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COURT FILE NO. 1601-12571

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, as amended
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LIGHTSTREAM RESOURCES LTD, 1863359 ALBERTA LTD, LTS RESOURCES PARTNERSHIP, 1863360 ALBERTA LTD AND BAKKEN RESOURCES PARTNERSHIP

PARTIES IN INTEREST LTS RESOURCES PARTNERSHIP AND BAKKEN RESOURCES PARTNERSHIP

DOCUMENT **BENCH BRIEF OF THE TORONTO-DOMINION BANK, AS ADMINISTRATIVE AGENT OF THE FIRST LIEN LENDERS**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **TORYS LLP**
79 Wellington Street West
Suite 3000
Toronto, ON M5K 1N2
Attention: David Bish/Lee Cassey
Tel: (416) 865-7353/(416) 865-7960
Fax: (416) 865-7380
Email: dbish@torys.com/lcassey@torys.com

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I. BACKGROUND AND OVERVIEW

1. Lightstream Resources Ltd. (“LTS”), 1863359 Alberta Ltd, 1863360 Alberta Ltd., LTS Resources Partnership, and Bakken Resources Partnership (collectively, the “**Lightstream Group**”) were granted protection under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) pursuant to an initial order of this Court dated September 26, 2016 (the “**Initial Order**”).

2. The granting of the Lightstream Group’s request for the Initial Order was supported by the Monitor and LTS’ two primary secured lender groups, which in the aggregate hold approximately \$1.2 billion in outstanding secured debt that is in default: (i) the first lien lenders (the “**First Lien Lenders**”) under a third amended and restated credit agreement dated as of May 29, 2015 (as amended by amending agreements dated June 30, 2015 and December 2, 2015, the “**Credit Agreement**”); and (ii) an *ad hoc* group (the “**Ad Hoc Group of Secured Noteholders**”) of holders US \$650 million of 9.875% second lien secured notes due June 15, 2019 (the “**Secured Notes**”) issued pursuant to a note indenture dated July 2, 2015 (the “**Secured Note Indenture**”). The principal amount outstanding under the Credit Agreement and Secured Note Indenture as of June 30, 2016, is approximately \$371,000,000 and \$845,585,000, respectively.¹ Members of the Ad Hoc Group of Secured Holders hold approximately 91.5% of the debt outstanding under the Secured Notes.

3. LTS has also issued US \$254 million of 8.625% senior unsecured notes due February 1, 2020 (the “**Unsecured Notes**”) pursuant to a note indenture dated January 30, 2012 (the “**Unsecured Note Indenture**”). The principal amount outstanding under the Unsecured Note Indenture as of June 30, 2016, is approximately \$325,390,000.²

4. Certain aspects of the Initial Order were objected to by certain parties that hold Unsecured Notes; specifically, Mudrick Capital Management, LP (“**Mudrick**”), FrontFour Capital Corp (“**FrontFour Capital**”) and FrontFour Group LLC (“**FrontFour Group**”, and together with FrontFour Capital and Mudrick, the “**Contingent Claimants**”) and who have

¹ Affidavit of Peter Scott sworn September 21, 2016 (the “**Scott Affidavit**”) at paras 46, 61, and 63.

² Scott Affidavit at paras 46 and 69.

commenced litigation claims against LTS in connection with alleged conduct relating to LTS issuance of the Secured Notes, principally on the basis of oppression and misrepresentation.

5. The Lightstream Group has indicated that it disagrees with the litigation claims asserted by the Contingent Claimants and has filed statements of defence in respect of same. At this stage, the Contingent Claimants hold only Unsecured Notes and their asserted contingent litigation claims.

6. The principal objections asserted by the Contingent Claimants at the hearing on the Initial Order were:

- (a) that the sales process attached as Appendix "A" to the Initial Order should not be approved;
- (b) that counsel to the Contingent Claimants should have their fees and disbursements paid by the Lightstream Group and for the benefit of the Administrative Charge to be extended to secure payment of such amounts; and
- (c) that there are no bases to support a granting of the charge in favour of the directors and officers of the Lightstream Group and securing a KERP and KEIP and the financial advisors of the Lightstream Group.

7. This Honourable Court determined there to be an urgent situation warranting the issuance of the Initial Order on September 26, 2016, and established a comeback hearing on the Initial Order for October 11, 2016 (the "**Comeback Hearing**") where objections to the Initial Order by the Contingent Claimants could be heard.

8. As set out more fully below, The Toronto-Dominion Bank, as agent for the First Lien Lenders (in such capacity, the "**Agent**"), submits this bench brief in support of the continuation of the Initial Order in the form approved by this Honourable Court on September 26, 2016, and for the dismissal of the objections thereto by the Contingent Claimants.

9. The Contingent Claimants are seeking to improperly delay the approval of the Sales Process in the Initial Order to gain leverage in these CCAA proceedings. The fundamental aspect of the Sales Process is that it is backstopped by a credit bid (the "**Credit Bid**") of the

Secured Notes debt, pursuant to an amended and restated support agreement between the Ad Hoc Group of Secured Noteholders and the Lightstream Group dated August 26, 2016 (the “**Support Agreement**”). If a bid superior to the Credit Bid is not received in the timeframe contemplated by the Sales Process, then the Credit Bid transaction will be consummated, subject to court approval. Pursuant to each of the Second Forbearance Agreement and the Commitment Letter (each as defined below), and also as stipulated in the Support Agreement, the completion of a qualified transaction is required by not later than December 31, 2016. The critical importance of this December 31, 2016, outside date is more fully discussed below.

10. The Contingent Claimants take no issue with the fact that the Lightstream Group is insolvent and needing the protection of a stay of proceedings. The Contingent Claimants assert that the Credit Bid need not be tied to the Sales Process, ostensibly because of the nature of their contingent claims being based on oppression and as a result of the notional remedies potentially available to the Contingent Claimants should they be successful in asserting their claims. They further claim that the Sales Process timelines are too short because the Lightstream Group has cash and does not require DIP Funding, so can run an extended process. These assertions are without merit. Without limitation, the First Lien Lenders have consistently asserted that they are entitled under the Credit Agreement to have exercised rights, including to sweep and/or to set-off against the cash balances of the Lightstream Group, but elected not to do and agreed with the Lightstream Group to leave them with sufficient liquidity to reach the outside date of December 31, 2016.

11. The intention of the Contingent Claimants is both abundantly clear and understandable: they would like an outcome in which they obtain an economic recovery, irrespective of the likelihood of such an outcome. In order to achieve this, they are incented to:

- (a) seek to delay the Sales Process and its timelines in hope of a market recovery or in an effort to postpone any determination by the market as to the value of the Lightstream Group’s business and assets (including the possible selection of the Credit Bid as the highest and best transaction, which if consummated will see no value flow to the Contingent Claimants on account of their Unsecured Notes, or any damages claim in the event their litigation is pursued and they are successful);

- (b) seek to alter the priority of their claims from unsecured to secured status; and
- (c) if nothing else, pose a threat to the economic recoveries of the First Lien Lenders and the holders of the Secured Notes, so as to have leverage with which to extract concessions and an economic recovery.

This conduct may also adversely affect the Lightstream Group's business and assets, including as a result of limited capital expenditures pending completion of a restructuring transaction.

12. To the extent that the efforts of the Contingent Claimants may jeopardize the economic position of the First Lien Lenders, it is of significant concern to the First Lien Lenders. The Contingent Claimants know that a delay in the heavily-negotiated timeframes set forth in the Sales Process (including, without limitation, submission of non-binding bids by October 21, 2016; submission of binding qualified bids by November 21, 2016, and the closing of a transaction that repays in full the First Lien Lenders in cash by December 31, 2016) could result in the Lightstream Group missing the critical milestones in the Second Forbearance Agreement and Commitment Letter, including the critical December 31, 2016, outside date for the closing of a transaction, which outside date is also a critical milestone under the Support Agreement. The Contingent Claimants seek to derail the heavily-negotiated and hard fought solution that has been reached by the Lightstream Group and their principal secured lender groups, in favour of protracted litigation on oppression claims with certain holders of Unsecured Notes.

II. DEVELOPMENT OF RESTRUCTURING PROCESS

13. On April 29, 2016, the Agent delivered notice to the Lightstream Group advising that: (i) the group's borrowing base was reduced from \$550 million to \$250 million; and (ii) given the present outstanding principal obligations of approximately \$371 million, there was an approximate \$121 million borrowing base shortfall. In accordance with the terms of the Credit Agreement, failure to pay the borrowing base shortfall within 90 days of notice constituted an event of default.

14. Since that time, the Agent and the First Lien Lenders have been working cooperatively with the Lightstream Group. On July 12, 2016, the Lightstream Group and the First Lien

Lenders entered into a formal forbearance agreement (the “**First Forbearance Agreement**”).³ Pursuant to the First Forbearance Agreement, the First Lien Lenders agreed to the Lightstream Group’s request that they forbear from exercising certain of their rights and remedies during the relief period set out therein in respect of certain events of default under the Credit Agreement. The commencement of the CBCA proceeding and entry into of the original Support Agreement on July 12, 2016, were events of default under the Credit Agreement, among others, that were subject to forbearance under the First Forbearance Agreement.

15. The First Forbearance Agreement required the Lightstream Group to continue a formal sales and investment solicitation process (“**SISP**”) already in process of being commenced that included the steps and milestones set forth in Schedule “A” thereto, with a view to fully and unconditionally repaying in cash the obligations owing to the First Lien Lenders on the closing of a transaction. That sale process was to be conducted concurrently with the restructuring by the Lightstream Group under the *Canada Business Corporations Act* (“**CBCA**”), and if the CBCA restructuring was not effected, such transaction was to be implemented through a CCAA proceeding.

16. Schedule “A” to the First Forbearance Agreement contained, among other things, the following milestone chart:

Activity	Deadline
Opening of Virtual Data room	July 13, 2016
Commencement of Technical Presentations	Week of July 20, 2016
Indicative offers submitted	Week of September 19, 2016
Closing of a SISP transaction in accordance with the second paragraph of section 3(g) of the First Forbearance Agreement	December 31, 2016

17. Section 2(xiv) of the First Forbearance Agreement contained the following acknowledgement of the Lightstream Group regarding the SISP:

based on the advice of the Financial Advisors, whether conducted in a CBCA proceeding, CCAA proceeding or otherwise, the SISP is commercially reasonable in all respects (including the proposed length thereof and the steps to be taken and the SISP milestones

³ A copy of the First Forbearance Agreement is attached hereto at Tab 1.

as shown in Schedule “A”), and permits the Borrower to canvass thoroughly the market with a view to the best interests of the Borrower and its stakeholders, and that the Lenders are relying on this in entering into this Agreement.

18. Section 3(g) of the First Forbearance Agreement contained the important covenant for the Lightstream Group to obtain written binding commitments of lenders regarding a new exit credit facility by no later than July 25, 2016, the proceeds of which were required to be used on the CBCA plan implementation date to unconditionally and irrevocably repay in full all of the obligations to the First Lien Lenders, in form and substance satisfactory to the First Lien Lenders. Without this new financing, Lightstream’s restructuring cannot be effected – it is the cornerstone upon which a restructuring is predicated, and the First Forbearance Agreement, Second Forbearance Agreement, Support Agreement and Credit Bid are each conditioned on such financing. The loss of that financing would fundamentally undermine the restructuring of the Lightstream Group.

19. On July 27, 2016, an amending agreement to the First Forbearance Agreement was entered into pursuant to which, *inter alia*, the relief period under the First Forbearance Agreement was extended at the request of the Lightstream Group to August 5, 2016, while this commitment for exit financing continued to be sought.⁴ And on August 5, 2016, a second amending agreement to the First Forbearance Agreement was entered into pursuant to which, *inter alia*, the relief period under the First Forbearance Agreement was further extended at the request of the Lightstream Group to August 9, 2016, while they continued to seek a binding commitment for exit financing.⁵

20. On August 9, 2016, the First Forbearance Agreement terminated in accordance with its terms as a result of the failure of the Lightstream Group to meet the requirement thereunder to have obtained commitments regarding a new credit facility, satisfactory to the Lenders, by not later than August 9, 2016, which was an event of default under the First Forbearance Agreement. At that time, the Lenders continued to support the Lightstream Group and did not take any steps to enforce their rights and remedies, whether under the Credit Agreement or otherwise (but did not waive, and otherwise reserved, all such rights and remedies). The Lightstream Group

⁴ A copy of the first amending agreement to the First Forbearance Agreement is attached hereto at Tab 2.

⁵ A copy of the second amending agreement to the First Forbearance Agreement is attached hereto at Tab 3.

indicated to the First Lien Lenders that they continued to seek a binding commitment for exit financing and that the SISP was continuing in accordance with the agreed-upon timeline.

21. Importantly, the Lightstream Group was able to obtain a binding written revolving facility commitment letter dated August 26, 2016, from certain lenders, which provides for a new revolving credit facility with an aggregate commitment of \$400 million, the proceeds of which shall be used to repay in full the obligations under the Credit Agreement and certain capital expenditures and operating costs of the Lightstream Group (the “**Commitment Letter**”). Two important conditions set out in the Commitment Letter are that the financing is conditional upon a restructuring transaction being completed on or before December 31, 2016, and that the holders of Secured Notes inject an additional \$50 million of capital into the Lightstream Group.

22. To be clear, the First Lien Lenders consist of 16 institutions, whereas the new facility pursuant to the Commitment Letter is being provided by five institutions (four of which are in the existing syndicate, and one of which is a proposed new lender to the Lightstream Group). The existing facilities under the Credit Agreement are entirely independent of the new facility under the Commitment Lender.

23. As a direct result of the Lightstream Group’s having obtained the Commitment Letter, the First Lien Lenders were prepared to further forbear. On September 15, 2016, the Lightstream Group entered into a Second Forbearance Agreement (the “**Second Forbearance Agreement**”)⁶ with the First Lien Lenders in which the First Lien Lenders have agreed to forbear from exercising their rights and remedies in respect of certain specified event of defaults throughout the Relief Period (as defined in the Second Forbearance Agreement), which in the case of the Lightstream Group's commencement of proceedings under the CCAA, extends to the outside time and date of 2:00 pm (Calgary time) on December 31, 2016.

24. Section 2(xvii) of the Second Forbearance Agreement contains a similar acknowledgement by the Lightstream Group to that contained in the First Forbearance Agreement regarding the appropriateness of the SISP. Pursuant to Section 3(g) of the Second

⁶ A copy of the Second Forbearance Agreement is attached hereto at Tab 4.

Agreement the Lightstream Group agreed to conduct and advance the SISP and provided further as follows:

... the CBCA Plan shall be implemented by not later than October 31, 2016 (save and except that if implementation is delayed beyond this date solely due to requisite approvals under the *Investment Canada Act* (Canada) and/or *Competition Act* (Canada), then implementation shall occur by not later than November 30, 2016; and (iv) the CCAA Restructuring, including any plan of arrangement under the CCAA (a “**CCAA Plan**”) or CCAA sale transaction, shall be implemented by not later than December 31, 2016.

25. Schedule “A” to the Second Forbearance Agreement also contained a chart of milestone times as follows (and, importantly, including the same December 31, 2016, outside date):

Activity	Deadline
Opening of Virtual Data room	July 13, 2016
Commencement of Technical Presentations	Week of July 20, 2016
Indicative offers submitted	Week of October 7, 2016
Closing of a SISP transaction in accordance with the second paragraph of section 3(g) of the Second Forbearance Agreement	December 31, 2016

26. Pursuant to Section 3(h) of the Second Forbearance Agreement, the following acknowledgment and covenants were made as to the commencement of a CCAA proceeding following the CBCA restructuring proceeding:

The Loan Parties acknowledge and agree that, pursuant to the Support Agreement and this Agreement, in the event that the CBCA Restructuring cannot be effected, a sale transaction will be pursued pursuant to a CCAA proceeding. No transaction shall be pursued or completed by the Loan Parties in a CCAA proceeding that does not provide for the unconditional and irrevocable repayment in full in cash of the Obligations, without the written consent of the Lenders. If the CBCA Restructuring cannot be effected, the Loan Parties covenant that they shall seek a form of CCAA Initial Order that is satisfactory to the Lenders, acting reasonably, including: (i) containing an express approval of a sales and investment process that is consistent with the SISP (including having the same steps and timelines set out therein, except that to the extent that a CCAA proceeding is commenced following the meeting of creditors in the CBCA Restructuring (expected to occur not later than September 30, 2016), the deadline for the submission of indicative offers will be no more than 30 days following commencement of the CCAA proceeding); (ii) a declaration that the Obligations owing to the Lenders shall be unaffected by any plan of compromise or arrangement; (iii) providing for the

payment of interest as and when required under the Credit Agreement; (iv) containing court-ordered charges that, to the extent such court-ordered charges rank in priority to or are *pari passu* with the Security, are satisfactory to the Lenders in both amount and priority; and (v) approving a cash flow forecast that is satisfactory to the Lenders.

The Second Forbearance Agreement expressly provides for the continuation of that agreement in accordance with its terms during the Lightstream Group's CCAA proceedings.

27. As is clear, the First Lien Lenders relied on the timelines agreed to with respect to the SISP in entering into the First Forbearance Agreement and the Second Forbearance Agreement, including, without limitation, the December 31, 2016, outside date, and in consenting to the granting of the Initial Order. The Sales Process attached to the Initial Order is a continuation of the SISP, and is in form and substance satisfactory to the First Lien Lenders.

28. Pursuant to the Support Agreement, the "backstop" of the Credit Bid provides certainty of a transaction in which the obligations of the First Lien Lenders will be repaid in full in cash by a certain agreed upon date, but the Sales Process provides a "market test" of the Credit Bid in the event another purchaser desires to offer more than the value of the Credit Bid, which transaction would need to repay in full in cash both the First Lien Lenders and the holders of Secured Notes, with any additional value flowing to lower-ranking creditors after the payment of transaction costs and charges under the Initial Order. As such, the Sales Process is not a *fait accompli* of the Credit Bid, nor does it chill bidding as the holders of Secured Noteholders are not permitted to top their Credit Bid in the event another bidder puts forward a superior bid. If one or more purchasers wish to top the Credit Bid, they can do so, but must do in accordance with the timelines established under the Sales Process, which are fair and reasonable, including that the transaction must close by December 31, 2016. This is the purpose of the Sales Process, which permits the Lightstream Group a reasonable period of time in which to pursue a superior transaction to the Credit Bid.

III. ISSUES

29. The three principal issues before this Court at the Comeback Hearing are:

(1) Should this Court approve the Lightstream Group's proposed Sales Process?

(2) Should the Legal Costs of the Contingent Claimants be Paid by the Lightstream Group and Secured by the Administration Charge?

(3) Should the D&O Charge and the KERP / KEIP Charges be Approved?

IV. ARGUMENT

A. *Should this Court approve the proposed Sales Process?*

30. Yes, in the form attached as Appendix "A" to the Initial Order that was approved September 26, 2016.

31. Canadian courts have routinely held that when considering whether to approve a marketing process, the following questions ought to be considered:

- (a) is a sale warranted at this time;
- (b) will the sale be of benefit to the whole "economic community";
- (c) do any of the debtors' creditors have a *bona fide* reason to object to a sale of the business; and
- (d) is there a better viable alternative.⁷

Each of these considerations supports approval of the Sales Process on the basis of the evidence before the Court.

32. On July 13, 2016, the Lightstream Group commenced the SISP (the precursor to the Sales Process), as required by the original Support Agreement and the First Forbearance Agreement.⁸ The commencement of a sale process at that time was publicly-announced by the Lightstream Group, and was further emphasized in the course of the group's proceedings under the CBCA. However, to the knowledge of the Agent, the Contingent Claimants have not taken any constructive steps prior to the commencement of the CCAA proceedings to address any concerns they may have with respect to the substance or timeline of the Sales Process.

⁷ *Nortel Networks Corp, Re*, 2009 CarswellOnt 4467 (SCJ) [Comm List] at para 49. [Attached at Tab 5]

⁸ Scott Affidavit at para 85.

33. The Agent understands that the Sales Process was established with the input of numerous sophisticated stakeholders and advisors, including: (i) the Monitor, in its capacity as prospective Monitor; (ii) the advisors assisting the Lightstream Group, including Evercore Capital L.L.C. and TD Securities Inc.; (iii) PricewaterhouseCoopers Inc., which has advised the First Lien Lenders with respect to, among other things, the development of the Sales Process; and (iv) BMO Nesbitt Burns Inc., which has advised the Ad Hoc Committee of Secured Noteholders with respect to, among other things, the development of the Sales Process.

34. In both the First Forbearance Agreement and Second Forbearance Agreement, the Lightstream Group acknowledged, based on the advice of its financial advisors, that the SISP, whether conducted in a CBCA proceeding, CCAA proceeding or otherwise, is commercially reasonable in all respects (including the proposed length thereof and the steps to be taken and the SISP milestones as scheduled to the forbearance agreements), and permits the Lightstream Group to canvass thoroughly the market with a view to the best interests of the Lightstream Group and its stakeholders, and that the First Lien Lenders were relying on this in entering into the First Forbearance Agreement and the Second Forbearance Agreement.

35. LTS seeks to continue the SISP in these CCAA restructuring proceedings by way of the Sale Procedures.⁹ This is a requirement under the Second Forbearance Agreement, including the timeframes set forth therein.

36. The Sale Procedures are designed to thoroughly canvas the market to solicit, explore, assess and negotiate possible superior transactions to the Credit Bid, with a view to the best interests of the Lightstream Group and its stakeholders.¹⁰

37. The Sale Procedures have been reviewed by the Monitor, who supports the approval of the Sale Procedures and timelines therein. The First Lien Lenders support the proposed Sale Procedures.

38. The Contingent Claimants' objection to the Sales Process is not *bona fide*, is counterproductive to this CCAA proceeding moving forward expeditiously, and jeopardizes the

⁹ Scott Affidavit at para 88.

¹⁰ Scott Affidavit at para 89.

Credit Bid backstop transaction. Such a result would be extremely prejudicial to the First Lien Lenders, as losing the Credit Bid transaction and Commitment Letter would remove an agreed upon “backstop” transaction that would repay in full the obligations owed to the First Lien Lenders. In today’s volatile oil and gas and credit markets, the First Lien Lenders cannot take such a risk and the balance of harm favours approval of the Sales Process. There is simply no prejudice to the Contingent Claimants through the Sales Process and no basis for the business judgment of the board of Lightstream Group to be ignored. If the Sales Process results in a superior transaction, it will only result in more value being received by the Lightstream Group’s stakeholders. Contingent litigation claimants of an insolvent company are not the parties to be driving this CCAA proceeding or seeking to extract value from secured lenders through purported hold-up value. While it is understandable that they would wish for an economic recovery, those wishes should not be indulged where doing so poses significant risk to the debtor and the economic interests of its priority stakeholders.

B. *Should the Legal Costs of the Contingent Claimants be Included in the Administration Charge?*

39. No. The fees and expenses of counsel to the Contingent Claimants should not be borne by the Lightstream Group in this CCAA proceeding and should not be secured by the \$2,000,000 administration charge granted in in the Initial Order (the “**Administration Charge**”).

40. The First Lien Lenders have reviewed the Lightstream Group’s bench brief submitted in connection with the September 26, 2016, hearing and agree with the arguments made therein in respect of the fees and expenses of counsel to the First Lien Lenders being included as a beneficiary of the Administration Charge.

41. Section 11.52(c) of the CCAA expressly provides this Court with the power to grant a charge in respect of professional fees and disbursements on notice to affected secured creditors: and provides as follows: “ any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.”¹¹

¹¹ CCAA, ss 11.52(1), (2). [Attached at Tab 6]

42. The factors to be considered by a court in determining whether to approve such a priority charge include:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the Monitor.¹²

Consideration of these factors in the present case does not support inclusion of counsel to the Contingent Claimants.

43. The proposed Monitor is of the view that the Administration Charge is appropriate.¹³

44. At the hearing on the Initial Order, counsel to the Contingent Claimants argued that, if the Contingent Claimants are not to be included in the Administration Charge, then counsel to the First Lien Lenders and Ad Hoc Group of Secured Noteholders likewise should not be. This is incorrect. On cross-examination of Mr. Peter Scott, counsel to the Contingent Claimants inquired as to whether any of the First Lien Lenders or Ad Hoc Group of Secured Noteholders are insolvent. Insolvency is not the test for payment of fees of professionals retained by parties other than the applicants.

45. As set forth throughout, the First Lien Lenders have played a critical role in both the CBCA proceeding and will in these CCAA proceedings. The cash being used to fund these proceedings is the cash collateral of the First Lien Lenders. Under the Second Forbearance Agreement, the Cash Flow Forecast of the Lightstream Group has to be satisfactory to the First Lien Lenders and is, but would not be if it included the payment of fees and expenses to the

¹² *Canwest Publishing Inc/Publications Canwest Inc, Re*, 2010 ONSC 222 at para 54 (SCJ) [Comm List]. [Attached at Tab 7]

¹³ Proposed Monitors Report at para 27.

Contingent Claimants. Nor would the form of Initial Order be satisfactory to the First Lien Lenders if it provided for such payment and priority charge.

46. There is no basis for payment of the fees of counsel to the Contingent Claimants in the present case. A stakeholder's legal fees are sometimes paid in CCAA proceedings, such as where: (i) a creditor is particularly vulnerable (e.g. representative counsel for employees or pensioners) and may not be able to participate in the proceedings, and where doing so affords the debtor a significant advantage (e.g. saving time and money in not having to deal separately with a large number of similarly-situated stakeholders); or (ii) the stakeholder is clearly "in the money" and/or is contractually entitled to add such costs to the obligations of the debtor, such that it is clear that the fees would be paid at some point and it is principally a question of timing of the payment. That is not the case with the Contingent Claimants, and payment of their legal fees is particularly inappropriate where those fees are being incurred: (i) in advancing contingent litigation claim against the debtors; (ii) in acting as a bidder, unlike other bidders whose legal fees are not being paid; (iii) in advancing unsecured claims, unlike other *pari passu* creditors whose legal fees are not being paid (including other holders of Unsecured Notes); and (iv) in seeking to derail the Lightstream Group's restructuring rather than in playing some vital role that advances the restructuring. As evidenced by the fact that the Contingent Claimants have hired two law firms, their effective participation in the CCAA proceedings is not in issue.

