in the calling of the Meeting of all Affected Creditors to consider and vote on the Plan.

104. The Applicants worked closely with the Monitor to ensure that notice was provided and that the meeting materials were delivered to all Affected Creditors in accordance with the Meeting Order. I am advised by John McKenna of the Monitor, and do verily believe that:

- (i) as provided in paragraph 12 of the Meeting Order, notice was published in 11 newspapers;
- (ii) the Meeting Materials were posted on the Monitor's website in accordance with paragraph 7 of the Meeting Order;
- (iii) the documents described in paragraph 8 of the Meeting Order were sent by email to all Affected Creditors or their legal counsel for whom the Monitor had obtained email addresses; and

- (iv) the Meeting Materials were sent by prepaid ordinary mail to all Affected Creditors for whom the Monitor did not have email addresses, in accordance with paragraph 9 of the Meeting Order.

105. The Applicants and the Monitor also hosted webcasts in English and French for (i) employees and retirees, and (ii) trade creditors. These webcasts were held on December 17 and 20, 2010 for the purpose of explaining the terms of the Plan and related documents in plain language, and providing a forum for those parties to ask questions. Representative Counsel asked to participate in the webcasts and was invited to do so by the Applicants and the Monitor.

106. In an effort to ensure that as many people as possible exercised their right to vote on the Plan, the Applicants prepared a letter to Affected Creditors in English and French that was sent by the Monitor on December 28, 2010. Annexed hereto and marked as Exhibit "M" is a true copy of the English form of letter sent to Affected Creditors on December 28, 2010.

107. I verily believe that, as a result of the extensive efforts undertaken by the Applicants and the Monitor to date, all Affected Creditors were provided with notice of the Meeting, the terms of the Plan and related documents, and were given an opportunity to vote on the Plan if they chose to do so.

#### IV. MEETING OF CREDITORS AND VOTE

108. In accordance with the Meeting Order, the Meeting to vote on the Plan was held at the Hyatt Regency hotel in Toronto at 10:00 a.m. on Monday, January 10, 2011.

109. At the Meeting, 290 creditors representing 94.8% of the number of Affected Creditors entitled to vote on the Plan, voted to accepted the Plan presented by the Applicants. However, 16 claims, including those filed by Morneau Sobeco on behalf of the NB Plans and the pension committees of the Quebec Plans, did not support the Plan.

110. As a result, the Plan did not receive the sufficient support of the requisite dollar value of claims filed by Affected Creditors. The Applicants had previously advised that the Plan

represented the best option and that no other or better Plan could be presented by the Applicants if the Plan was not approved.

111. At the Meeting, the Monitor advised those in attendance that the estimated recovery percentage to Affected Creditors with Proven Distribution Claims could be between 19% to 20% based on the estimated cash available on the Implementation Date and the undiscounted amount of the Promissory Notes and the Common Shares.

## V. NEXT STEPS

### *A. Residual Assets/Issues*

112. As outlined in my prior Affidavits and Monitor's Reports, Fraser Papers Inc. owns an old fishing camp on leased land in northern Quebec. The land is leased from the Crown and is subject to an annual renewal. The camp has been listed for some time with Re/Max Tremblant Inc. at a listing price of \$100,000 with no interest expressed or offers received. Earlier today, I accepted an offer of \$40,000. If agreed by the purchaser, the sale will close on February 28, 2010.

113. The Applicants own two remote properties in the Province of Quebec that were owned by a predecessor company. They have not been used in connection with any operations of the Applicants for many years, but the Applicants have been paying annual property taxes in the aggregate amount of approximately CAD\$1,500. One property is located in the municipality of Notre Dame du Laus, and the second is in the municipality of Antoine Labelle. Due to their location and past use, these properties have no known commercial or other value that could be realized for the benefit of the Applicants' creditors.

114. The Applicants have, through their Quebec counsel, been in discussions with the two local municipalities to determine if there is any interest on their part in acquiring these properties for a nominal amount, and assuming any liabilities in connection with the properties. No claims have been filed by any parties in respect of these properties, and the Applicants have therefore not been made aware of any potential claims that may exist.

115. The municipality of Notre Dame du Laus is interested in acquiring the properties provided it can satisfy itself as to any potential liabilities. This municipality has requested that it be given until mid-February to confirm whether it's prepared to proceed on the basis suggested by the Applicants. The Applicants will be making no further realty tax payments to the municipalities in respect of these properties, and will continue their discussions with the municipalities, subject to the CCAA Proceedings.

*B. Outstanding Letters of Credit*

116. As outlined in prior affidavits and in the Fifteenth Report, certain letters of credit have been issued under the DIP facility and are outstanding in the face amount of approximately \$4.9 million. These letters of credit are posted as security to secure workers compensation insurance policies in the U.S. The Applicants believe that the estimated liability for outstanding workers compensation claims is currently less than \$1.5 million.

117. I have been attempting to have the security held by these insurance companies for the workers compensation obligations reduced. To date, I have only been able to obtain small reductions as the insurers are reluctant to release security, particularly due to the Applicants' financial position.