47. The First Lien Lenders agree with the Lightstream Group that a fundamental threshold issue exists with respect to the Contingent Claimants: even if they are ultimately successful in their claims, how are their damage claims elevated to secured status as opposed to general unsecured damages claims, and that this threshold issue should be determined on an expedited basis, but should in no way entitle the Contingent Claimants to payment of their legal fees or to share in the Administration Charge.

C. *Should the D&O Charge and the KERP / KEIP Charges be Approved?*

48. The First Lien Lenders support the D&O Charge and have agreed to same, both in amount and priority. Such charges are commonplace in CCAA proceedings. Although the objections of the Contingent Claimants concerning this charge are not principally an issue for the First Lien Lenders, the Agent notes that it is important to the orderly completion of a

restructuring of the Lightstream Group that the directors and officers of the Lightstream Group do not resign and that they diligently maintain the restructuring path that has been commenced. Given the adverse consequences for stakeholders that may result should the amount or priority of the D&O Charge be altered, the First Lien Lenders oppose any change to the present form of Initial Order in this regard.

49. The First Lien Lenders take no position with respect to the KERP Charge and KEIP Charge in the Initial Order, save to note that: (i) the form of Initial Order at present is satisfactory to the First Lien Lenders; and (ii) in particular, it is important to the First Lien Lenders that the priority of such charges be subordinate to the existing indebtedness owing by the Lightstream Group to the First Lien Lenders.

V. CONCLUSION

50. The Agent, for and on behalf of the First Lien Lenders, respectfully requests that this Honourable Court dismiss the objection of the Contingent Claimants to the Initial Order.

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ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 5th day of October, 2016.

TORYS LLP



f.c.:

David Bish / Lee Cassey
Counsel to The Toronto-Dominion Bank,
as Agent to the First Lien Lenders

TAB 1

FORBEARANCE AGREEMENT

BETWEEN

LIGHTSTREAM RESOURCES LTD.
as Borrower

– and –

**1863359 ALBERTA LTD., LTS RESOURCES PARTNERSHIP,
1863360 ALBERTA LTD., AND BAKKEN RESOURCES PARTNERSHIP**
as Loan Parties

– and –

**THE TORONTO-DOMINION BANK,
ROYAL BANK OF CANADA,
THE BANK OF NOVA SCOTIA,
CANADIAN IMPERIAL BANK OF COMMERCE,
WELLS FARGO BANK N.A., CANADIAN BRANCH,
BANK OF AMERICA, N.A., CANADA BRANCH,
CREDIT SUISSE AG, TORONTO BRANCH,
HSBC BANK CANADA,
UNION BANK, CANADA BRANCH,
CAISSE CENTRALE DESJARDINS,
ALBERTA TREASURY BRANCHES,
SUMITOMO MITSUI BANKING CORPORATION OF CANADA,
CANADIAN WESTERN BANK,
UNITED OVERSEAS BANK LIMITED, VANCOUVER BRANCH,
NATIONAL BANK OF CANADA, and
BUSINESS DEVELOPMENT BANK OF CANADA**
as Lenders

– and –

THE TORONTO-DOMINION BANK
as Administrative Agent

July 12, 2016

FORBEARANCE AGREEMENT

THIS AGREEMENT is made as of the 12th day of July, 2016 (the “**Effective Date**”),

B E T W E N:

LIGHTSTREAM RESOURCES LTD.
(the “**Borrower**”)

– and –

**1863359 ALBERTA LTD., LTS RESOURCES PARTNERSHIP,
1863360 ALBERTA LTD., AND BAKKEN RESOURCES PARTNERSHIP**
(together with the Borrower, the “**Loan Parties**” and each a “**Loan Party**”)

– and –

**THE TORONTO-DOMINION BANK,
ROYAL BANK OF CANADA,
THE BANK OF NOVA SCOTIA,
CANADIAN IMPERIAL BANK OF COMMERCE,
WELLS FARGO BANK N.A., CANADIAN BRANCH,
BANK OF AMERICA, N.A., CANADA BRANCH,
CREDIT SUISSE AG, TORONTO BRANCH,
HSBC BANK CANADA,
UNION BANK, CANADA BRANCH,
CAISSE CENTRALE DESJARDINS,
ALBERTA TREASURY BRANCHES,
SUMITOMO MITSUI BANKING CORPORATION OF CANADA,
CANADIAN WESTERN BANK,
UNITED OVERSEAS BANK LIMITED, VANCOUVER BRANCH,
NATIONAL BANK OF CANADA, and
BUSINESS DEVELOPMENT BANK OF CANADA**
(collectively, the “**Lenders**” and each a “**Lender**”)

– and –

THE TORONTO-DOMINION BANK
(the “**Administrative Agent**”)

RECITALS:

- A. The Borrower, Administrative Agent and Lenders, among others, have entered into a third amended and restated credit agreement dated as of May 29, 2015, as amended by: (i) a consent and first amending agreement dated as of June 30, 2015; and (ii) a second

amending agreement dated as of December 2, 2015 (collectively, the “**Credit Agreement**”).

- B. The Borrower has issued: (i) US \$650 million of 9.875% second lien secured notes due June 15, 2019 (the “**Secured Notes**”) pursuant to a note indenture dated July 2, 2015 (the “**Secured Note Indenture**”); and (ii) US \$254 million of 8.625% senior unsecured notes due February 1, 2020 (the “**Unsecured Notes**”) pursuant to a note indenture dated January 30, 2012 (the “**Unsecured Note Indenture**”).
- C. The Borrower has indicated it will not cure on July 15, 2016, a required interest payment due June 15, 2016, under the Secured Notes, which is an event of default under the Secured Note Indenture, which, pursuant to Section 16.1(h) of the Credit Agreement, constitutes an Event of Default (the “**Secured Note Indenture Cross Event of Default**”), and an event of default under the Unsecured Note Indenture, which, pursuant to Section 16.1(i) of the Credit Agreement constitutes a further Event of Default (the “**Unsecured Note Indenture Cross Event of Default**”).
- D. The Borrower and certain holders of Secured Notes holding not less than 90% of the aggregate amount of the obligations outstanding under the Secured Notes (collectively, the “**Supporting Secured Noteholders**”) will concurrently enter into a support agreement dated on or about the date hereof (the “**Support Agreement**”), the entry of which constitutes an Event of Default pursuant to Section 16.1(g) of the Credit Agreement (the “**Support Agreement Event of Default**”), pursuant to which, *inter alia*, the Supporting Secured Noteholders agree to: (i) support a plan of arrangement of the Borrower under the CBCA, that is conditional upon, among other things, execution of commitment letters in respect of a new revolving credit facility by the Borrower and the providers of such credit facility, which credit facility is to be in an amount sufficient to repay in full in cash all of the Obligations and a conversion of the Secured Notes and Unsecured Notes into equity of the Borrower effective upon plan implementation (the “**CBCA Restructuring**”); and (ii) if the requisite votes are not obtained to implement the CBCA Restructuring, the Supporting Secured Noteholders will credit bid their debt to acquire substantially all of the assets of the Borrower pursuant to a proceeding under the CCAA, and a replacement credit facility would be arranged to repay in full in cash all of the Obligations upon the closing of such acquisition (the “**Credit Bid Acquisition**”);
- E. The Borrower’s commencement of proceedings in respect of the CBCA Restructuring constitutes an Event of Default pursuant to Section 16.1(g) of the Credit Agreement (the “**CBCA Event of Default**”, and together with the Secured Note Indenture Cross Event of Default, the Unsecured Note Indenture Cross Event of Default, and the Support Agreement Event of Default, the “**Specified Events of Default**”).
- F. The Borrower has requested that the Lenders agree to forbear in the Relief Period (as defined below) from exercising their rights and remedies in respect of the Specified Events of Default and in response thereto the Lenders have agreed to provide the interim relief set out herein, to provide the Borrower with sufficient time in which to: (i) obtain debt financing commitments necessary to repay in full in cash the Obligations as a condition to the implementation of the CBCA Restructuring (and the cancellation of all credit facilities

- under the Credit Agreement); (ii) commence the CBCA Restructuring; and (iii) pursue a formal sales and investment solicitation process (“SISP”) that includes the steps and milestones set forth in Schedule “A” hereto, with a view to fully and unconditionally repaying in cash the Obligations on the closing of any transaction (and the cancellation of all credit facilities under the Credit Agreement), to be conducted concurrently with the CBCA Restructuring, and if the CBCA Restructuring is not effected, such transaction to be implemented through a CCAA proceeding;
- G. In the event that the CBCA Restructuring cannot be effected, including due to an inability of the Borrower to obtain exit financing commitments to unconditionally and irrevocably repay in full in cash the Obligations, the Borrower intends to complete a sale transaction pursuant to the SISP under the CCAA, with a view to unconditionally and irrevocably repaying in full in cash the Obligations (and the cancellation of all credit facilities under the Credit Agreement).
- H. As a result of the Specified Events of Default, an event of default will occur under the Swap Documents (collectively, the “**Swap Documents Cross Events of Default**”) with the Swap Lenders and the obligations thereunder, absent this Agreement, being crystallized upon termination resulting in Swap Indebtedness owing by the Borrower to the Swap Lenders.
- I. The Majority Lenders and Swap Lenders are willing to forbear from exercising certain of their rights and remedies in respect of the Specified Events of Default and Swap Documents Cross Events of Default during the Relief Period, on the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements between the Parties contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Interpretation**

(a) **Credit Agreement Definitions**

Each capitalized term used and not otherwise defined in this Agreement shall have the meaning given to it in the Credit Agreement.

(b) **Other Definitions**

In this Agreement the following terms have the following meanings:

- (i) “**Additional Event of Default**” is defined in Section 7(a).
- (ii) “**Administrative Agent**” has the meaning ascribed to it in the preamble.
- (iii) “**Agreement**” means this agreement, including all Schedules, as it may be supplemented or amended by written agreement between the Parties.

- (iv) “**BIA**” means the *Bankruptcy and Insolvency Act* (Canada).
- (v) “**Borrower**” has the meaning ascribed to it in the preamble.
- (vi) “**CBCA**” means the *Canada Business Corporations Act* (Canada).
- (vii) “**CBCA Restructuring**” is defined in the Recitals hereto.
- (viii) “**CBCA Event of Default**” is defined in the Recitals hereto.
- (ix) “**Claims**” is defined in Section 4(a).
- (x) “**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada).
- (xi) “**Credit Agreement**” is defined in the Recitals hereto.
- (xii) “**Credit Bid Acquisition**” is defined in the Recitals hereto.
- (xiii) “**DIP**” is defined in Section 3(i)(vii).
- (xiv) “**Effective Date**” is defined in the preamble hereto.
- (xv) “**Existing Indebtedness**” is defined in Section 2(a)(vii).
- (xvi) “**Financial Advisors**” means Evercore Capital L.L.C. and TD Securities Inc. in their capacities as financial and asset sale advisors to the Borrower.
- (xvii) “**Forbearance Fee**” is defined in Section 3(h).
- (xviii) “**Lender**” and “**Lenders**” have the meaning ascribed to such terms in the preamble.
- (xix) “**Lender Financial Advisor**” has the meaning ascribed to it in Section 3(d).
- (xx) “**Loan Party**” and “**Loan Parties**” have the meaning ascribed to such terms in the preamble.
- (xxi) “**Outside Date**” is defined in Section 3(a).
- (xxii) “**Parties**” means the Lenders, Swap Lenders, Administrative Agent and the Borrower, collectively, and “**Party**” means any one of them.
- (xxiii) “**Releasees**” is defined in Section 4(a).
- (xxiv) “**Releasers**” is defined in Section 4(a).
- (xxv) “**Relief Period**” is defined in Section 3(a).
- (xxvi) “**Secured Notes**” is defined in the Recitals hereto.

- (xxvii) **“Secured Note Indenture”** is defined in the Recitals hereto.
- (xxviii) **“Secured Note Indenture Cross Event of Default”** is defined in the Recitals hereto.
- (xxix) **“SISP”** is defined in the Recitals hereto.
- (xxx) **“Specified Events of Default”** is defined in the Recitals hereto.
- (xxxi) **“Support Agreement”** is defined in the Recitals hereto.
- (xxxii) **“Support Agreement Event of Default”** is defined in the Recitals hereto.
- (xxxiii) **“Supporting Secured Noteholders”** is defined in the Recitals hereto.
- (xxxiv) **“Swap Documents Cross Events of Default”** is defined in the Recitals hereto.
- (xxxv) **“Unsecured Notes”** is defined in the Recitals hereto.
- (xxxvi) **“Unsecured Note Indenture”** is defined in the Recitals hereto.
- (xxxvii) **“Unsecured Note Indenture Cross Event of Default”** is defined in the Recitals hereto.

(c) **Rules of Interpretation**

- (A) Number and Gender. In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word “including” in this Agreement is to be construed as meaning “including, without limitation”.
- (B) Headings. Headings, subheadings and any table of contents or index contained in this Agreement are inserted for convenience of reference only, and will not affect the construction or interpretation of the Agreement.
- (C) Subdivisions. Unless otherwise expressly stated, reference herein to a Schedule or to an Article, Section, paragraph or other subdivision is a reference to such Schedule to this Agreement, or such Article, Section, paragraph or other subdivision of this Agreement.
- (D) Time. Time is and will be of the essence of this Agreement. Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends. If the last day of the

time period is not a Banking Day, the time period will end on the next Banking Day.

- (E) Statutes, Regulations and Rules. Unless otherwise expressly stated, any reference in this Agreement to any applicable Law is and will be a reference to that applicable Law as amended, supplemented, re-enacted or replaced from time to time, and, in the case of a statute, shall include all regulations and rules in force and effect in respect of such statute.
- (F) Monetary References. Whenever an amount of money is referred to herein, such amount will, unless otherwise expressly stated, be in Canadian Dollars.
- (G) Majority Lenders. Whenever the term “satisfactory to the Lenders” or “acceptable to the Lenders” is used herein, such satisfaction or acceptance shall be of the Majority Lenders.

(d) **Schedules**

The following is a list of the Schedules to this Agreement:

- Schedule “A” – SISP
- Schedule “B” – Existing Indebtedness

2. **Acknowledgments**

(a) **Acknowledgments of the Borrower**

The Borrower acknowledges, confirms, represents, warrants, covenants, and agrees that:

- (i) each of the Recitals set out above is true and correct in all material respects, and that such Recitals form an essential part of this Agreement;
- (ii) the Specified Events of Default will occur on July 15, 2016 and continue during the Relief Period, and are each an Event of Default under the Credit Agreement and other Loan Documents that entitles the Lenders to immediately exercise their rights and remedies under the Credit Agreement and the other Loan Documents and enforce Security in respect thereof and under applicable Law;
- (iii) no Default or Event of Default under the Credit Agreement exists other than the Specified Events of Default;

- (iv) the Lenders have not waived the Specified Events of Default and nothing contained in this Agreement or the transactions contemplated by this Agreement is or will be deemed to constitute any such waiver;
- (v) the Credit Agreement, the Security, the other Loan Documents, the Obligations and the Existing Indebtedness constitute legal, valid and binding obligations of the Loan Parties, enforceable against them in accordance with their respective terms, and the Lenders have and shall continue to have valid, enforceable and perfected first priority Liens created pursuant to the Security, subject only to Liens expressly permitted in the Loan Documents and as may have otherwise been agreed to in writing by the Lenders;
- (vi) to the knowledge of the Borrower, the Security has been properly perfected and registered, as the case may be, in all applicable jurisdictions;
- (vii) as of the Effective Date, the Borrower is indebted to the Lenders in respect of the Obligations in the aggregate principal amount of \$370,920,485.00, together with the accrued interest, fees, costs, expenses and other charges now payable by the Borrower to the Lenders in accordance with the Credit Agreement and this Agreement, as set out in Schedule "B" plus the Swap Indebtedness (collectively, the "**Existing Indebtedness**");
- (viii) the Existing Indebtedness is unconditionally owing by the Borrower to the Lenders, without any valid claim for set-off, counterclaim, damages or any other defence of any kind, nature or description whatsoever;
- (ix) absent this Agreement, on July 15, 2016, the Lenders are otherwise entitled to immediately accelerate and demand full payment of the Existing Indebtedness;
- (x) the Loan Parties do not have any Claims of any kind whatsoever against the Lenders, or any of its employees, advisors, officers, directors, affiliates or representatives;
- (xi) further interest, fees, costs, expenses and other charges shall continue to accrue and be incurred on and in respect of the Existing Indebtedness in accordance with the Credit Agreement, the other Loan Documents and this Agreement in the applicable amounts and at the applicable rates set out therein and herein;
- (xii) subject to applicable Law and the relief granted by the Lenders hereunder, the Lenders are and will be entitled to the rights, remedies and benefits provided for in the Loan Documents, this Agreement and under applicable Law;
- (xiii) the Lenders and Swap Lenders have informed the Loan Parties that they have conditionally agreed to forbear from exercising their rights and

remedies under the Credit Agreement in respect of the Specified Events of Default only because the Parties have agreed to the terms and conditions stated in this Agreement;

- (xiv) based on the advice of the Financial Advisors, whether conducted in a CBCA proceeding, CCAA proceeding or otherwise, the SISP is commercially reasonable in all respects (including the proposed length thereof and the steps to be taken and the SISP milestones as shown in Schedule "A"), and permits the Borrower to canvass thoroughly the market with a view to the best interests of the Borrower and its stakeholders, and that the Lenders are relying on this in entering into this Agreement; and
- (xv) a Borrowing Base Shortfall occurred as set forth in the notice delivered by the Administrative Agent to the Borrower dated April 29, 2016, and is continuing. Pursuant to Section 16.1(s) of the Credit Agreement, it is an Event of Default if the Borrowing Base Shortfall is not eliminated by July 28, 2016. This Agreement does not affect the Borrowing Base Shortfall or any of the Lenders' rights or remedies in respect thereof and the Borrower is not entitled to any Drawdown under the Credit Agreement.

(b) **Acknowledgments of the Loan Parties**

Each of the Loan Parties acknowledges, confirms and agrees that it accepts and does not and will not contest or dispute the validity, truth and accuracy of the acknowledgements, confirmations, representations, warranties, covenants, and agreements of the Borrower set out in Section 2(a) above. Each Loan Party represents and warrants that it does not possess any knowledge that the Borrower's acknowledgements, confirmations, representations, warranties, covenants, and agreements set out in Section 2(a) above are or may be incorrect or incomplete in any way.

3. **Relief**

(a) **Forbearance of Further Enforcement Action**

In reliance upon the acknowledgments, confirmations, representations, warranties, covenants and agreements of the Loan Parties contained in this Agreement, and subject to the terms and conditions of this Agreement and any documents or instruments executed in connection herewith, the Lenders agree to forbear from exercising their rights and remedies under the Loan Documents and/or applicable Laws arising solely from any Specified Events of Default, including the Swap Lenders and their right to terminate any of the Swap Documents or their obligations thereunder solely because of the Swap Documents Cross Events of Default, for the period (such period being referred to herein as the "**Relief Period**") commencing on the Effective Date and ending on the earlier of:

- (i) indefeasible repayment in full, in cash of the Obligations, and the cancellation of all credit facilities under the Credit Agreement;
- (ii) 2:00 p.m. (Calgary time) on July 28, 2016; and

- (iii) the occurrence or existence of an Additional Event of Default,
(such earlier date being the “**Outside Date**”).

Effective immediately on the Outside Date (except in the case of the occurrence of item (i) above), the agreement of the Lenders and Swap Lenders to forbear from exercising their rights and remedies as set forth herein shall automatically and without further notice, demand or any other requirement by the Lenders made to the Borrower expire and be of no further force and effect (but, for certainty, this Agreement shall not terminate and shall remain in full force and effect), it being expressly agreed that the effect of such expiration will be to permit the Lenders and Swap Lenders to exercise, without further notice or demand, their rights and remedies immediately, including, without limitation, applying to a court of competent jurisdiction to enforce any private or other remedies available to the Lenders or Swap Lenders or to seek the appointment, subject to applicable Law, of any permanent or interim receiver or receiver and manager or any trustee in bankruptcy under the BIA as against the Loan Parties, or to privately appoint a receiver and manager or receiver against the Loan Parties.

(b) No Other Waivers and Reservation of Rights

No waiver or indulgence by the Lenders or Swap Lenders of any of their rights and remedies hereunder, or under the Credit Agreement, Swap Documents, the Security, other Loan Documents or applicable Law shall be construed as a waiver of any other or subsequent right or remedy of the Lenders or Swap Lenders, and no delay or omission in the exercise or enforcement by the Lenders or Swap Lenders of their rights and remedies hereunder, under the Credit Agreement, Swap Documents the Security, other Loan Documents or applicable Law shall be construed as a waiver of any right or remedy of the Lenders or the Swap Lenders, and they, subject to Section 4(a), reserve all rights, claims and remedies that they have or may have against the Loan Parties hereunder or under the Credit Agreement, Swap Documents, the Security, the other Loan Documents or applicable Law. Without limiting the foregoing:

- (i) the Lenders and Swap Lenders have not waived, and are not by this Agreement waiving, and have no intention of waiving, any Default or Event of Default (including the Specified Events of Default) that exist or may be continuing on the Effective Date or any Additional Event of Default (whether the same as or similar to the Specified Events of Default or otherwise); and
- (ii) subject to Section 3(a) of this Agreement, the Lenders and Swap Lenders reserve the right, in their sole discretion, to exercise any or all of their rights or remedies under any of the Loan Documents or applicable Law as a result of the Specified Events of Default or any Additional Events of Default, and the Lenders have not waived any such rights or remedies.

(c) Tolling

As of the date hereof and continuing until 14 days following the Outside Date, and whether or not demand for payment or a notice of intention to enforce security has previously been delivered by the Administrative Agent or the Lenders to the Borrower, the Parties hereby agree to

toll and suspend the running of the applicable statutes of limitations, laches or other doctrines related to the passage of time in relation to the Existing Indebtedness, the Loan Documents (including the Security), and any rights, remedies or benefits arising from the Loan Documents and any other related matters, and each of the Parties confirms that this Agreement is intended to be an agreement to suspend or extend the limitation period provided by Section 3(1)(a) of the *Limitations Act* (Alberta), as well as the limitation period provided by Section 3(1)(b) of the *Limitations Act* (Alberta), in accordance with the provisions of Section 7(1) of the *Limitations Act* (Alberta), and any contractual time limitation on the commencement of proceedings, any claims or defenses based upon any applicable statute of limitations, contractual limitations, or any time related doctrine including waiver, acquiescence or laches.

(d) **Lender Financial Advisor**

The Loan Parties acknowledge that PricewaterhouseCoopers Inc. has been engaged as a financial advisor (the “**Lender Financial Advisor**”) to assist the Lenders in the evaluation of the Borrower’s financial information, asset or business valuations, forecasts and reporting as well as evaluating the CBCA Restructuring, SISP, potential CCAA restructuring, financings (including DIP financings), equity infusions, take-overs, or other restructuring proposals or proposed corporate transactions. The Borrower shall give full access to the Lenders and/or the Lender Financial Advisor to its management, properties, projects, systems and books and records and will pay for the reasonable fees and disbursements of the Lender Financial Advisor in accordance with the engagement letter with PricewaterhouseCoopers Inc. dated June 28, 2016.

(e) **Interest**

During the Relief Period, interest will continue to accrue and be payable to the Lenders on the Obligations at the default rate provided in the Credit Agreement.

(f) **Reporting**

During the Relief Period, and without limiting any reporting obligations of the Loan Parties under the Loan Documents, the Borrower shall promptly upon request provide to the Administrative Agent and the Lender Financial Advisor timely, complete and accurate information regarding the Loan Parties and their property, assets, affairs, activities and developments, including, without limitation:

- (A) detailed updates on the status and progress of the CBCA Restructuring (including any proposed debt financing commitment) and the SISP, on a weekly basis and, in any case, promptly upon the request of the Administrative Agent or Lender Financial Advisor;
- (B) forthwith upon receipt of same by the Borrower and in any event not later than 1 Banking Day following receipt of same by the Borrower: a copy of any notice received by any Loan Party in which any creditor, landlord or other Person delivers a notice of default, demand, claim, acceleration, termination, or enforcement, or any threat or statement of intention to do any of the foregoing, in respect of any alleged or actual claim or obligation of any Loan Party, in an

amount in excess of \$1,000,000, including, for certainty, any builders' liens or construction liens placed on the assets of any Loan Party;

- (C) immediate notice of any material adverse change after the date hereof in the business, assets or financial condition of any of the Loan Parties, or the occurrence of any Default, Event of Default, Additional Event of Default or any event that with notice or lapse of time or both would constitute an Event of Default or Additional Event of Default; and
- (D) all other information that is requested by the Administrative Agent or the Lender Financial Advisor from time to time, acting reasonably.

(g) CBCA Restructuring and SISP

At all times following the Effective Date, the Borrower shall conduct and advance the CBCA Restructuring in accordance with this Agreement and the Support Agreement and the timelines set forth herein and therein, and shall use its reasonable efforts to obtain written binding commitments of lenders regarding a new credit facility, by no later than July 22, 2016, and shall obtain such commitments in any event by no later than July 25, 2016, the proceeds of which will be used on the plan implementation date to unconditionally and irrevocably repay in full all of the Obligations to the Lenders, in form and substance satisfactory to the Lenders. The Borrower shall provide the Lenders with a copy of all draft CBCA Restructuring transaction documents (including plan of arrangement and information circular) substantially contemporaneously with distribution to the holders of Secured Notes pursuant to the Support Agreement, and in any event, the Lenders shall have received a copy of the plan of arrangement, in form and substance satisfactory to the Lenders, by no later than July 25, 2016.

At all times following the Effective Date, the Borrower shall conduct and advance the SISP with the objective of, among other things, soliciting, exploring, assessing and negotiating possible transactions for (i) capital investments in the Borrower's business or any part thereof, (ii) joint venture or partnership opportunities, and/or, (iii) the sale of the Loan Parties or their assets or any part thereof, in each case with a view to unconditionally and irrevocably repaying in full in cash all of the Obligations. No transaction shall be pursued or completed by the Borrower that does not provide for the unconditional and irrevocable repayment in full in cash of the Obligations, without the written consent of the Lenders. The Administrative Agent and Lender Financial Advisor shall be provided access to any physical or electronic data room that will be established in connection with the CBCA Restructuring, Credit Bid Acquisition, SISP, or any proposed debt financing commitment. Each transaction proposal accepted by the Borrower pursuant to the Credit Bid Acquisition, SISP, or otherwise, must be acceptable to the Lenders, but shall be deemed to be acceptable to the Lenders if: (i) it provides for the unconditional and irrevocable repayment of the Obligations in full in cash; (ii) such repayment in full shall occur on or before October 31, 2016; and (iii) the closing of such transaction is not subject to conditions precedent that are not acceptable to the Lenders, acting reasonably.

The Borrower shall from time to time at the Administrative Agent's or Lender Financial Advisor's request promptly cause its respective management and legal and financial advisors, including its Financial Advisors and any chief restructuring officer appointed, to make themselves available for any discussions or to provide any information reasonably required by the Administrative Agent or the Lender Financial Advisor.

(h) **Forbearance Fee**

The Borrower shall pay to the Administrative Agent, on behalf of the Lenders who execute this Agreement, a non-refundable fee (the "**Forbearance Fee**") to compensate such Lenders for the additional time incurred and to be incurred, and the costs and risks borne and to be borne, in connection with the forbearance contemplated herein and in monitoring the ongoing affairs of the Borrower, such fee to be in the amount of \$100,000 to be paid to the Lenders who execute this Agreement, to be divided proportionally based upon an executing Lender's Individual Commitment Amount to the aggregate amount of Individual Commitment Amounts of the Lenders executing this Agreement. The Forbearance Fee is in addition to all other fees, interest, costs and expenses payable in connection with the Loan Documents, and may be charged by the Administrative Agent to any account of the Borrower maintained by the Administrative Agent. The fees will be fully earned by the Agent on the date hereof despite any failure by any Party to comply with any other term of this Agreement.

(i) **Additional Agreements**

The Borrower agrees to the following:

- (i) Adherence to Agreements. During the Relief Period, the Borrower shall strictly adhere to all of the terms, conditions and covenants of this Agreement and the Loan Documents, including, without limitation, terms requiring prompt payment of principal, interest, fees and other amounts when due, except to the extent that such terms, conditions and covenants are otherwise specifically amended by this Agreement.
- (ii) Corporate Status. The Loan Parties shall maintain their respective existence as valid and subsisting corporations or partnerships, as applicable.
- (iii) Public Disclosure Obligations. The Borrower shall comply with all of its public disclosure obligations.
- (iv) Spending Restrictions. During the Relief Period, the Borrower shall not: (i) make any material acquisitions or investments; (ii) engage in any new hedging activities; (iii) consensually create any further Liens, provided that, subject the Second Lien Note Intercreditor Agreement, any steps taken for or on behalf of the holders of Secured Notes necessary to ensure that their existing security is valid and perfected, including the filing of additional liens and fixed charges to perfect such existing security shall be permitted; (iv) make or provide any capital contributions or financial assistance to third parties, or (v) make any discretionary bonus payments to any management or employees.

- (v) Operation of Business. Notwithstanding anything else in the Loan Documents, the Loan Parties shall not, other than in the ordinary course of business and consistent with past practice, incur or enter into any new material liability or obligation, of any nature or kind, during the Relief Period, except in accordance with the CBCA Restructuring or SISP, without the prior consent of the Lenders.
- (vi) Liens. The Borrower shall remain current in the payment of any obligations to its employees and governmental obligations (including all taxes and the remittance of all source deductions and sales taxes for which any of the Loan Parties is responsible) or any other payable or other secured claim that is capable of ranking in priority to or *pari passu* with the Obligations.
- (vii) Right of First Refusal regarding DIP Financing and Insolvency Proceeding. To the extent the Borrower receives any solicited or unsolicited offer(s) from any party other than the Lenders regarding a debtor-in-possession financing (“DIP”), the Borrower shall provide such offer to the Lenders on the same Banking Day such offer is received, and the Lenders are hereby granted a right of first refusal over any such offer(s), which may be exercised by the Lenders within five (5) Banking Days of receiving such offer.
- (viii) Bank Accounts. The Borrower will not, and will not permit any other Loan Party to, establish or maintain any operating accounts, deposit accounts or other bank or securities accounts with any financial institution except the Administrative Agent.

4. Covenants of the Parties

(a) **General Release / Covenant Not To Sue**

In consideration of, among other things, the Administrative Agent’s and Lenders’ execution and delivery of this Agreement, each of the Loan Parties, on behalf of itself and their respective agents, representatives, officers, directors, shareholders, advisors, employees, subsidiaries, affiliates, successors and assigns (collectively, “**Releasors**”), hereby forever waives, releases and discharges, to the fullest extent permitted by applicable Law, each Releasee from any and all claims (including, without limitation, crossclaims, counterclaims, claims of lender liability, rights of set-off and recoupment), actions, causes of action, suits, debts, accounts, interests, liens, promises, warranties, damages and consequential damages, demands, judgments, executions, costs, expenses or claims whatsoever (collectively, the “**Claims**”), that such Releasor now has or hereafter may have, of whatsoever nature and kind, whether known or unknown, whether arising at law or in equity, against any or all of the Administrative Agent, the Lead Arranger, the Lenders, the Issuing Lenders and the Swap Lenders in any capacity and their respective affiliates, subsidiaries, shareholders and “controlling persons” (within the meaning of any applicable Laws), and their respective successors and assigns and each and all of the officers, directors, employees, agents, attorneys and other representatives of each of the foregoing (collectively, the “**Releasees**”),

in each case based in whole or in part on facts, whether or not now known, existing before the Effective Date, that relate to, arise out of or otherwise are in connection with:

- (i) any or all of the Obligations, Loan Documents, transactions contemplated hereby or any actions or omissions in connection therewith;
- (ii) any aspect of the dealings or relationships between or among the Loan Parties, on the one hand, and any or all of the Administrative Agent, the Lead Arranger, the Lenders, the Issuing Lenders and the Swap Lenders, on the other hand, relating to any or all of the indebtedness, documents, transactions, actions or omissions referenced in clause (i) hereof; or
- (iii) any aspect of the dealings or relationships between or among any or all of the Agent, the Issuing Lenders and the Lead Arranger, on the one hand, and the Lenders and the Swap Lenders, on the other hand, to the extent such dealings or relationships relate to any or all of the indebtedness, documents, transactions, actions or omissions referenced in clause (i) hereof.

and the Loan Parties are not aware of any such Claims against any of the Releasees. The entering into of this Agreement by the Loan Parties shall constitute a ratification, adoption, and confirmation by such Parties of the foregoing general release of such Claims against the Releasees that are based in whole or in part on facts, whether or not now known or unknown. In entering into this Agreement, the Loan Parties consulted with, and have been represented by, legal counsel and expressly disclaims any reliance on any representations, acts or omissions by any of the Releasees and hereby agrees and acknowledges that the validity and effectiveness of the releases set forth above do not depend in any way on any such representations, acts and/or omissions or the accuracy, completeness or validity hereof. Each of the Loan Parties, on behalf of itself and all other Releasors, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise), and will not encourage or support, directly or indirectly, any other Releasor or other Person in suing, or commencing any proceedings or exercising or purporting to exercise rights or remedies against, any Releasee on the basis of any Claim released, remised and discharged by the Borrower hereunder. The provisions of this Section 4(a) shall survive the termination of this Agreement, the Credit Agreement, and the other Loan Documents, and payment in full of the Obligations. Notwithstanding the foregoing, the foregoing releases and covenants not to sue shall not apply, as to any Releasee, to any Claim which is determined by a court of competent jurisdiction, in a final and non-appealable judgment, to have resulted from the gross negligence, wilful misconduct, or breach of this Agreement of or by such Releasee.

5. Representations and Warranties

(a) Representations and Warranties

Each of the Loan Parties hereby represents and warrants to the Lenders as follows:

- (i) this Agreement, the Loan Documents and any other agreements or documents entered into pursuant to this Agreement have been duly authorized, executed and delivered to the Lenders by them, as applicable to

the extent a party thereto, are in full force and effect, as modified hereby, and constitute legal, valid and binding obligations enforceable against it in accordance with their terms;

- (ii) each of the representations and warranties made by on or behalf of the Loan Parties to the Lenders in any of the Loan Documents was true and correct when made, and in all material respects, or in all respects to the extent such representations and warranties are already qualified by materiality, remains true and correct on the Effective Date (except to the extent stated to be made only as of a specified date, and except to the extent that any such representation or warranty is not true or correct by virtue of the Specified Events of Default), with the same full force and effect as if each of those representations and warranties had been made by the applicable Loan Party on the date of, and within, this Agreement;
- (iii) there is no matter, fact or event that is known to it that has not been disclosed to the Lenders that is likely to have a material adverse effect on the performance of their obligations under this Agreement, and it has conducted such investigations as it considers reasonably necessary to make this representation and warranty;
- (iv) all remittances owing by the Loan Parties to the federal and provincial governments and agencies in respect of income taxes, provincial sales tax, goods and services tax, harmonized sales taxes, employee payroll remittances, wages, pension plan obligations, vacation pay and similar obligations and source deductions are current and in good standing; and
- (v) the authorization, execution and delivery and performance of this Agreement by it will not violate any applicable Law or any order, declaration or judgment binding on it, any consent, license, permit or approval to which it is party or beneficiary, or any agreement to which it is a party and will not result in, or require, the creation or imposition of any lien on any of its assets, property or undertaking.

6. Conditions to Effectiveness

(a) Conditions to Effectiveness

This Agreement, including, without limitation, the agreement of the Lenders to forbear enforcement contained herein, shall not be effective unless and until:

- (i) the Lenders have received a copy of this Agreement, duly authorized, executed and delivered by the Loan Parties;
- (ii) the Administrative Agent shall have received the Forbearance Fee;
- (iii) the reasonable legal fees and expenses of Torys LLP, and the fees and expenses of any other advisor or consultant to the Lenders (including,

- without limitation, the Lender Financial Advisor), for which invoices have been provided to the Borrower prior to the Effective Date, have been paid;
- (iv) no Default or Event of Default (other than the Specified Events of Default) has occurred and is continuing;
 - (v) the Lenders have received a copy of the Support Agreement, duly authorized, executed and delivered by the Loan Parties and Secured Noteholders holding not less than 90% of the aggregate amount of obligations under the Secured Notes, in form and substance satisfactory to the Lenders, and which shall include support for the Borrower obtaining debt financing commitments necessary to repay in full in cash the Obligations as a condition to implementation of the CBCA Restructuring;
 - (vi) the preliminary interim order sought in respect of the commencement of the CBCA Restructuring shall be in form and substance satisfactory to the Lenders (and shall include affirmation that the Lenders shall be treated as unaffected in any plan of arrangement filed by the Borrower and shall not be subject to any stay of proceedings in the CBCA proceeding);
 - (vii) the Lenders have received evidence that the SISP attached hereto (including, without limitation, the milestones set forth therein), which is in form and substance satisfactory to the Lenders, has been duly authorized and approved by the board of directors of the Borrower, such SISP being in form and substance satisfactory to the Lenders; and
 - (viii) the Lenders shall have received a certificate of an officer of each of the Loan Parties indicating that each of the representations and warranties set forth in Section 5 is true and correct in all material respects and that no Default or Event of Default (other than the Specified Events of Default) has occurred and is continuing.

7. **Events of Default under the Agreement**

(a) **Events of Default**

The following shall each be and be considered to be an “**Additional Event of Default**” under this Agreement (without limiting any event, action or occurrence that constitutes a Default or Event of Default under the Credit Agreement or any other Loan Document):

- (i) any Event of Default (other than the Specified Events of Default) that is existing as of the Effective Date or that may occur at any time on or after the Effective Date;
- (ii) non-payment of interest, principal or other amounts when due in accordance herewith, or any other monetary obligations set out herein;

- (iii) if the obligations under the Secured Notes, Secured Note Indenture, Unsecured Notes, or Unsecured Note Indenture are accelerated or if the trustee under the Secured Note Indenture issues a notice to the Administrative Agent under section 5.1(a) of the Second Lien Note Intercreditor Agreement between the Lenders and the Secured Note holders;
- (iv) if any material breach by any Loan Party or the Initial Consenting Holders (as defined in the Support Agreement) occurs under any Support Agreement or the Support Agreement is terminated;
- (v) if the Support Agreement or SISP are amended in any manner that the Lenders determine, in their sole discretion, are materially adverse or prejudicial to their interests, without the prior written consent of the Lenders;
- (vi) if any CBCA Restructuring transaction or other document or pleading is filed (including plan of arrangement) by the Borrower in the CBCA Restructuring, or any order is sought or granted in the CBCA Restructuring, that is not in form and substance satisfactory to the Lenders;
- (vii) failure by the Borrower to satisfy any of the CBCA Restructuring or SISP milestones, approvals, steps, and other requirements by the dates set out in the Support Agreement (as the same may be amended in accordance with the Support Agreement, provided such amendment is not materially adverse or prejudicial to the Lenders' interests, as the Lenders' determine in their sole discretion, without the prior written consent of the Lenders), and as otherwise required by this Agreement, the result of which failure is adverse or prejudicial to the Lenders' interests, as determined in their sole discretion, without the prior written consent of the Lenders;
- (viii) if the mandate of the Financial Advisors is terminated for any reason and a new financial advisor satisfactory to the Lenders, is not engaged within 10 Banking Days following the earlier of the Borrower: (i) receiving notice from the Financial Advisors, or any one of them, of such termination, or (ii) otherwise having actual knowledge of such termination;
- (ix) failure by the Borrower to provide reports or other information when required pursuant to this Agreement (and such failure continues for a period of 3 Banking Days following the earlier of the Borrower: (i) receiving notice of such failure from the Administrative Agent, and (ii) having actual knowledge thereof);
- (x) other than in respect of the CBCA Restructuring, any insolvency, bankruptcy, restructuring or similar proceedings described in Sections 16.1(f) and (g) of the Credit Agreement are commenced by or against any of the Loan Parties, in Canada or elsewhere, or any action is taken by any of the Loan Parties in furtherance of any such proceedings;

- (xi) any Loan Party, as the case may be, fails to comply with or defaults in the performance or observance of any of the terms, conditions, covenants, agreements or undertakings under or provided for in this Agreement;
- (xii) any Loan Party, as the case may be, fails to comply with, breaches, or defaults in the performance or observance of any of the terms, conditions, covenants, agreements or undertakings under or provided for in the other Loan Documents (other than in respect of the Specified Events of Default or other Additional Events of Default set out elsewhere in this Section 7(a)) and such failure continues for a period of 2 days following the earlier of the Borrower; (i) receiving notice of such failure from the Administrative Agent, and (ii) having actual knowledge thereof, provided such period shall not, in any event, extend past 2:00 p.m. (Calgary time) on July 28, 2016;
- (xiii) enforcement by any creditor of any material claim or Lien against the Borrower or any of its assets, property or undertaking (and for the purpose of this clause, a claim or the aggregate value of multiple claims held by the same or related Persons shall be material if in an amount in excess of \$10,000,000); and
- (xiv) any challenge is made to the legality, validity, binding nature or enforceability of this Agreement, the Obligations, the Existing Indebtedness, the Credit Agreement, Security, or any other Loan Document by any Loan Party.

(b) **Events of Default**

Nothing in this Agreement shall prejudice the Lenders' or Swap Lenders' rights to pursue any of their remedies including, without limitation, enforcing the Security: (i) prior to the effectiveness of this Agreement; (ii) upon the Outside Date (whether arising from the expiration or termination of the Relief Period or otherwise); or (iii) in respect of rights or remedies other than in respect of the Specified Events of Default.

8. **General Provisions**

(a) **Entire Agreement**

This Agreement, together with the other Loan Documents and the agreements and other documents to be delivered pursuant to this Agreement, constitute the entire agreement between the Lenders on the one hand, and the Loan Parties on the other hand, pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no representations, warranties, waivers or other agreements between the Parties in connection with the subject matter of this

Agreement except as specifically set out in this Agreement, the Loan Documents or any other agreements and documents delivered pursuant to this Agreement.

(b) **Severability**

If the whole or any portion of this Agreement or application thereof to any circumstance will be held invalid or unenforceable to an extent that does not affect the operation of this Agreement in a fundamental way, the remainder of this Agreement or its application to any circumstance other than to which it has been held invalid or unenforceable, will not be affected thereby and will be valid and enforceable to the fullest extent permitted by applicable Law.

(c) **Loan Documents**

In all respects, other than as expressly set out herein, the provisions of the Credit Agreement, Swap Documents and the other Loan Documents shall continue to apply unamended and shall remain in full force and effect, and all such Loan Documents are hereby specifically ratified, restated, and confirmed by all Parties hereto as of the Effective Date. This Agreement is and shall be deemed to be a Loan Document for all purposes of the Credit Agreement.

(d) **Governing Law**

This Agreement will be governed by and construed in accordance with the law in force in the Province of Alberta and the federal laws of Canada applicable therein, from time to time.

(e) **Attornment**

The Parties hereto do hereby irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Alberta for all matters arising out of or relating to this Agreement or any of the transactions contemplated thereby and to the extent legally permitted, waive any right they may have to, or to apply for, trial by jury in connection with any matter, action, proceeding, claim or counterclaim arising out of or relating to the Agreement or any of the transactions contemplated hereby.

(f) **Conflicts**

To the extent that there is any inconsistency or ambiguity between the provisions of this Agreement and the Credit Agreement or any other Loan Document, the provisions of this Agreement will govern to the extent necessary to eliminate such conflict, inconsistency or ambiguity.

(g) **Further Assurances**

The parties hereto shall execute and deliver such supplemental documents and take such supplemental action as may be necessary or desirable to give effect to the provisions and purposes of this Agreement, all at the expense of the Borrower.

(h) Enurement

This Agreement shall be binding upon and enure to the benefit of each of the Parties and its respective successors and permitted assigns.

(i) Costs and Expenses

The Borrower hereby absolutely and unconditionally agrees to pay to and fully indemnify the Lenders, on demand by the Lenders at any time and as often as may be required, whether or not all or any of the transactions contemplated by this Agreement are consummated, all reasonable fees and disbursements of any counsel to the Lenders, any other consultant (financial, appraiser, technical, or otherwise, including any Lender Financial Advisor) or agent and all other expenses incurred by the Lenders in connection with this Agreement or the Loan Documents, including, without limitation: (a) reasonable legal expenses in connection with the preparation, negotiation and interpretation of this Agreement, the other agreements or documents contemplated by this Agreement or the Loan Documents; (b) all reasonable expenses of advisors and consultants to the Lenders (including, for certainty, (i) legal expenses on a full indemnity basis and (ii) all costs and expenses of any advisor or consultant incurred in connection with the protection and enforcement of this Agreement or the Security, or the SISP, or in connection with any proceeding in respect of bankruptcy, insolvency, winding up, receivership, dissolution, reorganization, liquidation, moratorium, arrangement or assignment for the benefit of creditors involving any Party, in each of the foregoing events whether under the CBCA, BIA, CCAA, or any similar federal, state, provincial or foreign bankruptcy, insolvency, reorganization, receivership or similar law. To the extent the Borrower does not satisfy such existing and future fees and disbursements, and other expenses that are due and payable under this Agreement or the Credit Agreement within 14 days of receiving an invoice in respect of such fees and disbursement or notice of expenses that are due and payable, the Borrower specifically authorizes the Administrative Agent to debit from any of the Borrower's accounts with the Administrative Agent the amount of any such existing and future fees and disbursements, and other expenses that are due and payable under this Agreement or the Credit Agreement. Details of such debits made to any bank accounts of the Borrower shall be provided promptly to the Borrower by the Administrative Agent. The Borrower specifically waives all rights it may have to assess any of the legal, agents or other fees previously paid or payable by the Administrative Agent to its solicitors or payable to its solicitors, agents or others in connection with or in any way related to the Borrower up to the date of this Agreement arising under any law or statute.

(j) Survival of Representations and Warranties

All representations and warranties made in this Agreement or any other document furnished in connection herewith shall survive the execution and delivery of this Agreement and such other document, and no investigation by the Lenders or any closing shall affect the representations and warranties or the rights of the Lenders to rely upon such representations and warranties.

(k) **Assignment**

The Loan Parties shall not be entitled to assign any of their respective rights and/or obligations hereunder or any interest herein without the prior written consent of the Lenders.

(l) **Execution**

This Agreement may be executed in any number of counterparts (including by facsimile transmission or other electronic transmission) and by different Parties in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same instrument.


[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above mentioned.

LIGHTSTREAM RESOURCES LTD.,
as Borrower



Per: Name: Peter D. Scott
Title: Senior Vice President
and CFO

Per: Name: 
Title: JOHN D. WRIGHT
President and Chief Executive Officer

Forbearance Agreement – Lightstream

02284-2103 21733288.9

1863359 ALBERTA LTD., as Loan Party

Per:



Name: Peter D. Scott
Title: Senior Vice President
and CFO

Per:

Name: 
Title: JOHN D. WRIGHT
President and Chief Executive Officer

Forbearance Agreement – Lightstream

02284-2103 21733288.9

LTS RESOURCES PARTNERSHIP, as
Loan Party



Per:

Name: **Peter D. Scott**
Title: **Senior Vice President
and CFO**

Per:

Name: 
Title: **JOHN D. WRIGHT**
President and Chief Executive Officer

Forbearance Agreement - Lightstream

1863360 ALBERTA LTD., as Loan Party

Per:



Name: Peter D. Scott
Title: Senior Vice President
and CFO

Per:



Name: JOHN D. WRIGHT
Title: President and Chief Executive Officer

JOHN D. WRIGHT
President and Chief Executive Officer

Forbearance Agreement - Lightstream

02284-2103 21733288.9

**BAKKEN RESOURCES
PARTNERSHIP, as Loan Party**

Per:



Name: **Peter D. Scott**
Title: **Senior Vice President
and CFO**

Per:

Name: 
Title: **JOHN D. WRIGHT
President and Chief Executive Officer**

Forbearance Agreement – Lightstream

02284-2103 21733288.9

THE TORONTO-DOMINION BANK,
as Administrative Agent

Per: _____ 

Name: Andrew Ford
Title: Vice President, Loan Syndications-Agency

Per: _____

Name:
Title:


THE TORONTO-DOMINION BANK,
as Lender

Per: 
Name: David Radomsky
Title: Managing Director

Per: 
Name: Glen Cameron
Title: Director

Forbearance Agreement – Lightstream

ROYAL BANK OF CANADA, as Lender

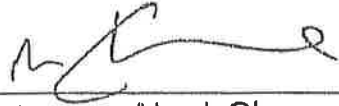
Per: 
Name: Gary Iweny
Title: Senior Director

Per: _____
Name:
Title:

**THE BANK OF NOVA SCOTIA, as
Lender**

Per: 

Name:
Title: Clare Horan
Senior Manager

Per: 

Name: Neel Chopra
Title: Director

**CANADIAN IMPERIAL BANK OF
COMMERCE, as Lender**

Per: Shad.

Name: SUPRIYA SARIN
Title: Senior Director

Per: Benita McCourt

Name:
Title: BENITA McCOURT
MANAGER

**WELLS FARGO BANK N.A.,
CANADIAN BRANCH, as Lender**

Per: _____

Name:

Title:



RYAN LINDQUIST
Managing Director

Per: _____

Name:

Title:

Forbearance Agreement – Lightstream

**BANK OF AMERICA, N.A., CANADA
BRANCH, as Lender**

Per: 

Name:

Title:

**Marc Ahlers
Vice President**


Per: _____


Name:

Title:


Forbearance Agreement – Lightstream

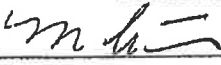
**CREDIT SUISSE AG, TORONTO
BRANCH, as Lender**

Per: 
Name: **Tammy Oldenburg**
Title: **Authorized Signatory**

Per: 
Name: **Chris Gage**
Title: **Authorized Signatory**

HSBC BANK CANADA, as Lender

Per: 
Name: *N Coates*
Title: *AVP Loan Management Unit*


Per: 
Name:
Title: .

MARSHALL CURTIS
Country Head
Loan Management Unit

Forbearance Agreement – Lightstream

02284-2103 21733288.9

**UNION BANK, CANADA BRANCH, as
Lender**

Per: 
Name: Beau Filkowski
Title: Vice President

Per: _____
Name:
Title:

CAISSE CENTRALE DESJARDINS, as
Lender

Per:


Name: P. LATTUCA
Title: MANAGER.