118. In addition, I have approached insurers in an effort to have them buy out the remaining liability pursuant to the insurance policies. To date, we have not made any alternate arrangements with any insurers.

119. The outstanding letters of credit represent an obligation and liability of the Applicants under the DIP facility that is secured by the DIP Lender's Charge over all of the Applicants' assets. In order to enable the DIP facility to be repaid in full and the DIP Lender's Charge to be released on the Plan Implementation Date, the DIP Lender must receive cash in an amount sufficient to fully repay all current borrowings under the DIP facility, all borrowings that may be required to fund the Completion Fund and to satisfy the Applicants' liability in respect of the outstanding letters of credit.

120. The Transaction Agreement provided that on the Plan Implementation Date, upon the DIP facility being repaid in full from the proceeds of from the Transaction Agreement, the Plan Sponsor would assume responsibility for managing the remaining outstanding workers compensation claims, including making payments in respect of claims out of the funds received from the Applicants in repayment of the DIP facility. Over time, as the remaining employee workers compensation claims were discharged, the LC requirement would be reduced by the insurance companies. As the LC requirement was reduced, and ultimately once it is extinguished by the return and cancellation of the letters of credit, any funds received by the Plan Sponsor that were in excess of the amounts required to repay all obligations, would be reimbursed by the Plan Sponsor to the Trusts.

121. The terms and conditions under which the Plan Sponsor would administer the claims and reimburse any excess cash was to have been contained in an Administration Agreement among the Plan Sponsor and the Trustees of the Trusts.

122. I am the sole remaining employee and officer of Fraser Papers Inc. In the absence of completion of the Transaction Agreement or a source of ongoing funding, it is difficult to contemplate any scenario whereby a party would agree to manage this ongoing liability for many years in the absence of any means of compensating them for doing so.

## VI. REJECTION OF PLAN

### *A. Future Cash Requirements*

123. As I have sworn in prior Affidavits filed in this proceeding, prior to execution of the Transaction Agreement, I could see no scenario in which cash would be available for distribution to unsecured creditors. With the passage of time and the fees and expenses that have continued to be incurred, and the rejection of the Plan which incorporated the Transaction Agreement by the Applicants' creditors, the uncertainty as to whether the Promissory Notes and Common Shares would be available for distribution to the unsecured creditors is heightened.

124. The Applicants and the Monitor advised all Affected Creditor that it was their view that the Plan and the Transaction Agreement represented the best path forward. As the Plan, which



was prepared on the basis of substantive consolidation, has now been rejected at the Meeting, it is not expected that the Applicants will be in a position to present a further or alternative plan on such a basis to their creditors.

125. I am advised by the DIP Lender and do verily believe that the failure of the Applicants to obtain the Required Majority at the Meeting is viewed by the DIP Lender as a serious and material adverse event under the DIP facility.

126. In view of the uncertainty concerning whether the existing obligations under the DIP facility could be repaid in full, I am not aware of any other lender or source of financing with which to continue operations even in the short term, if the DIP Lender decided to terminate further borrowings.

127. I am advised by the DIP Lender and do verily believe that, in the event there is insufficient cash to repay all amounts owing to the DIP Lender in full, the DIP Lender will continue to assert the benefit of the DIP Lender's Charge over all property, assets and undertaking of the Applicants, which includes the Promissory Notes and Common Shares.

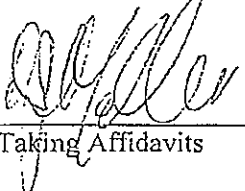
*B. Impact on Pension Payments under the NB Plans*

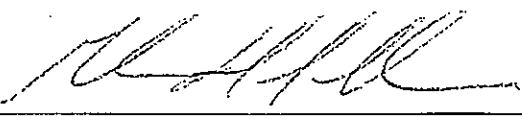
128. As described above, the Pension Agreements mitigated the impact of the deficits that exist in the NB Plans. On April 13, 2010 I was copied on an email exchange between D.J. Miller of TGF and the NB Superintendent regarding the funded ratio under each NB Plan. This email from the NB Superintendent illustrates how the existing funded ratio was increased by up to 10% when certain factors, including the anticipated future consideration to be received by each of the NB Plans from the Applicants, was taken into account.

129. In the event the DIP Lender is not repaid in full in cash such that there is no distribution of the Promissory Notes and Common Shares to the Applicants' unsecured creditors, this will undoubtedly impact the funded ratio under each NB Plan and therefore the pension payment entitlements received by retirees under the NB Plans.

130. I swear this Affidavit by way of update for the benefit of the Court and the Applicants' stakeholders, and for no other or improper purpose.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 11<sup>th</sup> day of  
January, 2011.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
GLEN McMILLAN

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO **FRASER PAPERS INC./PAPIERS FRASER INC.**, FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED, FRASER PAPERS LIMITED and FRASER N.H. LLC

Court File No. CV-09-8241-00CL

**ONTARIO**  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

**AFFIDAVIT OF GLEN McMILLAN**  
(Sworn January 11, 2011)

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**MOTION RECORD**  
(Supplemental Meeting Order)  
(returnable on February 1, 2011)

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