Per:

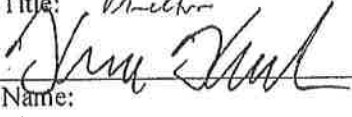
Name:
Title:

Forbearance Agreement – Lightstream

ALBERTA TREASURY BRANCHES,
as Lender

Per: 

Name: Rick Gille
Title: Director

Per: 

Name:
Title: **Kevin Kynoch**
Senior Director Energy

Forbearance Agreement – Lightstream

**SUMITOMO MITSUI BANKING
CORPORATION OF CANADA, as**

Lender


Per: 

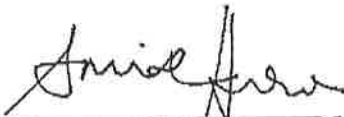
Name: Alfred Lee
Title: Managing Director

Per: _____

Name:
Title:

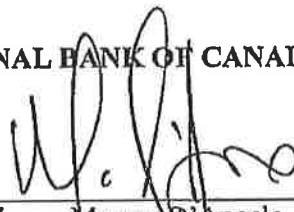
**CANADIAN WESTERN BANK, as
Lender**

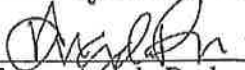
Per: 
Name: **Kuno Ryckborst**
Title: **Senior Manager,
Energy & Corporate Banking**

Per: 
Name:
Title: **Amin Haque
Manager,
Energy & Corporate Banking**

Forbearance Agreement – Lightstream

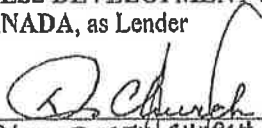
NATIONAL BANK OF CANADA, as
Lender

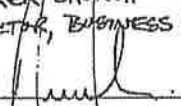
Per: 
Name: Murray D'Angelo
Title: Vice President

Per: 
Name: Angela Becker
Title: Director

Forbearance Agreement – Lightstream

**BUSINESS DEVELOPMENT BANK
OF CANADA, as Lender**

Per: 
Name: DEREK CHURCH
Title: DIRECTOR, BUSINESS RESTRUCTURING

Per: 
Name: Russell W. French
Title: Assistant Vice President, Business Restructuring
Vice-président adjoint, Restructuration d'entreprise

Forbearance Agreement - Lightstream

**UNITED OVERSEAS BANK
LIMITED, VANCOUVER BRANCH, as
Lender**



Per: _____

Name: John Gleason

Title: ED and GM

Per: _____

Name:

Title:

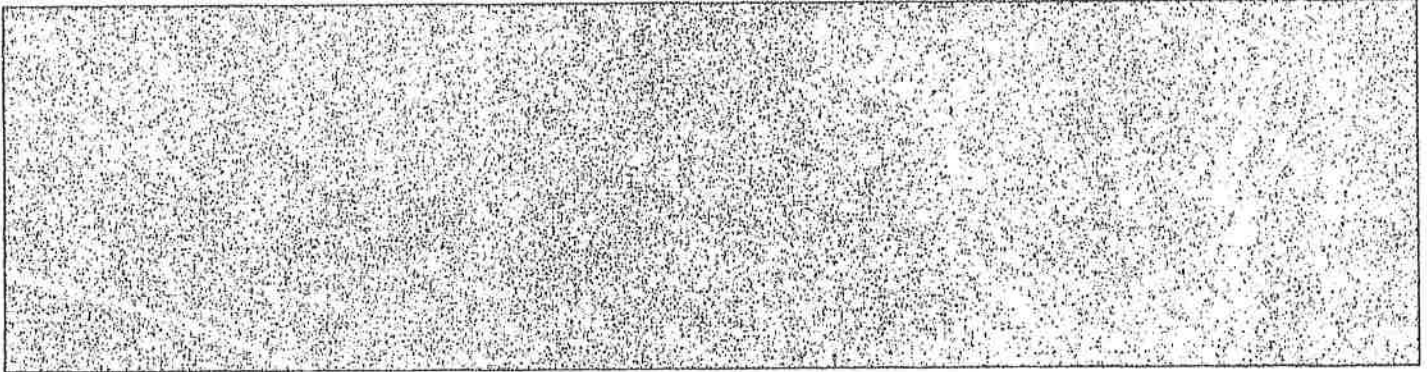
Forbearance Agreement – Lightstream

SCHEDULE "A"

SISP

Activity	Deadline
Opening of Virtual Data room	July 13, 2016
Commencement of Technical Presentations	Week of July 20, 2016
Indicative offers submitted	Week of September 19, 2016
Closing of a SISP transaction in accordance with the second paragraph of section 3(g) of this Agreement	December 31, 2016

TD Securities



LIGHTSTREAM RESOURCES LTD.
CORPORATE OFFERING | JULY 2016

TD Energy Advisors / TD Securities Inc.
471 - 7th Avenue S.W., 36th Floor, Calgary, Alberta T2P 4K9 • Telephone 403 503 4848 • Fax 403 503 4849
www.lightstreamresources.com



DRAFT - JULY 2016

Introduction

Lightstream Resources Ltd. (the "Company") has engaged TD Securities Inc. ("TD") to manage a process to divest all of the Company's assets (the "Offering"). The Company is a predominantly-light oil Canadian exploration and production company with a focused asset portfolio in three core areas: Bakken, Cardium and Swan Hills. Interested parties are encouraged to review the Offering from an asset value perspective, independent of the current capitalization.

INVESTMENT HIGHLIGHTS

- **High-netback, light oil production base**
 - » Strong operating netback of \$17.18/boe⁽¹⁾ driven by low operating costs of \$12.57/boe⁽²⁾ and a light oil-weighted production stream
 - » At current pricing, Lightstream's assets generate strong free cash flow to support future growth
- **Two major core areas account for 93% of current production**
 - » Total production of 25,921 boe/d; 67% Oil and Liquids⁽²⁾
 - » The vast majority of Lightstream's production comes from two Business Units:
 - › The Cardium Business Unit: 14,680 boe/d (51% Oil and Liquids)⁽²⁾
 - › The Saskatchewan Business Unit: 9,355 boe/d (93% Oil and Liquids)⁽²⁾
 - » Low base decline rate of 23%
- **Long-life reserves; significant oil-in-place with low current recovery factors**
 - » 142 mboe of 2P reserves, almost 50% PDP⁽³⁾; 15 year RLI
 - » ~2.3 billion barrels of Discovered Petroleum-Initially-in-Place ("DPIIP")
 - › Cardium Business Unit current recovery factor of 3.3%
 - › Saskatchewan Business Unit current recovery factor of 2.9%
- **Business provides compelling upside from large inventory of economic drilling locations and secondary recovery projects**
 - » 486 booked⁽³⁾, 1,036 unbooked drilling locations
 - » Secondary recovery projects implemented in the Bakken and the Swan Hills core areas with natural gas flood and waterflood ultimate recoveries expected to be 15-25%
- **Strong environmental liability position⁽⁴⁾**
 - » Alberta LMR: 3.22
 - » Saskatchewan LMR: 3.47
 - » BC LMR: 1.03

(1) Based on May 2016 Lease Operating Statement values

(2) Average based on Lease Operating Statements Jan-May 2016

(3) Sproule December 31, 2015 Reserves Report, January 1, 2016 pricing per Sproule

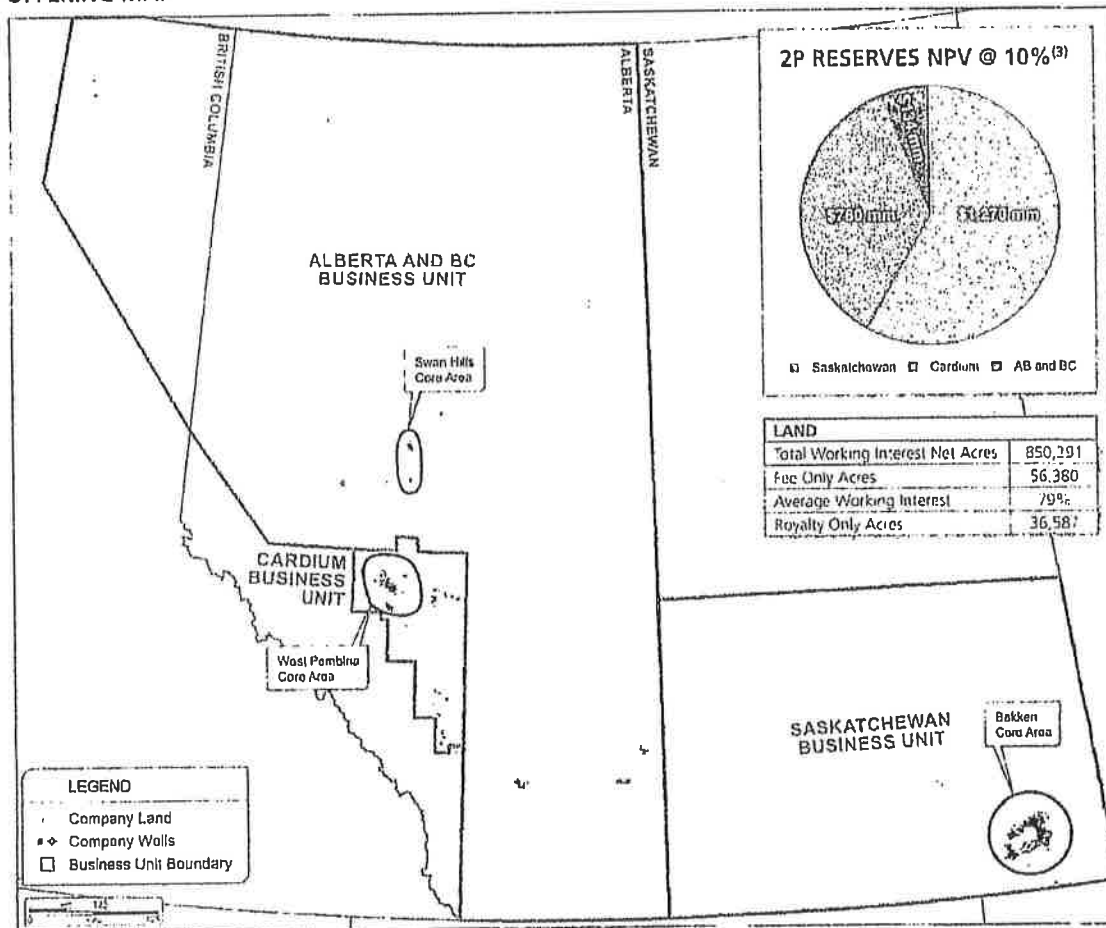
(4) As of June 2016



Business Highlights

Production of 25,921 boe/d⁽¹⁾ concentrated in three oil and liquids-rich core assets results in high netbacks, predictable declines and strong support for over 1,500 booked and unbooked drilling locations.

OFFERING MAP



OFFERING SUMMARY

BUSINESS UNIT	TOTAL PRODUCTION ⁽¹⁾ (boe/d)	OIL AND LIQUIDS SPLIT ⁽²⁾ (%)	NET OPERATING INCOME ⁽²⁾ (\$ m)	1P VOLUMES ⁽¹⁾ (mm-boe)	2P VOLUMES ⁽²⁾ (mm-boe)	1P NPV10 ⁽¹⁾ (\$ m)	2P NPV10 ⁽¹⁾ (\$ m)
Cardium	14,680	51%	28.7	45.7	66.2	582	780
Saskatchewan	9,355	93%	21.8	36.4	63.1	730	1,270
AB and BC	1,886	57%	-0.2	7.5	13.1	73	134
TOTAL	25,921	67%	50.3	89.6	142.4	1,385	2,184

(1) Average based on Lease Operating Statements Jan-May 2016

(2) Company actuals from Lease Operating Statements Jan-May 2016, average WTI price during period was US\$37.48/bbl

(3) Sproule December 31, 2015 Reserves Report, January 1, 2016 pricing per Sproule

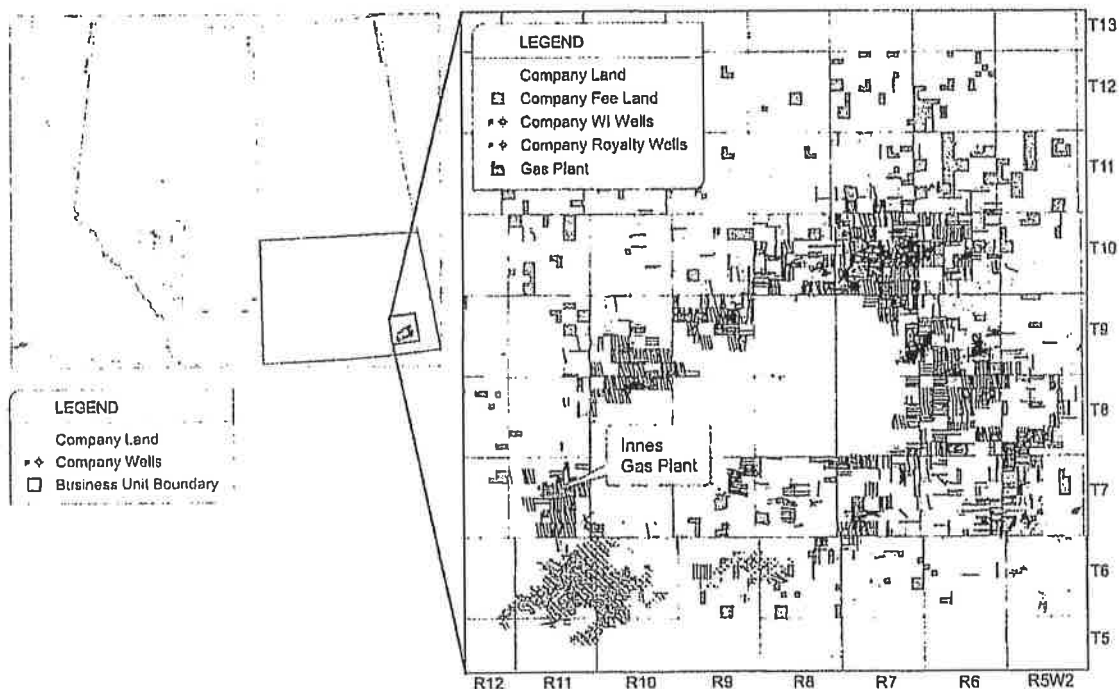


Saskatchewan Business Unit Summary

- The Bakken zone is the core asset within the Saskatchewan Business Unit and is one of Canada's largest unconventional oil reservoirs with significant remaining recoverable volumes
- Significant, high-working interest position in 286,000 net acres of Contiguous Crown, Private Freehold, and Corporate Fee Title land
 - » Corporate Fee Title land of ~56,000 acres
- Lightstream's land position in the Bakken reservoir is estimated to contain an DPIP of 1.4 billion barrels with cumulative recovery of 2.9% (July 2016) across the lands
 - » Significant opportunity for EOR via both natural gas and water injection
- Additional low risk development and exploration upside provided by Mississippian prospects
- High netback of \$23.07/boe¹
 - » 42.1-45.4 °API Bakken light oil production of 7,841 boe/d²
 - » 30.2-33.0 °API Mississippian light oil production of 1,492 boe/d²
 - » 32 boe/d² of royalty production
- 62.8 mmboe of 2P reserves (December 31, 2015)
- Total inventory of Bakken and Mississippian locations (booked and unbooked) of 805 and 209, respectively

BUSINESS UNIT	SASKATCHEWAN
PRODUCTION^{1P}	Jan-May 2016
Average Production	9,355 boe/d
Oil and NGLs	93%
FINANCIALS^{1P}	Jan-May 2016
Net Operating Income	\$21.8 mm
Capex	\$2.5 mm
Opex	\$15.95/boe
Free Cash Flow	\$19.7 mm
RESERVES	Sproule 31-Dec-15
2P NPV @10%	\$1,270 mm
2P Reserves Volumes	63,061 mmboe
UPSIDE OPPORTUNITIES	
Un-developed Land	146,097 net acres
Booked Locations	293 net
Unbooked Locations	721 net

BAKKEN CORE AREA MAP



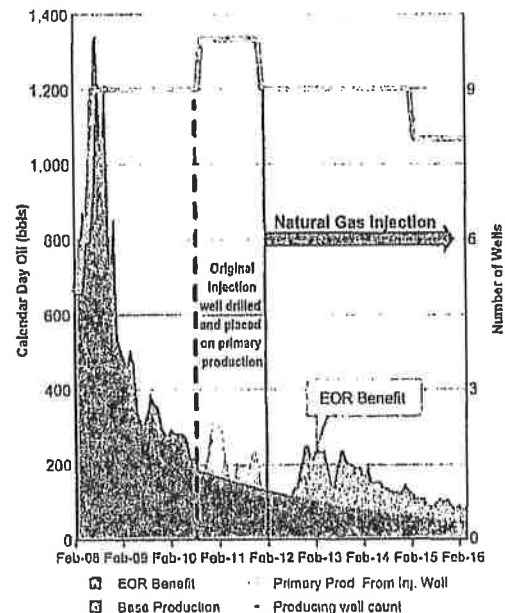
4 (1) Based on May 2016 Lease Operating Statement values
 (2) Average based on Company field estimate production
 (3) Average based on Company Lease Operating Statements - Jan-May 2016



Saskatchewan Business Unit Opportunities

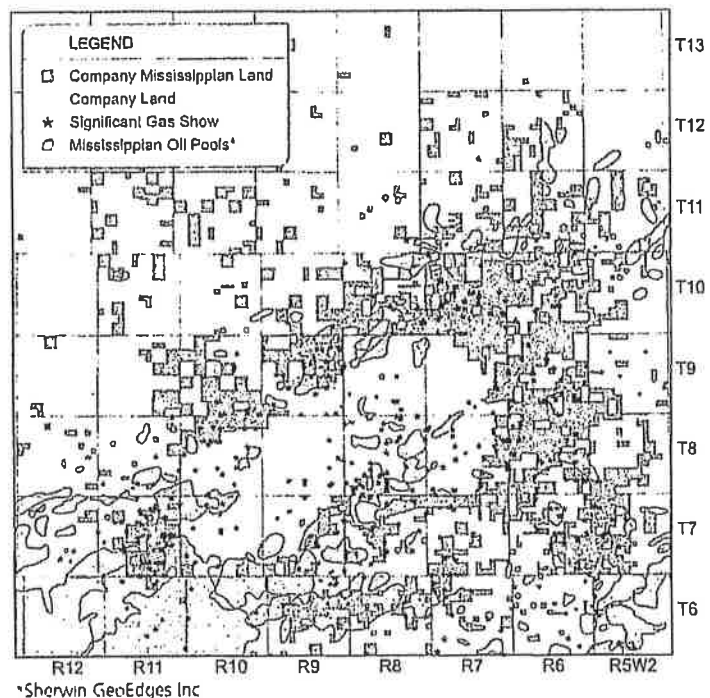
- Lightstream has developed the Bakken into an asset generating significant free cashflow with an extensive existing infrastructure and large inventory of infill, step-out and field extension locations
- Current inventory >800 Bakken drilling locations, Lightstream has also implemented two natural gas injection schemes, one at Creelman and one at Midale
 - » Patterns have demonstrated positive results and enhanced recovery since operations began in 2011
- EOR schemes are expected to increase the recovery factor to 15 - 25%
- Sproule recognizes a total of 622 mboe of remaining reserves for the 16-34 EOR pattern (December 31, 2015)
 - » EUR increased reserves by 32.5% due to secondary recovery (to-date)
- Majority of the Bakken landbase suitable for either natural gas or waterflooding efforts

EOR PERFORMANCE CHART (16-34 PATTERN)



- Mississippian hydrocarbon accumulations exist along the various subcrop edges of the various subcrop edges of the formations and their sub-units, as well in structurally defined erosional highs
- Lightstream has developed a large database of Mississippian gas shows which, when combined with seismic, has significantly de-risked a large inventory of highly economic Mississippian drilling locations
 - » Drilling down to the Bakken provides a free look at the Mississippian horizon
- Current total Mississippian inventory of 209 locations
 - » Only 34 locations booked
- Creelman/Frobisher discovery at 101/09-35-008-10W2/00 key analog to further development

MISSISSIPPIAN SIGNIFICANT GAS SHOWS MAP



*Sherwin GeoEdges Inc

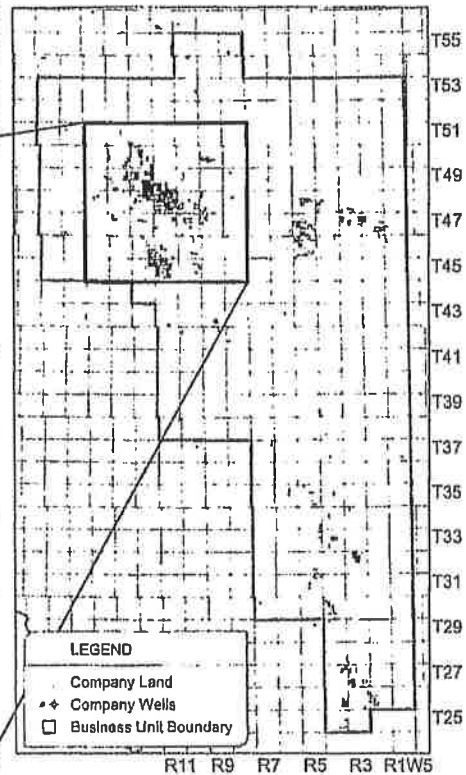
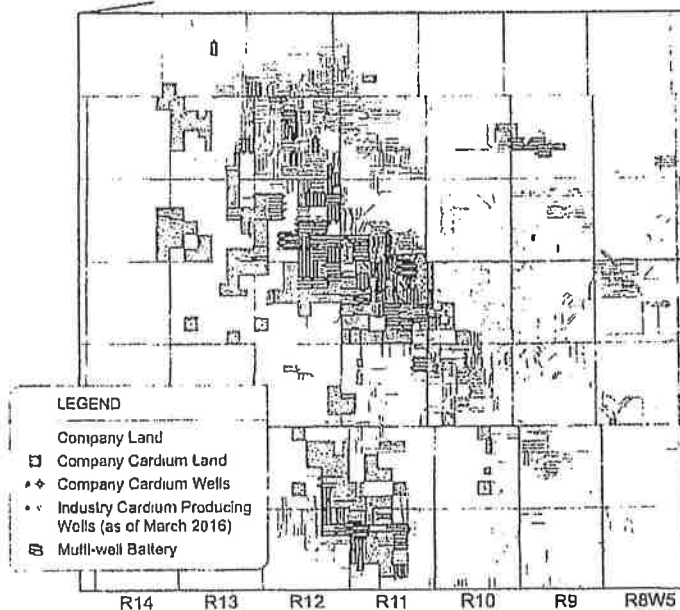


Cardium Business Unit Summary

- Predictable base production of 14,879 boe/d⁽¹⁾ declining at 14%
 - » Cardium Formation: 11,517 boe/d⁽¹⁾; 61% Oil and Liquids
 - » Falher/Notikewin Formations: 2,884 boe/d⁽¹⁾; 14% Oil and Liquids
- Attractive land base of ~183,000 net acres of land
 - » Largely concentrated in the West Pembina and Brazeau areas where horizontal drilling and multi-stage fracturing have unlocked additional reserves
 - » 152,468 net acres of Cardium Rights
 - » 31,504 net acres of Mannville Rights
- Minimal expiry concerns in the most prospective areas
- Almost 80% of the 2P reserves are concentrated in West Pembina and Brazeau
- Very attractive LMR of 5.0 due to recent nature of development
- Sufficient inventory available to achieve steady production of ~15,000 boe/d while generating free cash flow
 - » 430 booked, unbooked and contingent net locations targeting the Cardium (395) and Mannville (35) formations
- Recent Company activity has focused on the liquids-rich Mannville gas opportunities at Brazeau

BUSINESS UNIT	CARDIUM
PRODUCTION⁽¹⁾	
Average Production:	Jan-May 2016 14,680 boe/d
Oil and NGLs	51%
FINANCIALS⁽²⁾	
Net Operating Income	Jan-May 2016 \$28.7 mm
Capex	\$1.3 mm
Opex	\$9.05/boe
Free Cash Flow	\$27.4 mm
RESERVES	
2P NPV @10%	Sproule 31-Dec-15 \$780 mm
2P Reserve Volumes	66,231 m ³ boe
UPSIDE OPPORTUNITIES	
Undeveloped Land	77,053 net acres
Booked Locations	151 net
Unbooked Locations	279 net

WEST PEMBINA CORE AREA MAP

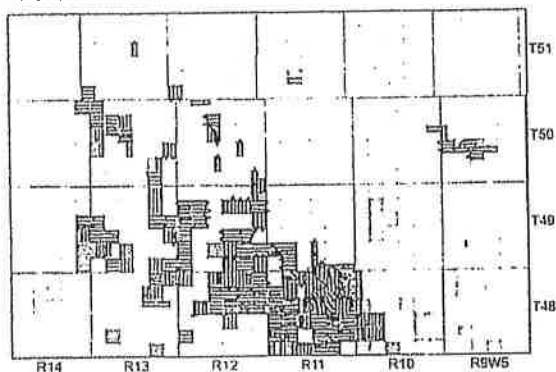


6 (1) Average based on Company field estimate production
 (2) Average based on Company Lease Operating Statements Jan-May 2016

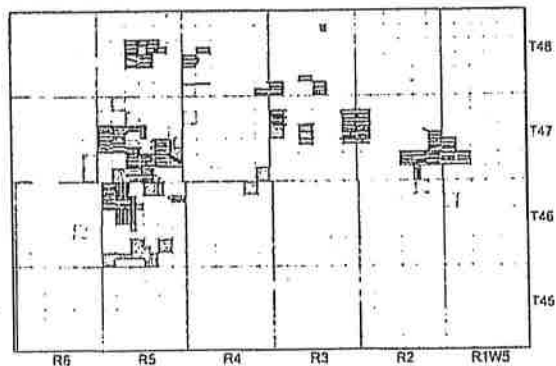


Cardium Formation Opportunities

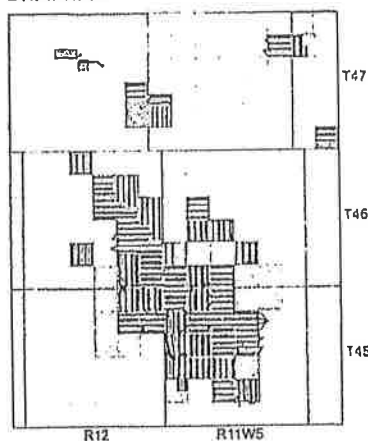
WEST PEMBINA



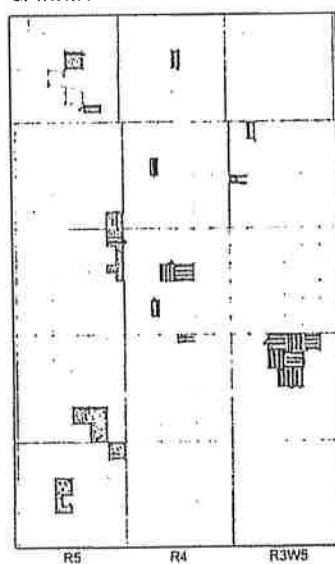
EAST PEMBINA



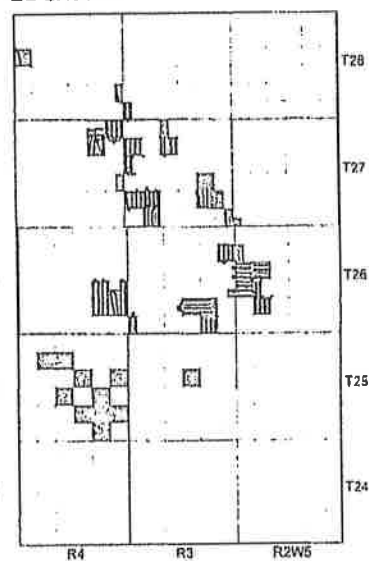
BRAZEAU



GARRINGTON



LOCHEND



LEGEND

- ☐ Company Cardium Land
- ☐ Company Land
- ◆ Company Cardium Wells
- Booked Locations
- Unbooked Locations

CARDIUM LOCATION INVENTORY

CORE AREA	BOOKED	UNBOOKED	CONTINGENT
West Pembina	66.9	89.3	15.3
East Pembina	25.4	12.2	8.8
Brazeau	42.0	48.3	11.9
Garrington	6.0	1.6	2.0
Lochend	8.9	14.9	9.3
Other	0.9	0.9	0.0
TOTAL	150.1	197.2	47.3

NEED TO KNOW

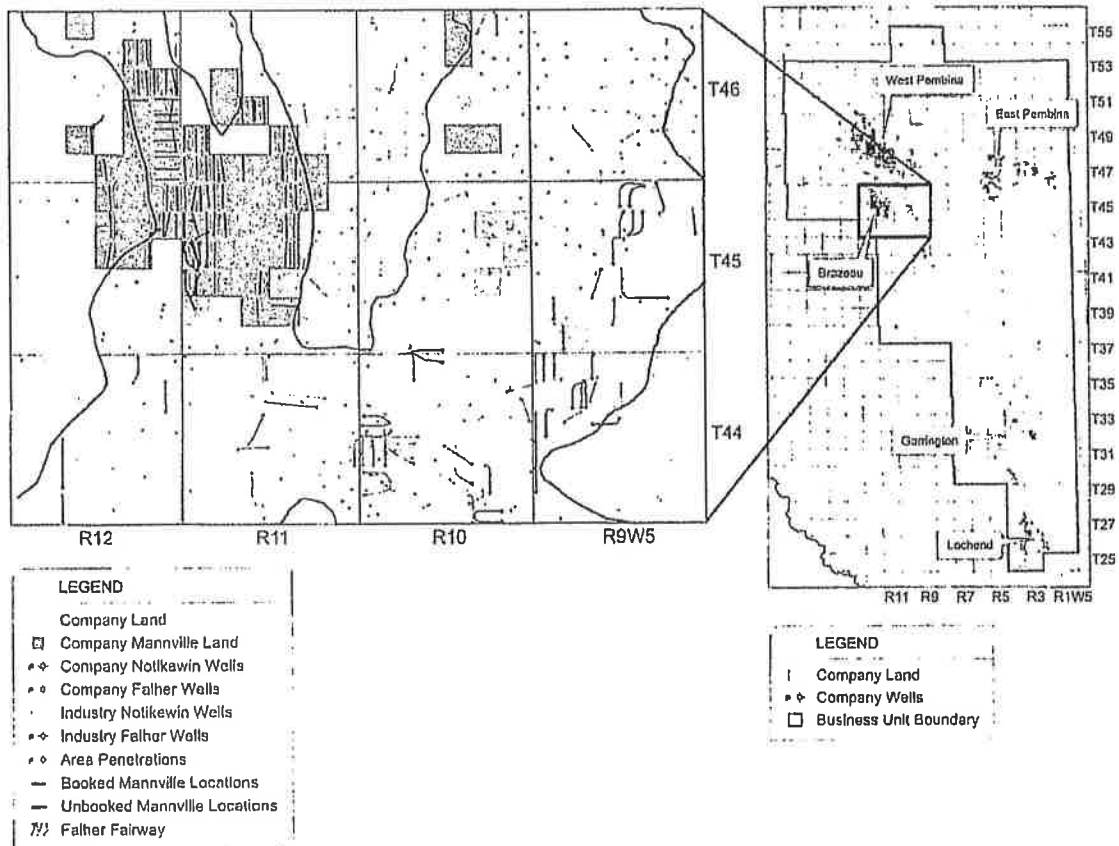
- Oil-weighted focused area currently being exploited with infills and step-out drilling
 - » 89% of Cardium inventory located in West Pembina, East Pembina and Brazeau
- Waterflood EUR implemented in July 2014
- Company operates key facilities and infrastructure



Other Cardium Business Unit Opportunities

- Existing Cardium infrastructure allows Mannville formations such as the Falher and Notikewin to be optimally developed
- Considerable Mannville (Falher/Notikewin) industry activity in the Brazeau region with 204 producing horizontal wells and current production of ~380 mmcf/d
- Lightstream has 5.1 net wells on production and to date an inventory of ~35 net Mannville locations

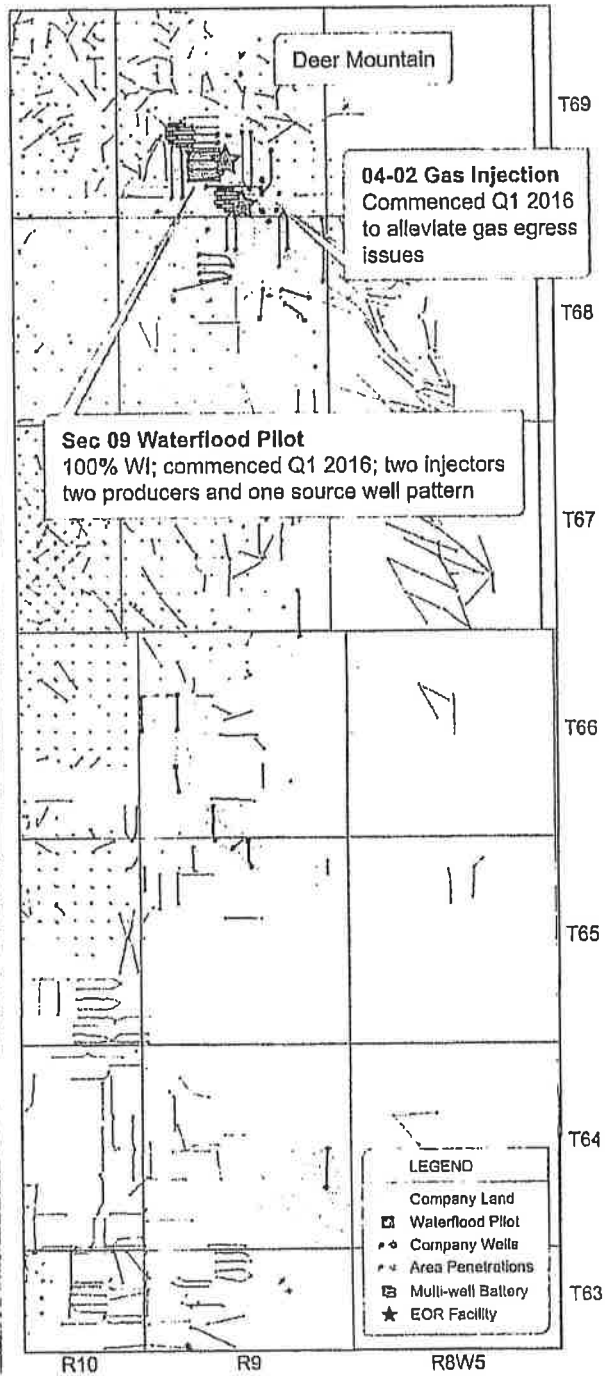
BRAZEAU CORE AREA MAP



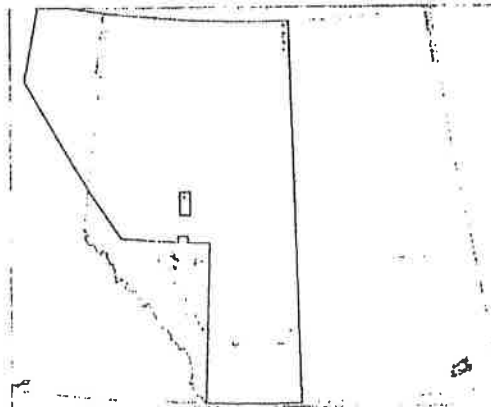
Alberta and British Columbia Business Unit Summary

- The Alberta/BC Business Unit is comprised of the Swan Hills core asset and other legacy production from Southern Alberta and West Central Alberta and BC
- The Swan Hills region features high impact development and exploration upside with large DPIIP of ~8 mmbbl/section at Deer Mountain
- The Deer Mountain area also contains significant EOR potential due to proven projects in close proximity, LTS owned infrastructure and a high working interest
- 317 boe/d currently shut-in due to 3rd party gas system constraints
 - » Company is currently re-injecting solution gas to maintain oil production

SWAN HILLS CORE AREA MAP



BUSINESS UNIT	SWAN HILLS	OTHER AD/BC
PRODUCTION⁽¹⁾		
Jan-May 2016		
Average Production	887 boe/d	1,300 boe/d
Oil and NGUs	96%	23%
FINANCIALS⁽¹⁾		
Jan-May 2016		
Net Operating Income	\$1.9 mm	-\$2.1 mm
Capex	\$1.0 mm	\$1.4 mm
Opex	19.7¢/boe	\$26.12/boe
Free Cash Flow	\$0.9 mm	-\$3.5 mm
RESERVES		
Sproule 31-Dec-15		
2P NPV @ 10%	\$117 mm	\$17 mm
2P Reserves Volumes	9,999 mboe	1,131 mboe
UPSIDE OPPORTUNITIES		
Undeveloped Land	18,413 net acres	196,258 net acres
Booked Locations	39 net	2 net
Unbooked Locations	33 net	0 net



(1) Average based on Company Lease Operating Statements Jan-May 2016



Process and Contacts

Lightstream Resources Ltd. has engaged TD Securities to manage a process to divest the Company's entire Canadian asset portfolio. The Company is a light oil-focused Canadian exploration and production company with a diverse producing and resource portfolio. Although the offering is separated into three packages (Saskatchewan, Cardium, and Alberta/British Columbia) the Company's strong preference is to complete an en bloc transaction.

It is the intention of the Company and TD to conduct the Offering process such that it minimizes any disruption to the Company's operations. Interested Parties should not contact the Company directly regarding any aspect of the Offering.

Confidentiality Agreement can be accessed through the link below and can also be found on the TD Energy Advisors website www.tdenergyadvisors.com. Virtual data room access may be obtained upon executing and submitting a Confidentiality Agreement via email to the attention of Michael Charron (michael.charron@tdsecurities.com). All other inquiries, communications or additional information requests related to the Offering should be directed to one of the following individuals at TD Securities.

TD SECURITIES TD Canada Trust Tower Suite 3600, 421 - 7th Ave SW Calgary, AB T2P 4K9 Tel: 403-503-4848	
TD Energy Advisors Mark Kuhn Managing Director, Head of TD Energy Advisors T: 403 503 4852 mark.kuhn@tdsecurities.com	Investment Banking Greg Saksida Managing Director T: 403-292-1806 Greg.saksida@tdsecurities.com
Ruben Contreras, P.Eng Director T: 403 503 4853 ruben.contreras@tdsecurities.com	Scott Barron Managing Director T: 403 292 1283 scott.barron@tdsecurities.com
Diego Cuba, P.Eng Associate T: 403 503 4859 diego.cuba@tdsecurities.com	Michael Charron Vice President T: 403 299 8505 michael.charron@tdsecurities.com

Timing

- Virtual Data Room: July 13, 2016
- Technical Presentations: Commencing week of July 20, 2016
- Indicative Offer to be Submitted. Week of September 19, 2016



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SCHEDULE "B"

EXISTING INDEBTEDNESS

Lightstream Resources

Revolving Credit Facilities - Actual Amounts Drawn (as at July 11th, 2016)

Lender	Syndicated Tranche		Current Operating Facility - TD only		TOTAL OUTSTANDING	
	Actual Amount	%	Actual Amount	%	Actual Amount	%
TORONTO-DOMINION BANK	10,164,599.16	2.8314%	11,920,485.00	100.000000000000%	22,085,078.16	5.9541%
BANK OF NOVA SCOTIA	40,306,322.20	11.2274%			40,306,322.20	10.8666%
ROYAL BANK OF CANADA	40,306,322.20	11.2274%			40,306,322.20	10.8666%
CIBC	38,116,435.13	10.6174%			38,116,435.13	10.2762%
WELLS FARGO BANK-CAD BRANCH	27,734,384.89	7.7255%			27,734,384.89	7.4772%
B OF N.A. (CANADA BRANCH)	25,239,260.93	7.0304%			25,239,260.93	6.8045%
CREDIT SUISSE AG TORONTO BR	25,239,260.93	7.0304%			25,239,260.93	6.8045%
HSBC BANK CANADA	22,320,435.13	6.2174%			22,320,435.13	6.0176%
UNION BANK, CANADA BRANCH	21,977,043.73	6.1217%			21,977,043.73	5.9250%
CAISSE CENTRALE DESJARDINS	19,916,695.34	5.5478%			19,916,695.34	5.3695%
ALBERTA TREASURY BRANCHES	18,199,739.07	5.0696%			18,199,739.07	4.9066%
SUMITOMO MITSUI BANKING CORPORATION OF CANADA	15,452,608.60	4.3043%			15,452,608.60	4.1660%
CANADIAN WESTERN BANK	14,079,043.73	3.9217%			14,079,043.73	3.7957%
UNITED OVERSEAS BANK	14,079,043.73	3.9217%			14,079,043.73	3.7957%
NATIONAL BANK OF CANADA	13,163,333.09	3.6667%			13,163,333.09	3.5488%
BUSINESS DEVELOPMENT BANK OF CANADA	12,705,478.14	3.5391%			12,705,478.14	3.4254%
	359,000,000.00	100.0000%	11,920,485.00	100%	370,920,485.00	100.0000%

TAB 2

AMENDING AGREEMENT

THIS AMENDING AGREEMENT is dated as of the 27th day of July, 2016,

B E T W E E N:

LIGHTSTREAM RESOURCES LTD.
(the “Borrower”)

– and –

**1863359 ALBERTA LTD., LTS RESOURCES PARTNERSHIP,
1863360 ALBERTA LTD., AND BAKKEN RESOURCES PARTNERSHIP**
(together with the Borrower, the “Loan Parties” and each a “Loan Party”)

– and –

**THE TORONTO-DOMINION BANK,
ROYAL BANK OF CANADA,
THE BANK OF NOVA SCOTIA,
CANADIAN IMPERIAL BANK OF COMMERCE,
WELLS FARGO BANK N.A., CANADIAN BRANCH,
BANK OF AMERICA, N.A., CANADA BRANCH,
CREDIT SUISSE AG, TORONTO BRANCH,
HSBC BANK CANADA,
UNION BANK, CANADA BRANCH,
CAISSE CENTRALE DESJARDINS,
ALBERTA TREASURY BRANCHES,
SUMITOMO MITSUI BANKING CORPORATION OF CANADA,
CANADIAN WESTERN BANK,
UNITED OVERSEAS BANK LIMITED, VANCOUVER BRANCH,
NATIONAL BANK OF CANADA, and
BUSINESS DEVELOPMENT BANK OF CANADA**
(collectively, the “Lenders” and each a “Lender”)

– and –

THE TORONTO-DOMINION BANK
(the “Administrative Agent”)

RECITALS:

- A. The Loan Parties, Administrative Agent, and Lenders are parties to a forbearance agreement dated as of July 12, 2016 (the “**Forbearance Agreement**”).

- B. The Loan Parties have indicated that the Borrowing Base Shortfall will not be eliminated by July 28, 2016, which is a further Event of Default pursuant to Section 16.1(s) of the Credit Agreement (the “**Borrowing Base Shortfall Event of Default**”).
- C. The Loan Parties have requested certain amendments to the Forbearance Agreement, including an extension of the Relief Period, and a forbearance from the exercise of rights and remedies in respect of the Borrowing Base Shortfall Event of Default.
- D. The Lenders and Swap Lenders have agreed to the Loan Parties’ request, subject to the terms and conditions set out herein.

NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements contained in this Amending Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Defined Terms. In this Amending Agreement, unless something in the subject matter or context is inconsistent: (a) terms defined in the description of the parties or in the recitals have the respective meanings given to them in the description or recitals, as applicable; and (b) all other capitalized terms have the respective meanings given to them in the Forbearance Agreement.

1.2 Headings. The headings of the Articles and Sections of this Amending Agreement are inserted for convenience of reference only and shall not affect the construction or interpretation of this Amending Agreement.

ARTICLE 2 AMENDMENTS

2.1 Amendments to Forbearance Agreement. The Forbearance Agreement is hereby amended with effect as of July 25, 2016, as follows:

- (a) In Recital E, the “and” is deleted before the term: “the Support Agreement Event of Default”, and the following is added following such term immediately before the term “the Specified Events of Default”:

“and the Event of Default pursuant to Section 16.1(s) of the Credit Agreement which shall occur during the Relief Period as the Borrowing Base Shortfall will not be eliminated by July 28, 2016 (the ‘**Borrowing Base Shortfall Event of Default**’)”

- (b) The following definition is added to section 1(b) in alphabetical order:

“‘Borrowing Base Shortfall Event of Default’ has the meaning ascribed to it in the Recitals.”

- (c) Section 2(xv) is deleted in its entirety and replaced with the following:

“a Borrowing Base Shortfall has occurred as set forth in the notice delivered by the Administrative Agent to the Borrower dated April 29, 2016, and is continuing. Pursuant to Section 16.1(s) of the Credit Agreement, it is an Event of Default if the Borrowing Base Shortfall is not eliminated by July 28, 2016. The Borrowing Base Shortfall will not be eliminated by July 28, 2016, and on such date, the Borrowing Base Shortfall Event of Default will have occurred and be continuing.”

- (d) The date “July 28, 2016” in Sections 3(a)(ii) and 7(a)(xii) is deleted and replaced with the following date in both Sections: “August 5, 2016”.
- (e) The date of “July 25, 2016” that appears two times in Section 3(g) (obtaining commitments regarding a new credit facility and provision of a plan of arrangement in form and substance satisfactory to the Lenders) is deleted and replaced in both places with “August 2, 2016”.
- (f) Schedule A to the Forbearance Agreement (SISP) is deleted in its entirety and replaced with the Schedule A attached hereto.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations. The Loan Parties represent and warrant to the Lenders that, as of the date hereof:

- (g) this Amending Agreement has been duly authorized, executed and delivered by the Loan Parties and the Forbearance Agreement as amended hereby constitutes a legal, valid and binding obligation of each Loan Party, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditor’s rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law;
- (h) the representations and warranties of the Loan Parties set forth in the Forbearance Agreement are true and correct, except to the extent any such representation or warranty is made as of a specified date, in which case such representation or warranty shall have been true and correct as of such date; and
- (i) the Loan Parties are in full compliance with the covenants in the Forbearance Agreement and Support Agreement and no Default or Event of Default has occurred and is continuing other than the Specified Events of Default.

ARTICLE 4 GENERAL

4.1 Acknowledgment and Agreement as to Process. The Loan Parties acknowledge and agree that, pursuant to the Support Agreement and the Forbearance Agreement, in the event that the CBCA Restructuring cannot be effected, a comparable transaction will be pursued pursuant to a CCAA proceeding, including potentially a Credit Bid Acquisition. No transaction shall be pursued or completed by the Loan Parties (including in a CCAA proceeding) that does not provide for the unconditional and irrevocable repayment in full in cash of the Obligations, without the written consent of the Lenders. If the CBCA Restructuring cannot be effected, the Loan Parties covenant that they shall seek a form of CCAA Initial Order that is satisfactory to the Lenders, including: (i) containing an express approval of a sales and investment process that is consistent with the SISF (including having the same milestones set out therein, except that to the extent a CCAA proceeding is commenced following the meeting of creditors in the CBCA Restructuring (expected to occur on September 13, 2016), that the deadline for the submission of indicative offers will be no less than 30 days following commencement of the CCAA proceeding); (ii) a declaration that the Obligations owing to the Lenders shall be unaffected by any plan of compromise or arrangement; (iii) providing for the payment of interest as and when required under the Credit Agreement; (iv) containing court-ordered charges that, to the extent such court-ordered charges rank in priority to or equal to the Security, are satisfactory to the Lenders in both amount and priority; and (v) approving a cash flow forecast that is satisfactory to the Lenders.

4.2 Application of True-Up Provision. Notwithstanding that the Obligations have not yet been declared by the Agent to be due and payable pursuant to Section 16.2 of the Credit Agreement, the Lenders have agreed that the "true-up" provisions of Section 16.3 of the Credit Agreement should apply as of the date of this Amending Agreement and as a result, the schedule of Existing Indebtedness set out in the Forbearance Agreement, as well as the Individual Commitment Amounts of each Lender, is amended and replaced with the Schedule B hereto.

4.3 Effectiveness. This Amending Agreement shall become effective upon the satisfaction of the following conditions precedent: (i) this Amending Agreement shall be executed and delivered by the Loan Parties and the Administrative Agent and approved by the Lenders in accordance with the Credit Agreement; and (ii) the Lenders shall have received an updated 13-week cash flow forecast, in form and substance satisfactory to the Lenders. Except as specifically stated herein, the Forbearance Agreement shall continue in full force and effect in accordance with the provisions hereof. As of the date hereof, any reference to the Forbearance Agreement shall refer to the Forbearance Agreement as amended hereby.

4.4 Binding Nature. This Amending Agreement shall enure to the benefit of and be binding upon the Loan Parties and Lenders and their respective successors and permitted assigns.

4.5 Conflicts. To the extent that there is any inconsistency or ambiguity between the provisions of this Amending Agreement and the Forbearance Agreement or any other Loan Document, the provisions of this Amending Agreement will govern to the extent necessary to eliminate such conflict, inconsistency or ambiguity.

4.6 Governing Law. This Amending Agreement will be governed by and construed in accordance with the law in force in the Province of Alberta and the federal laws of Canada applicable therein, from time to time.

4.7 Execution. This Amending Agreement may be executed in any number of counterparts (including by facsimile transmission or other electronic transmission) and by different Parties in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same instrument.

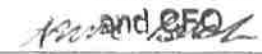
[Signature pages follow]

IN WITNESS WHEREOF, the parties have entered into this Amending Agreement as of the date first above mentioned.

LIGHTSTREAM RESOURCES LTD.,
as Borrower


Per: 

Name: Peter D. Scott
Title: Senior Vice President

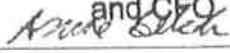
Per: 

Name:
Title: Annie Belecki
General Counsel

1863359 ALBERTA LTD., as Loan Party

Per: 

Name: **Peter D. Scott**
Title: **Senior Vice President
and CFO**

Per: 

Name:
Title: **Annie Belecki
General Counsel**

LTS RESOURCES PARTNERSHIP, as
Loan Party, by its managing partner, Lightstream
Resources Ltd.

Per:




Name: **Peter D. Scott**
Title: **Senior Vice President
and CFO**

Per:

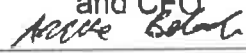


Name:
Title: **Annie Pollock
General Counsel**

1863360 ALBERTA LTD., as Loan Party

Per: 

Name: **Peter D. Scott**
Title: **Senior Vice President
and CFO**

Per: 

Name:
Title: **Annie Belecki
General Counsel**

BAKKEN RESOURCES

PARTNERSHIP, as Loan Party, by its managing partner, Lightstream Resources Ltd.

Per: 

Name: **Peter D. Scott**
Title: **Senior Vice President
and CFO**

Per: 

Name:
Title: **Annie Belecki
General Counsel**

THE TORONTO-DOMINION BANK,
as Administrative Agent

Per: _____ 

Name:
Title: Andrew Ford
Vice President, Loan Syndications-Agency

Per: _____

Name:
Title:

THE TORONTO-DOMINION BANK,
as Lender

Per: 

Name: Clark Terriff
Title: Managing Director

Per: 

Name: Glen Cameron
Title: Director

ROYAL BANK OF CANADA, as Lender

Per: _____
Name: Gary Ivany
Title: Senior Director


Per: _____
Name:
Title:

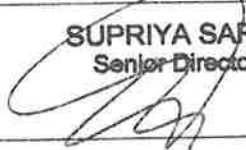
**THE BANK OF NOVA SCOTIA, as
Lender**

Per: 
Name: Rocco Fabiano
Title: Vice President

Per: 
Name:
Title: Clare Horan
Senior Manager

**CANADIAN IMPERIAL BANK OF
COMMERCE, as Lender**

Per: 
Name: **SUPRIYA SARIN**
Title: **Senior Director**

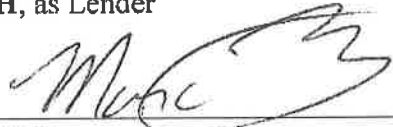
Per: 
Name: **DOUG BROWN**
Title: **Vice-President & Deputy**

**WELLS FARGO BANK N.A.,
CANADIAN BRANCH, as Lender**

Per: 
Name: **DAN LINDQUIST**
Title: **Managing Director**

Per: _____
Name:
Title:

**BANK OF AMERICA, N.A., CANADA
BRANCH, as Lender**

Per: 

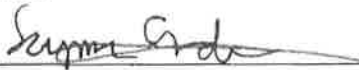
Name: **Marc Ahlers**
Title: **Vice President**

Per: _____

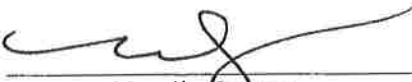
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Title:

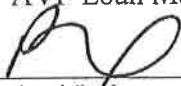
**CREDIT SUISSE AG, TORONTO
BRANCH, as Lender**

Per: 
Name: Chris Gage
Title: Authorized Signatory

Per: 
Name: SIMON OROYS
Title: AUTHORIZED SIGNATORY

HSBC BANK CANADA, as Lender

Per: 
Name: Natalie Coates
Title: AVP Loan Management Unit

Per: 
Name: Paul Irving
Title: VP Loan Management Unit

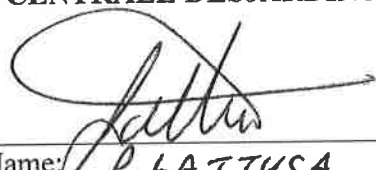
**UNION BANK, CANADA BRANCH, as
Lender**

Per: 
Name: Beau Filkowski
Title: Vice President

Per: _____
Name:
Title:

**CAISSE CENTRALE DESJARDINS, as
Lender**

Per:


Name: P. LATTUCA
Title: MANAGER

Per:

Name:
Title:

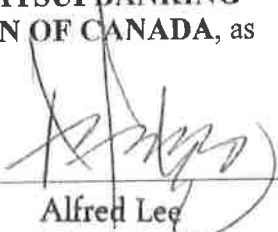
ALBERTA TREASURY BRANCHES,
as Lender

Per: 
Name: Rick Miller
Title: Director

Per: 
Name: Simon Briggs
Title: Senior Associate Director

**SUMITOMO MITSUI BANKING
CORPORATION OF CANADA, as
Lender**

Per: _____




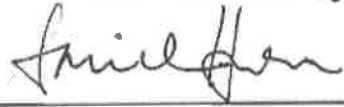
Name: Alfred Lee
Title: Managing Director

Per: _____

Name:
Title:

**CANADIAN WESTERN BANK, as
Lender**

Per: 
Name: Kuno Ryckborst
Title: Senior Manager,
Energy & Corporate Banking

Per: 
Name: Amin Haque
Title: Manager,
Energy & Corporate Banking

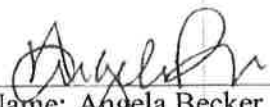
**UNITED OVERSEAS BANK
LIMITED, VANCOUVER BRANCH, as
Lender**

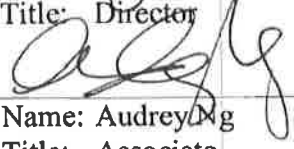


Per: _____
Name: John Gleason
Title: ED and GM


Per: _____
Name:
Title:

**NATIONAL BANK OF CANADA, as
Lender**

Per: 
Name: Angela Becker
Title: Director

Per: 
Name: Audrey Ng
Title: Associate

**BUSINESS DEVELOPMENT BANK
OF CANADA, as Lender**

Per: 
Name: Russell W. French
Title: Assistant Vice President

Per: 
Name: Derek Church
Title: Director

Schedule A

SISP

Activity	Deadline
Opening of Virtual Data room	July 13, 2016
Commencement of Technical Presentations	Week of July 20, 2016
Indicative offers submitted	Week of September 19, 2016
Closing of a SISP transaction in accordance with the second paragraph of section 3(g) of this Agreement	December 31, 2016



July 13, 2016

Lightstream Resources Ltd. (the "Company") has engaged TD Securities Inc. ("TD") to manage a process to divest all of the Company's assets (the "Offering"). The Company is a predominantly light oil Canadian exploration and production company with a focused asset portfolio in three oil and liquids-rich core areas: Bakken, Cardium and Swan Hills. Although these areas could be treated as three distinct packages, it is the Company's strong preference to complete an en bloc transaction. Interested parties are encouraged to review the Offering from an asset value perspective, independent of the current capitalization.

The Offering is highlighted by its strong light oil-weighted production base of 25,921 boe/d (67% Oil and Liquids) for the period January-May 2016 with a current corporate operating netback of \$17.18/boe (May 2016, Company lease operating statements). The Company's Discovered Petroleum-Initially-in-Place is significant at ~2.3 billion barrels with long-life 2P reserves of 142 mmbbl. The Offering provides a compelling opportunity to develop over 1,500 booked and unbooked drilling locations and the ability to implement various secondary recovery projects on existing fields.

The Teaser document and Confidentiality Agreement can be accessed through the links below and can also be found on the TD Energy Advisors website www.tdenergyadvisors.com. Virtual data room access may be obtained upon executing and submitting a Confidentiality Agreement. All other inquiries, communications or additional information requests related to the Offering should be directed to one of the following individuals at TD Securities.

Teaser (pdf)

Confidentiality Agreement (pdf)

Mark Kuhn
Managing Director, Head of TD Energy
Advisors
403 503 4852
mark.kuhn@tdsecurities.com

Ruben Contreras, P.Eng
Director
403 503 4853
ruben.contreras@tdsecurities.com

Diego Cuba, P.Eng
Associate
403 503 4859
diego.cuba@tdsecurities.com

Greg Saksida
Managing Director
403 292 1806
greg.saksida@tdsecurities.com

Scott Barron
Managing Director
403 292 1283
scott.barron@tdsecurities.com

Michael Charron
Vice President
403 299 8505
michael.charron@tdsecurities.com

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Our mailing address is:
TD Securities Inc.

Global Energy and Power Group
3600 - 42nd - 7th Ave SW
TD Canada Trust Tower
Calgary, Alberta
Canada
T2P 4K9

[Unsubscribe from this list](#)

TD Securities



LIGHTSTREAM RESOURCES LTD.
CORPORATE OFFERING | JULY 2016

TD Energy Advisors / TD Securities Inc.

421 - 7th Avenue S.W., 36th Floor, Calgary, Alberta T2P 4K9 • Telephone: 403 503 4848 • Fax: 403 503 4849

www.tdeneryadvisors.com



Introduction

Lightstream Resources Ltd. (the "Company") has engaged TD Securities Inc. ("TD") to manage a process to divest all of the Company's assets (the "Offering"). The Company is a predominantly light oil Canadian exploration and production company with a focused asset portfolio in three core areas: Bakken, Cardium and Swan Hills. Interested parties are encouraged to review the Offering from an asset value perspective, independent of the current capitalization.

INVESTMENT HIGHLIGHTS

- **High-netback, light oil production base**
 - » Strong operating netback of \$17.18/boe⁽¹⁾ driven by low operating costs of \$12.57/boe⁽²⁾ and a light oil-weighted production stream
 - » At current pricing, Lightstream's assets generate strong free cash flow to support future growth
- **Two major core areas account for 93% of current production**
 - » Total production of 25,921 boe/d; 67% Oil and Liquids⁽²⁾
 - » The vast majority of Lightstream's production comes from two Business Units:
 - › The Cardium Business Unit: 14,680 boe/d (51% Oil and Liquids)⁽²⁾
 - › The Saskatchewan Business Unit: 9,355 boe/d (93% Oil and Liquids)⁽²⁾
 - » Low base decline rate of 23%
- **Long-life reserves; significant oil-in-place with low current recovery factors**
 - » 142 mmboe of 2P reserves, almost 50% PDP⁽³⁾; 15 year RLI
 - » ~2.3 billion barrels of Discovered Petroleum-Initially-in-Place ("DPIIP")
 - › Cardium Business Unit current recovery factor of 3.3%
 - › Saskatchewan Business Unit current recovery factor of 2.9%
- **Business provides compelling upside from large inventory of economic drilling locations and secondary recovery projects**
 - » 486 booked⁽³⁾, 1,036 unbooked drilling locations
 - » Secondary recovery projects implemented in the Bakken and the Swan Hills core areas with natural gas flood and waterflood ultimate recoveries expected to be 15-25%
- **Strong environmental liability position⁽⁴⁾**
 - » Alberta LMR: 3.22
 - » Saskatchewan LMR: 3.47
 - » BC LMR: 1.03

(1) Based on May 2016 Lease Operating Statement values

(2) Average based on Lease Operating Statements Jan-May 2016

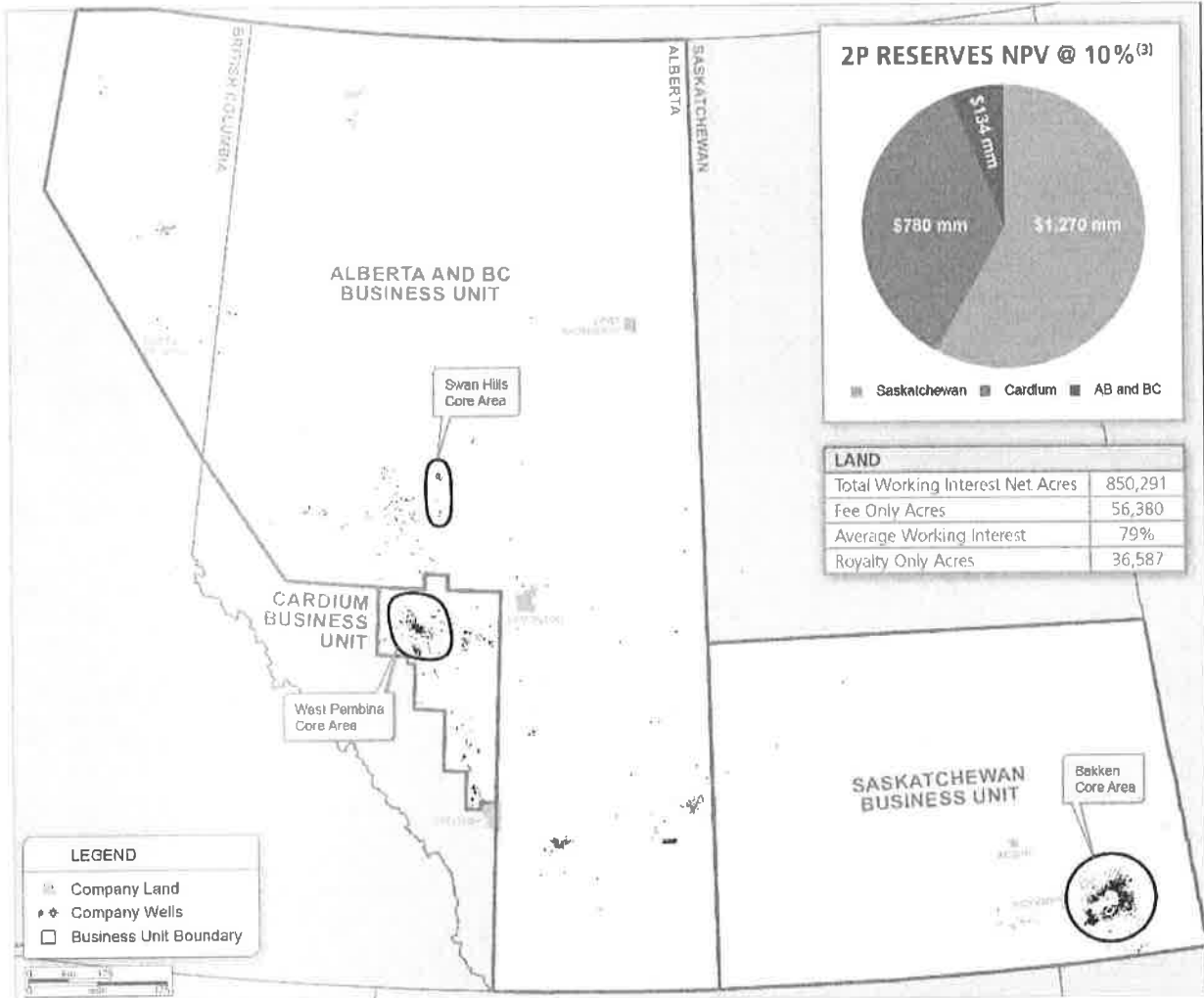
(3) Sproule December 31, 2015 Reserves Report, January 1, 2016 pricing per Sproule

(4) As of June 2016

Business Highlights

Production of 25,921 boe/d⁽¹⁾ concentrated in three oil and liquids-rich core assets results in high netbacks, predictable declines and strong support for over 1,500 booked and unbooked drilling locations.

OFFERING MAP



OFFERING SUMMARY

BUSINESS UNIT	TOTAL PRODUCTION ⁽¹⁾	OIL AND LIQUIDS SPLIT ⁽¹⁾	NET OPERATING INCOME ⁽²⁾	1P VOLUMES ⁽²⁾	2P VOLUMES ⁽²⁾	1P NPV10 ⁽²⁾	2P NPV10 ⁽²⁾
	(boe/d)	(%)	(\$mm)	(mmboe)	(mmboe)	(\$mm)	(\$mm)
Cardium	14,680	51%	28.7	45.7	66.2	582	780
Saskatchewan	9,355	93%	21.8	36.4	63.1	730	1,270
AB and BC	1,886	57%	-0.2	7.5	13.1	73	134
TOTAL	25,921	67%	50.3	89.6	142.4	1,385	2,184

(1) Average based on Lease Operating Statements Jan-May 2016

(2) Company actuals from Lease Operating Statements Jan-May 2016, average WTI price during period was US\$37.48/bbl

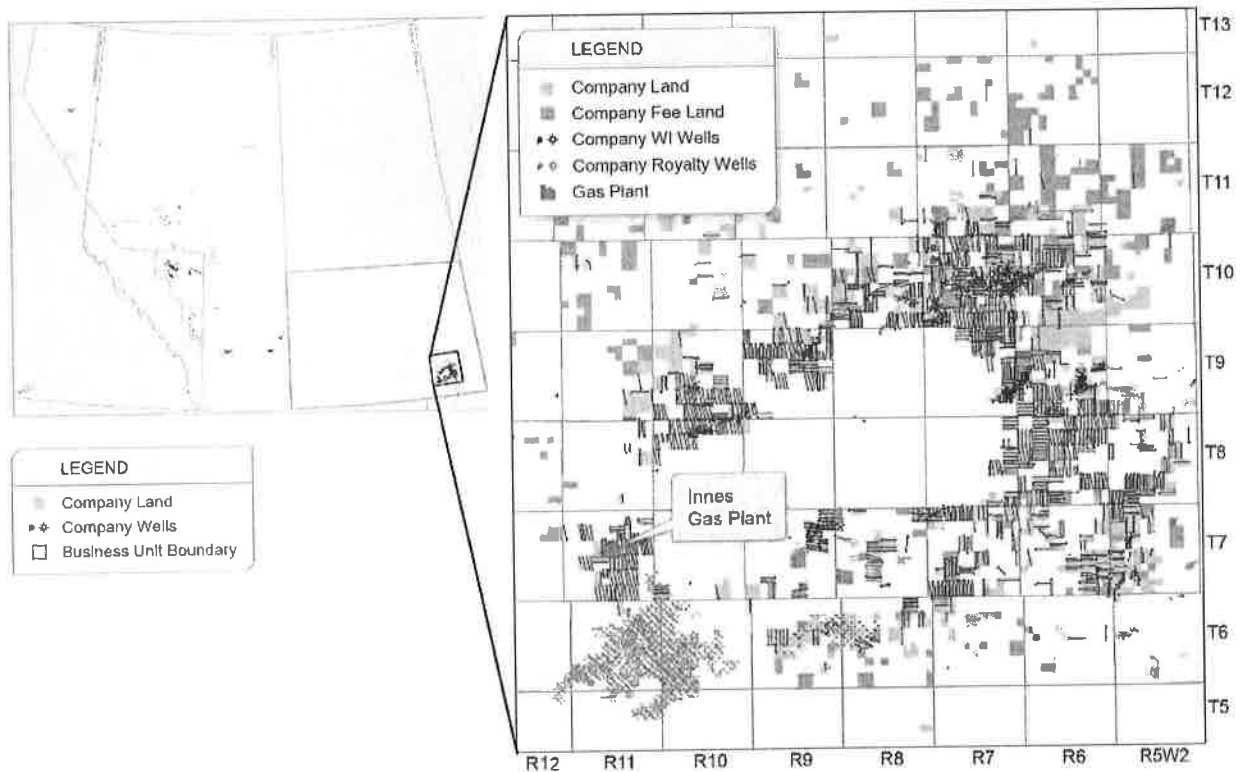
(3) Sproule December 31, 2015 Reserves Report, January 1, 2016 pricing per Sproule

Saskatchewan Business Unit Summary

- The Bakken zone is the core asset within the Saskatchewan Business Unit and is one of Canada's largest unconventional oil reservoirs with significant remaining recoverable volumes
- Significant, high-working interest position in 286,000 net acres of Contiguous Crown, Private Freehold, and Corporate Fee Title land
 - » Corporate Fee Title land of ~56,000 acres
- Lightstream's land position in the Bakken reservoir is estimated to contain an DPLP of 1.4 billion barrels with cumulative recovery of 2.9% (July 2016) across the lands
 - » Significant opportunity for EOR via both natural gas and water injection
- Additional low risk development and exploration upside provided by Mississippian prospects
- High netback of \$23.07/boe⁽¹⁾
 - » 42.1-45.4 °API Bakken light oil production of 7,841 boe/d⁽²⁾
 - » 30.2-33.0 °API Mississippian light oil production of 1,492 boe/d⁽²⁾
 - » 32 boe/d⁽²⁾ of royalty production
- 62.8 mmbob of 2P reserves (December 31, 2015)
- Total inventory of Bakken and Mississippian locations (booked and unbooked) of 805 and 209, respectively

BUSINESS UNIT	SASKATCHEWAN
PRODUCTION⁽³⁾	Jan-May 2016
Average Production	9,355 boe/d
Oil and NGLs	93%
FINANCIALS⁽³⁾	Jan-May 2016
Net Operating Income	\$21.8 mm
Capex	\$2.5 mm
Opex	\$15.95/boe
Free Cash Flow	\$19.3 mm
RESERVES	Sproule 31-Dec-15
2P NPV @10%	\$1,270 mm
2P Reserves Volumes	63,061 mboe
UPSIDE OPPORTUNITIES	
Undeveloped Land	146,097 net acres
Booked Locations	293 net
Unbooked Locations	721 net

BAKKEN CORE AREA MAP



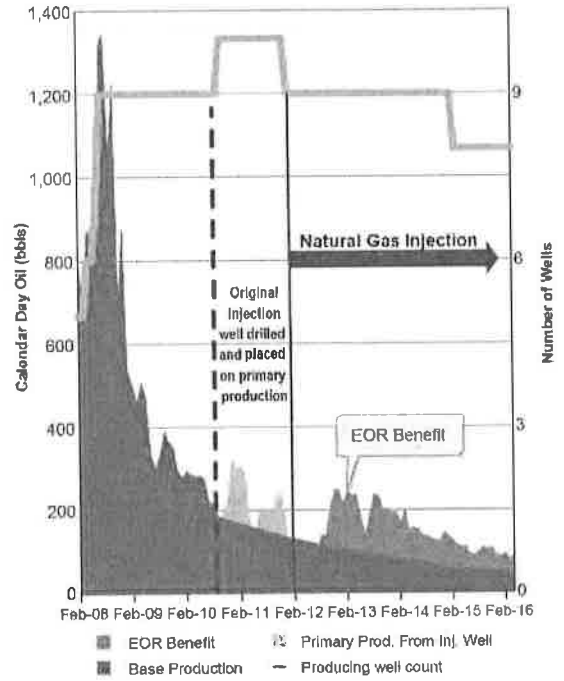
4 (1) Based on May 2016 Lease Operating Statement values
 (2) Average based on Company field estimate production
 (3) Average based on Company Lease Operating Statements Jan-May 2016



Saskatchewan Business Unit Opportunities

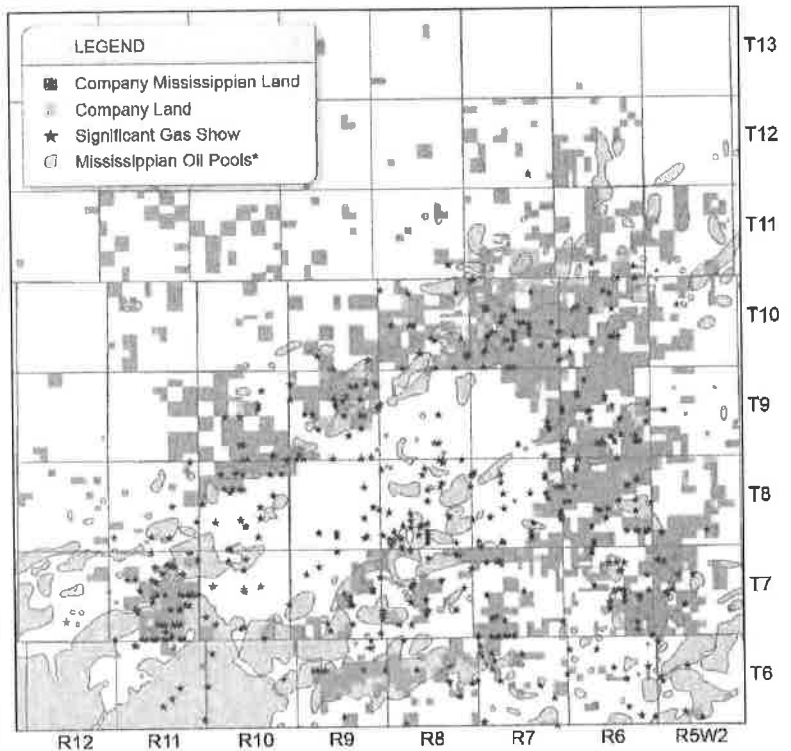
- Lightstream has developed the Bakken into an asset generating significant free cashflow with an extensive existing infrastructure and large inventory of infill, step-out and field extension locations
- Current inventory >800 Bakken drilling locations, Lightstream has also implemented two natural gas injection schemes, one at Creelman and one at Midale
 - » Patterns have demonstrated positive results and enhanced recovery since operations began in 2011
- EOR schemes are expected to increase the recovery factor to 15 – 25%
- Sproule recognizes a total of 622 mboe of remaining reserves for the 16-34 EOR pattern (December 31, 2015)
 - » EUR increased reserves by 32.5% due to secondary recovery (to-date)
- Majority of the Bakken landbase suitable for either natural gas or waterflooding efforts

EOR PERFORMANCE CHART (16-34 PATTERN)



MISSISSIPPIAN SIGNIFICANT GAS SHOWS MAP

- Mississippian hydrocarbon accumulations exist along the various subcrop edges of the formations and their sub-units, as well in structurally defined erosional highs
- Lightstream has developed a large database of Mississippian gas shows which, when combined with seismic, has significantly de-risked a large inventory of highly economic Mississippian drilling locations
 - » Drilling down to the Bakken provides a free look at the Mississippian horizon
- Current total Mississippian inventory of 209 locations
 - » Only 34 locations booked
- Creelman/Frobisher discovery at 101/09-35-008-10W2/00 key analog to further development



*Sherwin GeoEdges Inc.

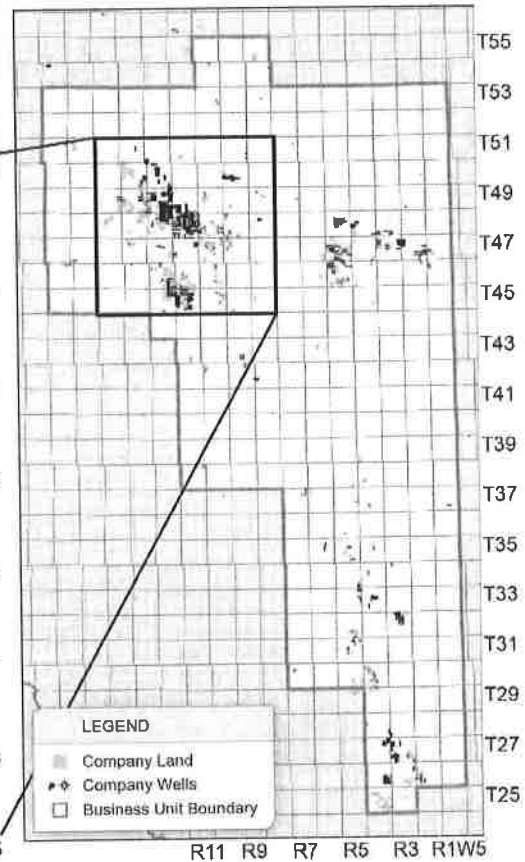
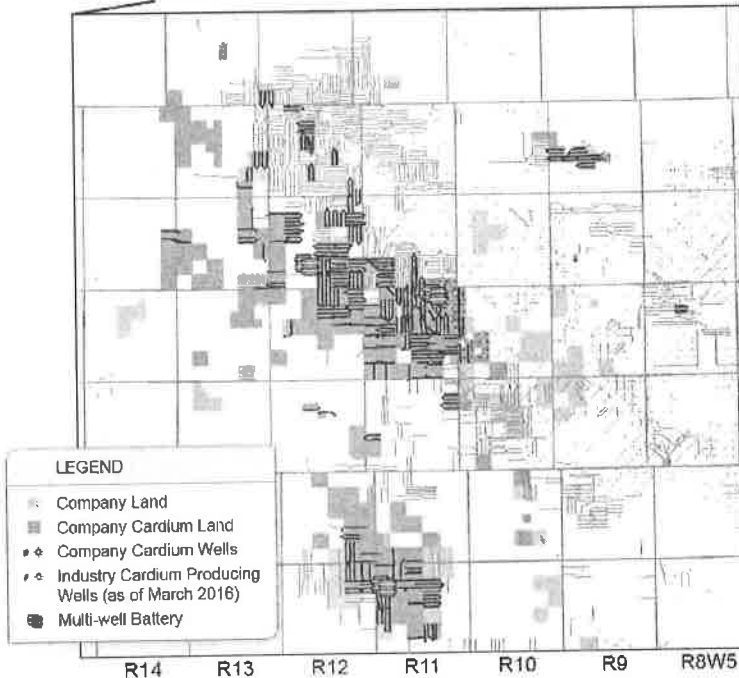


Cardium Business Unit Summary

- Predictable base production of 14,879 boe/d⁽¹⁾ declining at 14%
 - » Cardium Formation: 11,517 boe/d⁽¹⁾; 61% Oil and Liquids
 - » Falher/Notikewin Formations: 2,884 boe/d⁽¹⁾; 14% Oil and Liquids
- Attractive land base of ~183,000 net acres of land
 - » Largely concentrated in the West Pembina and Brazeau areas where horizontal drilling and multi-stage fracturing have unlocked additional reserves
 - » 152,468 net acres of Cardium Rights
 - » 31,504 net acres of Mannville Rights
- Minimal expiry concerns in the most prospective areas
- Almost 80% of the 2P reserves are concentrated in West Pembina and Brazeau
- Very attractive LMR of 5.0 due to recent nature of development
- Sufficient inventory available to achieve steady production of ~15,000 boe/d while generating free cash flow
 - » 430 booked, unbooked and contingent net locations targeting the Cardium (395) and Mannville (35) formations
- Recent Company activity has focused on the liquids-rich Mannville gas opportunities at Brazeau

BUSINESS UNIT	CARDIUM
PRODUCTION⁽²⁾	Jan-May 2016
Average Production	14,680 boe/d
Oil and NGLs	51%
FINANCIALS⁽²⁾	Jan-May 2016
Net Operating Income	\$28.7 mm
Capex	\$1.3 mm
Opex	\$9.05/boe
Free Cash Flow	\$27.4 mm
RESERVES	Sproule 31-Dec-15
2P NPV @10%	\$780 mm
2P Reserves Volumes	66,231 mboe
UPSIDE OPPORTUNITIES	
Undeveloped Land	77,053 net acres
Booked Locations	151 net
Unbooked Locations	279 net

WEST PEMBINA CORE AREA MAP

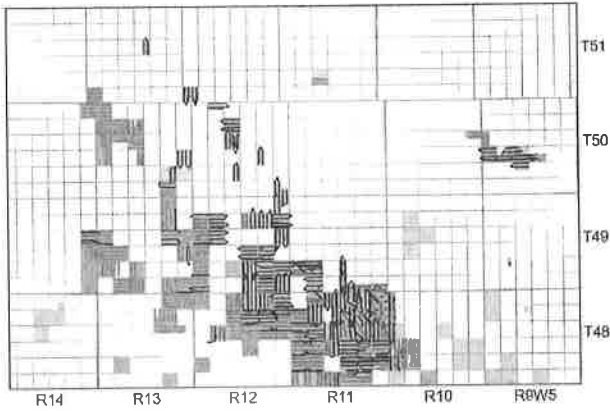


6 (1) Average based on Company field estimate production
 (2) Average based on Company Lease Operating Statements Jan-May 2016

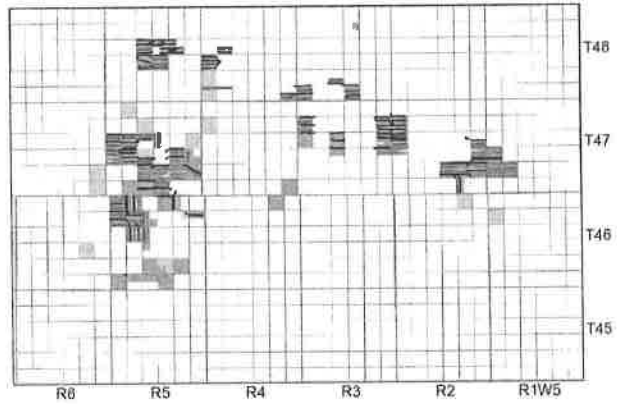


Cardium Formation Opportunities

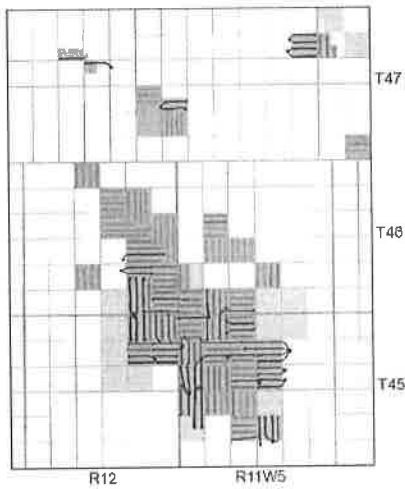
WEST PEMBINA



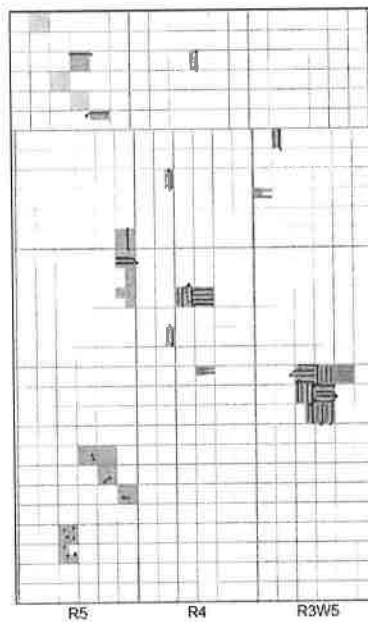
EAST PEMBINA



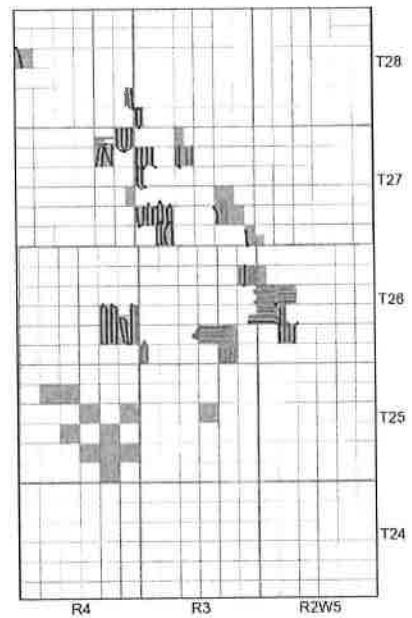
BRAZEAU



GARRINGTON



LOCHEND



LEGEND	
	Company Cardium Land
	Company Land
	Company Cardium Wells
	Booked Locations
	Unbooked Locations

CARDIUM LOCATION INVENTORY			
CORE AREA	BOOKED	UNBOOKED	CONTINGENT
West Pembina	66.9	89.3	15.3
East Pembina	75.4	42.2	8.8
Brazeau	42.0	48.3	11.9
Garrington	6.0	1.6	2.0
Lochend	8.9	14.9	9.3
Other	0.9	0.9	0.0
TOTAL	150.1	197.2	47.3

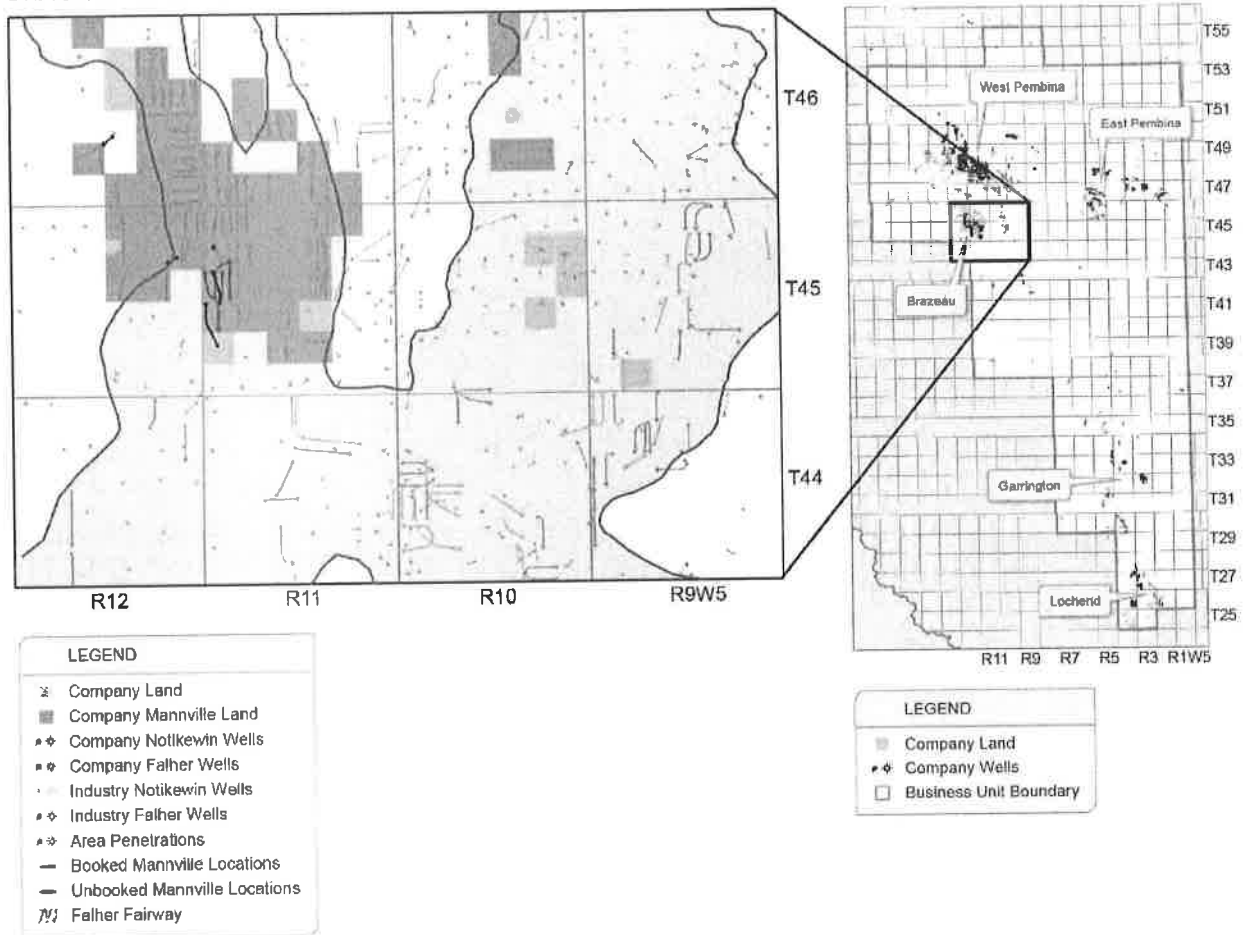
NEED TO KNOW

- Oil-weighted focused area currently being exploited with infills and step-out drilling
 - » 89% of Cardium inventory located in West Pembina, East Pembina and Brazeau
- Waterflood EUR implemented in July 2014
- Company operates key facilities and infrastructure

Other Cardium Business Unit Opportunities

- Existing Cardium infrastructure allows Mannville formations such as the Falher and Notikewin to be optimally developed
- Considerable Mannville (Falher/Notikewin) industry activity in the Brazeau region with 204 producing horizontal wells and current production of ~380 mmcfe/d
- Lightstream has 5.1 net wells on production and to date an inventory of ~35 net Mannville locations

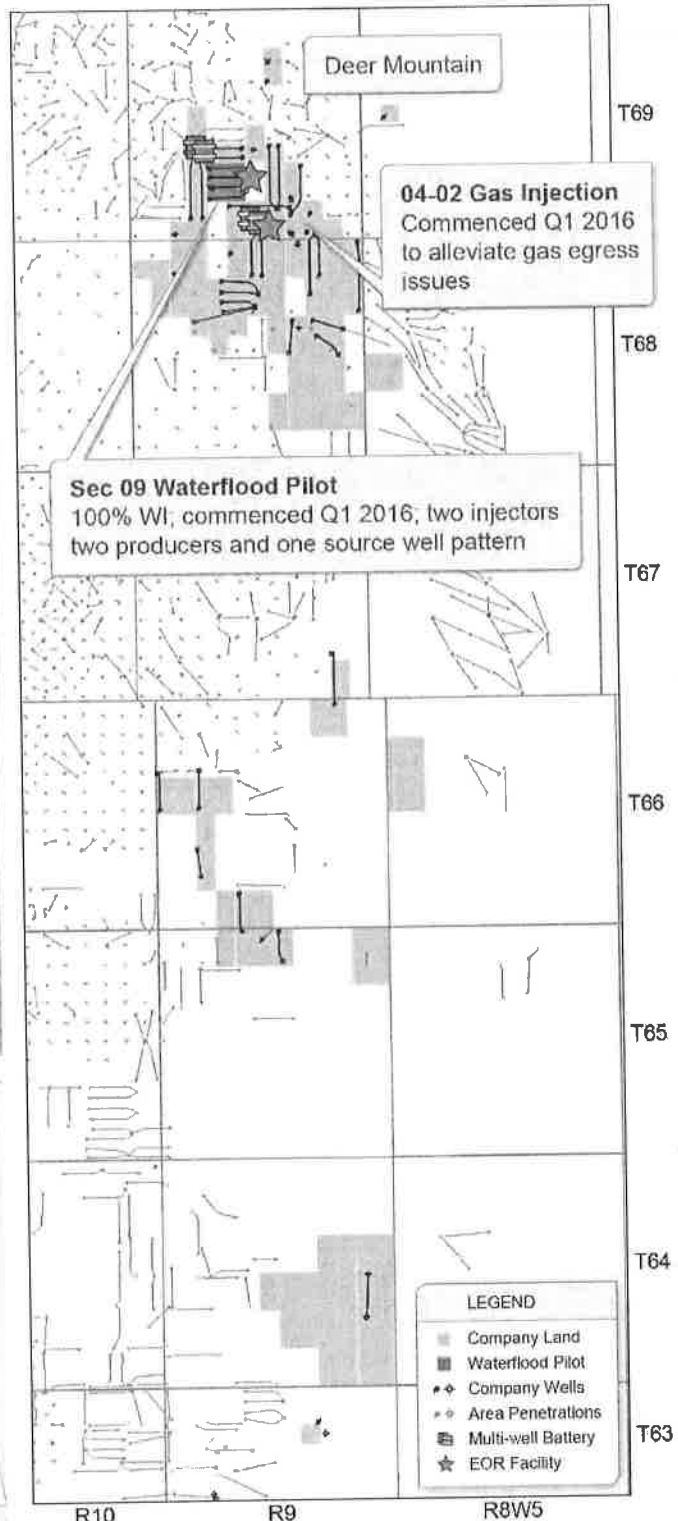
BRAZEAU CORE AREA MAP



Alberta and British Columbia Business Unit Summary

- The Alberta/BC Business Unit is comprised of the Swan Hills core asset and other legacy production from Southern Alberta and West Central Alberta and BC
- The Swan Hills region features high impact development and exploration upside with large DPIIP of ~8 mmbbl/section at Deer Mountain
- The Deer Mountain area also contains significant EOR potential due to proven projects in close proximity, LTS owned infrastructure and a high working interest
- 317 boe/d currently shut-in due to 3rd party gas system constraints
 - » Company is currently re-injecting solution gas to maintain oil production

SWAN HILLS CORE AREA MAP



BUSINESS UNIT	SWAN HILLS	OTHER AB/BC
PRODUCTION⁽¹⁾ Jan-May 2016		
Average Production	887 boe/d	1,000 boe/d
Oil and NGLs	96%	23%
FINANCIALS⁽¹⁾ Jan-May 2016		
Net Operating Income	\$1.9 mm	-\$2.1 mm
Capex	\$1.0 mm	\$1.4 mm
Opex	19.79/boe	\$26.12/boe
Free Cash Flow	\$0.9 mm	-\$3.5 mm
RESERVES Sproule 31-Dec-15		
2P NPV @10%	\$117 mm	\$17 mm
2P Reserves Volumes	9,999 mboe	3,131 mboe
UPSIDE OPPORTUNITIES		
Undeveloped Land	18,413 net acres	196,258 net acres
Booked Locations	99 net	2 net
Unbooked Locations	35 net	0 net



(1) Average based on Company Lease Operating Statements Jan-May 2016

Process and Contacts

Lightstream Resources Ltd. has engaged TD Securities to manage a process to divest the Company's entire Canadian asset portfolio. The Company is a light oil-focused Canadian exploration and production company with a diverse producing and resource portfolio. Although the offering is separated into three packages (Saskatchewan, Cardium, and Alberta/British Columbia) the Company's strong preference is to complete an en bloc transaction.

It is the intention of the Company and TD to conduct the Offering process such that it minimizes any disruption to the Company's operations. Interested Parties should not contact the Company directly regarding any aspect of the Offering.

A Confidentiality Agreement can be found on the TD Energy Advisors website www.tdenergyadvisors.com. Virtual data room access may be obtained upon executing and submitting a Confidentiality Agreement via email to the attention of Tom Hades (tom.hades@tdsecurities.com). All other inquiries, communications or additional information requests related to the Offering should be directed to one of the following individuals at TD Securities.

TD SECURITIES TD Canada Trust Tower Suite 3600, 421 - 7th Ave SW Calgary, AB T2P 4K9 Tel: 403-503-4848	
TD Energy Advisors	Investment Banking
Mark Kuhn Managing Director, Head of TD Energy Advisors T: 403 503 4852 mark.kuhn@tdsecurities.com	Greg Saksida Managing Director T: 403 292 1806 greg.saksida@tdsecurities.com
Ruben Contreras, P.Eng Director T: 403 503 4853 ruben.contreras@tdsecurities.com	Scott Barron Managing Director T: 403 292 1283 scott.barron@tdsecurities.com
Diego Cuba, P.Eng Associate T: 403 503 4859 diego.cuba@tdsecurities.com	Michael Charron Vice President T: 403 299 8505 michael.charron@tdsecurities.com

Timing

- Virtual Data Room: July 13, 2016
- Technical Presentations: Commencing week of July 20, 2016
- Indicative Offer to be Submitted: Week of September 19, 2016

Disclaimer

This document was prepared solely for informational purposes and is being provided to assist prospective purchasers in considering their interest in acquiring Lightstream Resources Ltd. ("Lightstream" or the "Company") and its subsidiaries. Lightstream has engaged TD Securities Inc. as its sole financial advisor in connection with this transaction. By accepting this document, the recipient acknowledges that it has read, understood and accepted the terms of this notice.

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Nothing in this document should be construed as giving legal, investment or other advice of any kind. The recipient should consult its own professional advisors as to legal, tax and related matters concerning an acquisition of Lightstream, its subsidiaries or any of their business assets. This document is intended only for persons reasonably believed to be sufficiently expert to understand the risks involved. The recipient should conduct its own investigation, analysis and evaluation of these assets. In particular, any estimates or projections or opinions contained herein necessarily involve significant elements of subjective judgment, analysis and assumption and each recipient should satisfy itself in relation to such matters.

The information in this document, which does not purport to be comprehensive and does not include all of the information that a prospective purchaser may require, has been provided by Lightstream and other sources and has not been independently verified by TD Securities. The information contained herein must be considered as a whole and selecting portions of the analyses without considering all of the factors and analyses together, could create a misleading view of the presentation. The preparation of a document such as this is complex and is not necessarily susceptible to partial analysis or summary description. Any attempt to do so could lead to undue emphasis on any particular factor or analysis.

This presentation may contain forward-looking information relating to capital expenditures, future drilling, economic predictions, drilling costs, production rates, cash flow, investment payouts, valuations and other matters. These statements relate to future events or future performance. Forward-looking statements are often, but not always, identified by the use of words such as "anticipate", "plan", "estimate", "expect", "forecast", "may", "project", "believe" and similar expressions. Forward-looking statements are based on the opinions and estimates of management at the date the statements are made, and are subject to a variety of risks and uncertainties and other factors that could cause actual events or results to differ materially from those anticipated in the forward-looking statements. Although Lightstream believes that the expectations are reasonable there can be no assurance that such expectations will prove to be correct. We cannot guarantee future results, level of activity, performance or achievements and there is no representation that the actual results achieved will be the same, in whole or in part, as those set out in the forward-looking statements. The forward-looking statements contained in this presentation are expressly qualified by this cautionary statement. The forward-looking statements made herein relate only to events or information as of the date on which the statements are made.

Disclaimer

In addition, certain disclosure in this presentation may constitute "anticipated results" for the purposes of National Instrument 51-101 of the Canadian Securities Administrators because the disclosure in question may, in the opinion of a reasonable person, indicate the potential value or quantities of resources attributable to assets. Anticipated results are subject to numerous risks and uncertainties, including various geotechnical, geological, technical, operational, engineering, commercial and technical risks. In addition, the geotechnical analysis and engineering to be conducted in respect of such assets is incomplete. Such risks and uncertainties may render some such assets uneconomic or may cause the anticipated results disclosed herein to be inaccurate.

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Lightstream reserves the right to: (i) negotiate with one or more persons at any time and to enter into a definitive purchase agreement without prior notice to the recipient or any other person; (ii) terminate further participation in the investigation and proposal process by any person; (iii) request the return of this document and any other Information provided to the recipient; and (iv) modify any procedures relating to this process without assigning any reason therefor. The issuance of this document shall not be taken as any form of commitment or obligation on the part of Lightstream or TD Securities to proceed with any transaction. In no circumstances will Lightstream be responsible for any costs, losses or expenses incurred in connection with any appraisal or investigation by you of Lightstream, its subsidiaries or their business assets.

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 - Regional Coverage

Global Energy & Power Group

- TD Energy Advisors (A&D)
- Current Mandates**
- Recent Transactions
- Energy Trading

Investment Banking > Industry Expertise > Global Energy & Power Group > TD Energy Advisors > Current Mandates

Current Mandates

- Subscribe to TD Energy Advisors Mailing List
- Visit Our Virtual Data Room



Bid Date: Week of September 19, 2016



Offering Map - [Zoom In](#)

Lightstream Resources Ltd. Corporate Offering

Total production of 25,921 boe/d
 - 67% Oil and Liquids
 - Low base decline rate of 23%
 Long-life reserves; significant oil-in-place with low current recovery factors
 - 142 mmboe of 2P reserves, almost 50% PDP
 - ~2.3 billion barrels of Discovered Petroleum-Initially-in-Place ("DPIIP")
 - Cardium Business Unit current recovery factor of 3.3%
 - Saskatchewan Business Unit current recovery factor of 2.9%
 Business provides compelling upside from large inventory of economic drilling locations and secondary recovery projects
 Strong environmental liability position
 - Alberta LMR: 3.22
 - Saskatchewan LMR: 3.47
 - BC LMR: 1.03

Documents

- [Teaser \(Best Printed Double Sided 8.5x11\)](#)
- [Confidentiality Agreement](#)

Key Contacts

- Mark Kuhn**
403 503 4852
- Ruben Contreras**
403 503 4853
- Scott Barron**
403 292 1283
- Michael Charron**
403 299 8505



Bid Date: TBD



Offering Map - [Zoom In](#)

Centrica CQ Energy Canada Partnership Offering

Diverse portfolio of long reserve-life producing assets
 - 353 mmcf/d net (Q1 2016 average), with an additional 50 mmcf/d behind pipe
 Operating cash flow for 2015 of \$150 million
 High working interest, predominantly operated facilities and infrastructure
 - Throughput capacity of over 600 mmcf/d
 - Associated pipelines and gathering network of approximately 12,850 km
 Vast acreage position of 2.34 million net acres
 Recoverable upside potential of greater than 5.3 tcf spanning long life, low decline dry gas in the Plains and Foothills areas through to a deep inventory of low risk, liquids-rich, overpressured gas in the Montney Formation
 Highly experienced, fully-staffed

Documents

- [Teaser \(Best Printed Double Sided 8.5x11\)](#)

Key Contacts

- Mark Kuhn**
403 503 4852
- Ruben Contreras**
403 503 4853
- Scott Barron**
403 292 1283
- Michael Charron**
403 299 8505

team with strong technical capabilities and established systems and processes

BONAVISTA
ENERGY CORPORATION

Bid Date: Post Bid



**Bonavista Energy Corporation
British Columbia Asset Offering**

Liquids-rich and overpressured Montney resource play
 - Core Montney land: >38,000 acres (97% WI; only 9 operated horizontal wells drilled)
 Significant operated land base
 - Total net land: >330,000 acres
 Majority operated, high working interest production of approximately 5,000 boe/d (30% oil & liquids) as of November 2015 field production estimate
 - Stable, low decline of 10%
 - Approximately 750 boe/d currently shut in
 Virtual data room opening in January 2016

Documents

- [Teaser \(Best Printed Double Sided 8.5x11\)](#)
- [Confidentiality Agreement](#)

Key Contacts

- Mark Kuhn**
403 503 4852
- David Leroux**
403 503 4858
- Kris Hokazono**
403 503 4856
- Michael Charron**
403 299 8505

PennWest

Bid Date: Post Bid



**Penn West Petroleum Ltd.
Western Canada Mineral Fee Title Land Rights and Third Party Royalty Interests Offering**

Annualized 2015 revenue stream of \$11.6 million
 Royalty production of approximately 840 boe/d YTD (69% oil & liquids) as of July 2015
 Top tier operators and diverse quality land base across the WCSB
 Significant Land Base
 - Fee Land: ~228,000 acres
 - Royalty Land: ~1.3 million acres

Documents

- [Teaser](#)
- [Confidentiality Agreement](#)

Key Contacts

- Mark Kuhn**
403 503 4852
- Ruben Contreras**
403 503 4853
- Robert Mason**
403 292 1282
- Taso Arvanitis**
403 299 8558

Schedule B

Existing Indebtedness

Lender	Outstanding Principal Amount and Individual Commitment Amount (Cdn \$)	Percentage	True-Up Payment Made or (Received) (Cdn\$)
The Toronto-Dominion Bank	43,267,412.61	11.6649%	21,182,334.45
The Bank of Nova Scotia	37,858,801.16	10.2067%	(2,447,521.04)
Royal Bank Of Canada	37,858,801.16	10.2067%	(2,447,521.04)
Canadian Imperial Bank of Commerce	35,801,890.61	9.6522%	(2,314,544.52)
Wells Fargo Bank N.A., Canadian Branch	26,050,269.67	7.0231%	(1,684,115.22)
Bank of America, N.A., Canada Branch	23,706,657.14	6.3913%	(1,532,603.79)
Credit Suisse AG, Toronto Branch	23,706,657.14	6.3913%	(1,532,603.79)
HSBC Bank Canada	20,965,071.21	5.6522%	(1,355,363.92)
Union Bank, Canada Branch	20,642,531.57	5.5652%	(1,334,512.16)
Caisse Centrale Desjardins	18,707,293.73	5.0435%	(1,209,401.61)
Alberta Treasury Branches	17,094,596.21	4.6087%	(1,105,142.86)
Sumitomo Mitsui Banking Corporation of Canada	14,514,279.76	3.9130%	(938,328.84)
Canadian Western Bank	13,224,121.87	3.5652%	(854,921.86)
United Overseas Bank Limited, Vancouver Branch	13,224,121.87	3.5652%	(854,921.86)
National Bank of Canada	12,364,015.94	3.3333%	(799,317.15)
Business Development Bank of Canada	11,933,963.31	3.2174%	(771,514.83)
<u>TOTAL:</u>	370,920,485.00	100.0000%	(0.00)

TAB 3

SECOND AMENDING AGREEMENT

THIS SECOND AMENDING AGREEMENT is dated as of the 5th day of August, 2016,

B E T W E E N:

LIGHTSTREAM RESOURCES LTD.
(the “Borrower”)

– and –

**1863359 ALBERTA LTD., LTS RESOURCES PARTNERSHIP,
1863360 ALBERTA LTD., AND BAKKEN RESOURCES PARTNERSHIP**
(together with the Borrower, the “Loan Parties” and each a “Loan Party”)

– and –

**THE TORONTO-DOMINION BANK,
ROYAL BANK OF CANADA,
THE BANK OF NOVA SCOTIA,
CANADIAN IMPERIAL BANK OF COMMERCE,
WELLS FARGO BANK N.A., CANADIAN BRANCH,
BANK OF AMERICA, N.A., CANADA BRANCH,
CREDIT SUISSE AG, TORONTO BRANCH,
HSBC BANK CANADA,
UNION BANK, CANADA BRANCH,
CAISSE CENTRALE DESJARDINS,
ALBERTA TREASURY BRANCHES,
SUMITOMO MITSUI BANKING CORPORATION OF CANADA,
CANADIAN WESTERN BANK,
UNITED OVERSEAS BANK LIMITED, VANCOUVER BRANCH,
NATIONAL BANK OF CANADA, and
BUSINESS DEVELOPMENT BANK OF CANADA**
(collectively, the “Lenders” and each a “Lender”)

– and –

THE TORONTO-DOMINION BANK
(the “Administrative Agent”)

RECITALS:

- A. The Loan Parties, Administrative Agent, and Lenders are parties to a forbearance agreement dated as of July 12, 2016, as amended by an amending agreement dated as of July 27, 2016 (collectively, the “**Forbearance Agreement**”).

- B. The Loan Parties have requested certain amendments to the Forbearance Agreement, including an extension of the Relief Period.
- C. The Lenders and Swap Lenders have agreed to the Loan Parties' request, subject to the terms and conditions set out herein.

NOW THEREFORE THIS SECOND AMENDING AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements contained in this Second Amending Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Defined Terms. In this Second Amending Agreement, unless something in the subject matter or context is inconsistent: (a) terms defined in the description of the parties or in the recitals have the respective meanings given to them in the description or recitals, as applicable; and (b) all other capitalized terms have the respective meanings given to them in the Forbearance Agreement.

1.2 Headings. The headings of the Articles and Sections of this Second Amending Agreement are inserted for convenience of reference only and shall not affect the construction or interpretation of this Second Amending Agreement.

ARTICLE 2 AMENDMENTS

2.1 Amendments to Forbearance Agreement. The Forbearance Agreement is hereby amended with effect as of August 2, 2016, as follows:

- (a) The date "August 5, 2016" in Sections 3(a)(ii) and 7(a)(xii) is deleted and replaced with the following date in both Sections: "August 12, 2016".
- (b) The date of "August 2, 2016" that appears two times in Section 3(g) (obtaining commitments regarding a new credit facility and provision of a plan of arrangement in form and substance satisfactory to the Lenders) is deleted and replaced in both places with "August 9, 2016".

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations. The Loan Parties represent and warrant to the Lenders that, as of the date hereof:

- (a) this Second Amending Agreement has been duly authorized, executed and delivered by the Loan Parties and the Forbearance Agreement as amended hereby constitutes a legal, valid and binding obligation of each Loan Party, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium

or other laws affecting creditor's rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law;

- (b) the representations and warranties of the Loan Parties set forth in the Forbearance Agreement are true and correct, except to the extent any such representation or warranty is made as of a specified date, in which case such representation or warranty shall have been true and correct as of such date;
- (c) the Loan Parties are in full compliance with the covenants in the Forbearance Agreement and Support Agreement and no Default or Event of Default has occurred and is continuing other than the Specified Events of Default; and
- (d) the SISP is ongoing and being conducted in accordance with the steps and timelines set out in the Forbearance Agreement and none of the Loan Parties have taken any steps to terminate or change the SISP.

ARTICLE 4 GENERAL

4.1 Acknowledgment and Agreement as to Process. The Loan Parties acknowledge and agree that, pursuant to the Support Agreement and the Forbearance Agreement, in the event that the CBCA Restructuring cannot be effected, a comparable transaction will be pursued pursuant to a CCAA proceeding, including potentially a Credit Bid Acquisition. No transaction shall be pursued or completed by the Loan Parties (including in a CCAA proceeding) that does not provide for the unconditional and irrevocable repayment in full in cash of the Obligations, without the written consent of the Lenders. If the CBCA Restructuring cannot be effected, the Loan Parties covenant that they shall seek a form of CCAA Initial Order that is satisfactory to the Lenders, including: (i) containing an express approval of a sales and investment process that is consistent with the SISP (including having the same milestones set out therein, except that to the extent a CCAA proceeding is commenced following the meeting of creditors in the CBCA Restructuring (expected to occur on September 13, 2016), that the deadline for the submission of indicative offers will be no less than 30 days following commencement of the CCAA proceeding); (ii) a declaration that the Obligations owing to the Lenders shall be unaffected by any plan of compromise or arrangement; (iii) providing for the payment of interest as and when required under the Credit Agreement; (iv) containing court-ordered charges that, to the extent such court-ordered charges rank in priority to or equal to the Security, are satisfactory to the Lenders in both amount and priority; and (v) approving a cash flow forecast that is satisfactory to the Lenders.

4.2 No Change in Restructuring Timeline. The Loan Parties acknowledge and agree that the entering into of this Second Amending Agreement and the extensions of time provided for herein will not delay, extend or otherwise impact on: (i) the SISP steps and timelines (including whether as presently being conducted or as may subsequently be conducted in CCAA proceedings); (ii) the steps and timelines for the completion of a CBCA Restructuring, Credit Bid Acquisition, or other transaction to be effected under the CCAA; or (iii) the Outside Date.

4.3 Effectiveness. This Second Amending Agreement shall become effective upon this Second Amending Agreement being executed and delivered by the Loan Parties and the Administrative Agent and approved by the Lenders in accordance with the Credit Agreement. Except as specifically stated herein, the Forbearance Agreement shall continue in full force and effect in accordance with the provisions hereof. As of the date hereof, any reference to the Forbearance Agreement shall refer to the Forbearance Agreement as amended hereby.

4.4 Binding Nature. This Second Amending Agreement shall enure to the benefit of and be binding upon the Loan Parties and Lenders and their respective successors and permitted assigns.

4.5 Conflicts. To the extent that there is any inconsistency or ambiguity between the provisions of this Second Amending Agreement and the Forbearance Agreement or any other Loan Document, the provisions of this Second Amending Agreement will govern to the extent necessary to eliminate such conflict, inconsistency or ambiguity.

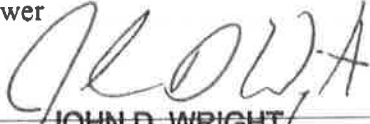
4.6 Governing Law. This Second Amending Agreement will be governed by and construed in accordance with the law in force in the Province of Alberta and the federal laws of Canada applicable therein, from time to time.

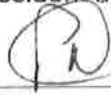
4.7 Execution. This Second Amending Agreement may be executed in any number of counterparts (including by facsimile transmission or other electronic transmission) and by different Parties in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same instrument.

[Signature pages follow]


IN WITNESS WHEREOF, the parties have entered into this Second Amending Agreement as of the date first above mentioned.


LIGHTSTREAM RESOURCES LTD.,
as Borrower

Per: 
Name: JOHN D. WRIGHT
Title: **President and Chief Executive Officer**


Per: 
Name: _____
Title: **Peter D. Scott
Senior Vice President
and CFO**


1863359 ALBERTA LTD., as Loan Party

Per: 
Name: JOHN D. WRIGHT
Title: **President and Chief Executive Officer**

Per: 
Name: _____
Title: **Peter D. Scott
Senior Vice President
and CFO**


LTS RESOURCES PARTNERSHIP, as
Loan Party, by its managing partner,
LIGHTSTREAM RESOURCES LTD.

Per: 
Name: JOHN D. WRIGHT
Title: **President and Chief Executive Officer**

Per: 
Name: _____
Title: **Peter D. Scott
Senior Vice President
and CFO**

1863360 ALBERTA LTD., as Loan Party

Per: 
Name: **JOHN D. WRIGHT**
Title: **President and Chief Executive Officer**

Per: 
Name: **Peter D. Scott**
Title: **Senior Vice President
and CFO**

**BAKKEN RESOURCES
PARTNERSHIP**, as Loan Party by its
managing partner, **LIGHTSTREAM
RESOURCES LTD.**

Per: 

Name: **JOHN D. WRIGHT**
Title: **President and Chief Executive Officer**

Per: 

Name: **Peter D. Scott**
Title: **Senior Vice President
and CFO**

THE TORONTO-DOMINION BANK,
as Administrative Agent

Per:  _____

Name: Andrew Ford
Title: Vice President, Loan Syndications-Agency

Per: _____

Name:
Title:

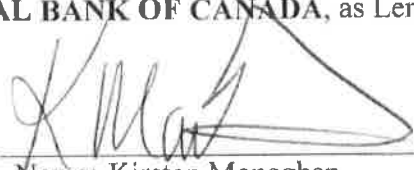
THE TORONTO-DOMINION BANK,
as Lender

Per: 
Name: **Clark Terriff**
Title: **Managing Director**

Per: 
Name: **Glen Cameron**
Title: **Director**

ROYAL BANK OF CANADA, as Lender

Per:



Name: Kirsten Monaghan

Title: Senior Director

Per:

Name:

Title:

**THE BANK OF NOVA SCOTIA, as
Lender**

Per: _____

Name:

Clare Horan

Title:

Senior Manager

Per: _____

Name:

Neel Chopra

Title:

Director

**CANADIAN IMPERIAL BANK OF
COMMERCE, as Lender**

Per: 

Name: **SUPRIYA SARIN**
Title: **Senior Director**

Per: 

Name: **DOUG BROWN**
Title: **Vice-President & Deputy**

**WELLS FARGO BANK N.A.,
CANADIAN BRANCH, as Lender**

Per: _____
Name: **DAN LINDQUIST**
Title: **Managing Director**

Per: _____
Name:
Title:

**BANK OF AMERICA, N.A., CANADA
BRANCH, as Lender**

Per: 

Name:

Title:

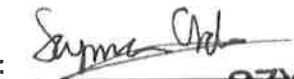
**Marc Ahlers
Vice President**

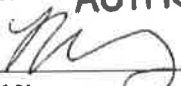
Per: _____

Name:


Title:

**CREDIT SUISSE AG, TORONTO
BRANCH, as Lender**

Per: 
Name: **SZYMON ORDYS**
Title: **AUTHORIZED SIGNATORY**


Per: 
Name: **Tammy Oldenburg**
Title: **Authorized Signatory**

HSBC BANK CANADA, as Lender

Per: 
Name: Natalie Coates
Title: AVP Loan Management Unit

Per: 
Name: Paul Irving
Title: VP Loan Management Unit

**UNION BANK, CANADA BRANCH, as
Lender**


Per: 
Name: Beau Filkowski
Title: Vice President

Per: _____
Name:
Title:

**CAISSE CENTRALE DESJARDINS, as
Lender**

Per:

Name:
Title:



PIERRE PELLETIER
VICE PRESIDENT

Per:

Name:
Title:

ALBERTA TREASURY BRANCHES,
as Lender

Per: 
Name: *Rick Miller*
Title: *Director*

Per: 
Name: _____
Title: **Simon Briggs**
Senior Associate Director

**SUMITOMO MITSUI BANKING
CORPORATION OF CANADA, as
Lender**

Per: _____

Name:


Alfred Lee

Title:


Managing Director


Per: _____

Name:

Title:

**CANADIAN WESTERN BANK, as
Lender**

Per: 
Name: _____
Title: **Kuno Ryckborst
Senior Manager,
Energy & Corporate Banking**

Per: 
Name: _____
Title: **Arden Buskell
AVP & Manager, Energy Lending
& Corporate Banking**

**UNITED OVERSEAS BANK
LIMITED, VANCOUVER BRANCH, as
Lender**

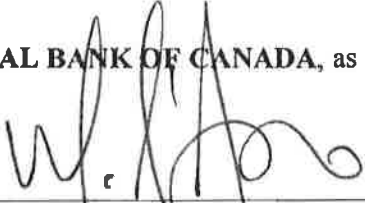


Per: _____
Name: John Gleason
Title: ED and GM

Per: _____
Name:
Title:

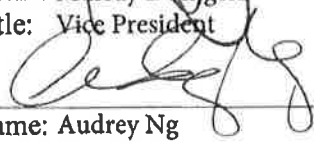
**NATIONAL BANK OF CANADA, as
Lender**

Per:



Name: Murray D. Angelo
Title: Vice President

Per:



Name: Audrey Ng
Title: Associate

**BUSINESS DEVELOPMENT BANK
OF CANADA, as Lender**

Per:



Name: DEREK CHURCH

Title: DIRECTOR, BUSINESS RESTRUCTURING

Per:



Name: Russell French

Title: AUP, BRU

TAB 4

SECOND FORBEARANCE AGREEMENT

BETWEEN

LIGHTSTREAM RESOURCES LTD.
as Borrower

– and –

**1863359 ALBERTA LTD., LTS RESOURCES PARTNERSHIP,
1863360 ALBERTA LTD., AND BAKKEN RESOURCES PARTNERSHIP**
as Loan Parties

– and –

**THE TORONTO-DOMINION BANK,
ROYAL BANK OF CANADA,
THE BANK OF NOVA SCOTIA,
CANADIAN IMPERIAL BANK OF COMMERCE,
WELLS FARGO BANK N.A., CANADIAN BRANCH,
BANK OF AMERICA, N.A., CANADA BRANCH,
CREDIT SUISSE AG, TORONTO BRANCH,
HSBC BANK CANADA,
UNION BANK, CANADA BRANCH,
CAISSE CENTRALE DESJARDINS,
ALBERTA TREASURY BRANCHES,
SUMITOMO MITSUI BANKING CORPORATION OF CANADA,
CANADIAN WESTERN BANK,
UNITED OVERSEAS BANK LIMITED, VANCOUVER BRANCH,
NATIONAL BANK OF CANADA, and
BUSINESS DEVELOPMENT BANK OF CANADA**
as Lenders

– and –

THE TORONTO-DOMINION BANK
as Administrative Agent

September 15, 2016

SECOND FORBEARANCE AGREEMENT

THIS AGREEMENT is made as of the 15th day of September, 2016 (the “**Effective Date**”),

B E T W E N:

LIGHTSTREAM RESOURCES LTD.
(the “**Borrower**”)

– and –

**1863359 ALBERTA LTD., LTS RESOURCES PARTNERSHIP,
1863360 ALBERTA LTD., AND BAKKEN RESOURCES PARTNERSHIP**
(together with the Borrower, the “**Loan Parties**” and each a “**Loan Party**”)

– and –

**THE TORONTO-DOMINION BANK,
ROYAL BANK OF CANADA,
THE BANK OF NOVA SCOTIA,
CANADIAN IMPERIAL BANK OF COMMERCE,
WELLS FARGO BANK N.A., CANADIAN BRANCH,
BANK OF AMERICA, N.A., CANADA BRANCH,
CREDIT SUISSE AG, TORONTO BRANCH,
HSBC BANK CANADA,
UNION BANK, CANADA BRANCH,
CAISSE CENTRALE DESJARDINS,
ALBERTA TREASURY BRANCHES,
SUMITOMO MITSUI BANKING CORPORATION OF CANADA,
CANADIAN WESTERN BANK,
UNITED OVERSEAS BANK LIMITED, VANCOUVER BRANCH,
NATIONAL BANK OF CANADA, and
BUSINESS DEVELOPMENT BANK OF CANADA**
(collectively, the “**Lenders**” and each a “**Lender**”)

– and –

THE TORONTO-DOMINION BANK
(the “**Administrative Agent**”)

RECITALS:

- A. The Borrower, Administrative Agent and Lenders, among others, have entered into a third amended and restated credit agreement dated as of May 29, 2015, as amended by: (i) a consent and first amending agreement dated as of June 30, 2015; and (ii) a second

amending agreement dated as of December 2, 2015 (collectively, the "**Credit Agreement**").

- B. The Borrower has issued: (i) US \$650 million of 9.875% second lien secured notes due June 15, 2019 (the "**Secured Notes**") pursuant to a note indenture dated July 2, 2015 (the "**Secured Note Indenture**"); and (ii) US \$254 million of 8.625% senior unsecured notes due February 1, 2020 (the "**Unsecured Notes**") pursuant to a note indenture dated January 30, 2012 (the "**Unsecured Note Indenture**").
- C. The Borrower did not cure on July 15, 2016, a required interest payment due June 15, 2016, under the Secured Notes, which is an event of default under the Secured Note Indenture, which, pursuant to Section 16.1(h) of the Credit Agreement, constitutes an Event of Default (the "**Secured Note Indenture Cross Event of Default**"), and an event of default under the Unsecured Note Indenture, which, pursuant to Section 16.1(i) of the Credit Agreement constitutes a further Event of Default (the "**Unsecured Note Indenture Cross Event of Default**").
- D. The Borrower and certain holders of Secured Notes holding not less than 90% of the aggregate amount of the obligations outstanding under the Secured Notes (collectively, the "**Supporting Secured Noteholders**") have entered into a support agreement dated July 12, 2016 (as amended and restated by an amended and restated support agreement dated August 26, 2016, and as may be further amended, supplemented, re-enacted or replaced from time to time but only to the extent permitted hereunder, the "**Support Agreement**"), the entry of which constituted an Event of Default pursuant to Section 16.1(g) of the Credit Agreement (the "**Support Agreement Event of Default**").
- E. Pursuant to the Support Agreement, the Supporting Secured Noteholders agreed to: (i) support the CBCA Plan (as defined below), subject to the conditions in the Support Agreement, and (ii) if the requisite votes are not obtained to implement the CBCA Plan, credit bid their debt or propose an alternate transaction structure acceptable to the Supporting Secured Noteholders and the Borrower, each acting reasonably, to acquire substantially all of the assets of the Borrower pursuant to a transaction under the CCAA with a closing date no later than December 31, 2016, and a replacement credit facility would be arranged to repay in full in cash all of the Obligations upon the closing of such acquisition (the "**Credit Bid Acquisition**"), as set forth in the Support Agreement.
- F. The Borrower's commencement of proceedings under the CBCA on July 12, 2016 (the "**CBCA Restructuring**"), constitutes an Event of Default pursuant to Section 16.1(g) of the Credit Agreement (the "**CBCA Event of Default**"). If the Borrower commences proceedings under the CCAA, there would be another Event of Default under Section 16.1(g) of the Credit Agreement (the "**CCAA Event of Default**").
- G. The Borrower's failure to eliminate the Borrowing Base Shortfall by July 28, 2016, constitutes an Event of Default pursuant to Section 16.1(s) of the Credit Agreement (the "**Borrowing Base Shortfall Event of Default**").

- H. The Borrower did not pay on August 2, 2016, a required interest payment under the Unsecured Note Indenture and which was not made within the 30-day cure period under the Unsecured Note Indenture, which constitutes an event of default thereunder, which is an Event of Default pursuant to Section 16.1(i) of the Credit Agreement (the “**Unsecured Note Payment Event of Default**”, and together with the Secured Note Indenture Cross Event of Default, the Unsecured Note Indenture Cross Event of Default, the Support Agreement Event of Default, the CBCA Event of Default, any CCAA Event of Default, and the Borrowing Base Shortfall Event of Default, the “**Specified Events of Default**”).
- I. On July 12, 2016, the Loan Parties, Administrative Agent and Lenders entered into a forbearance agreement (the “**First Forbearance Agreement**”), pursuant to which, *inter alia*, the Lenders agreed to the Loan Parties’ request that they forbear from exercising certain of their rights and remedies during the relief period set out therein in respect of the Secured Note Indenture Cross Event of Default, the Unsecured Note Indenture Cross Event of Default, the Support Agreement Event of Default and the CBCA Event of Default.
- J. In accordance with the First Forbearance Agreement and the Support Agreement, the Loan Parties commenced a sales and investment solicitation process (the “**SISP**”) that is presently continuing and that will be continued in the event of a CCAA Restructuring, as defined below, and which SISP presently includes and shall continue to include in the event of a CCAA Restructuring the steps and timelines set forth in Schedule “A” hereto.
- K. On July 27, 2016, the Loan Parties, Administrative Agent and Lenders entered into an amending agreement to the First Forbearance Agreement pursuant to which, *inter alia*, the relief period under the First Forbearance Agreement was extended at the request of the Loan Parties and the Lenders agreed to the Loan Parties’ request that they forbear from exercising certain of their rights and remedies during the relief period in respect of the Borrowing Base Shortfall Event of Default, and the Administrative Agent and the Lenders exercised their rights under Section 16.3(e) of the Credit Agreement to “true-up” the outstanding Aggregate Principal Amounts between the Operating Facility and the Syndicated Facility.
- L. On August 5, 2016, the Loan Parties, Administrative Agent and Lenders entered into a second amending agreement to the First Forbearance Agreement pursuant to which, *inter alia*, the relief period under the First Forbearance Agreement was further extended at the request of the Loan Parties and the Lenders agreed to the Loan Parties’ request that they forbear from exercising certain of their rights and remedies during such relief period.
- M. On August 9, 2016, the First Forbearance Agreement terminated in accordance with its terms as a result of the failure of the Loan Parties to meet the requirement thereunder to have obtained commitments regarding a new credit facility, satisfactory to the Lenders, by not later than August 9, 2016, which was an Additional Event of Default as defined in the First Forbearance Agreement. Since that time, the Lenders have not taken any steps to enforce their rights and remedies, whether under the Credit Agreement or otherwise, but have not waived, and have otherwise reserved, all such rights and remedies.

- N. The Loan Parties have received a revolving facility commitment letter dated August 26, 2016, from certain lenders, which provides for a new revolving credit facility with an aggregate commitment of \$400 million, the proceeds of which will be used to indefeasibly pay the Obligations and to fund certain capital expenditures and operating costs of the Loan Parties (the "**Commitment Letter**"), which Commitment Letter is satisfactory to the Lenders in its current form.
- O. As part of the CBCA Restructuring, the Borrower will receive additional cash proceeds of approximately US\$38.5 million from an offering of US\$39.3 million aggregate principal amount (issued with an original cash issue discount of 2%) of new 12% second lien secured notes of the Borrower due 2020 (the "**Second Lien Noteholder Commitment**").
- P. The Borrower is presently pursuing the CBCA Restructuring, which involves a proposed plan of arrangement (the "**CBCA Plan**") under the CBCA pursuant to which all of the Secured Notes and Unsecured Notes are converted into equity of the Borrower and all liens and guarantees in respect of either of them have been released and discharged, accompanied by the repayment in full. If the CBCA Plan fails to be approved, the Borrower intends to commence proceedings under the CCAA (the "**CCAA Restructuring**") to implement a transaction that will close by not later than December 31, 2016, and provide for the indefeasible repayment in full, in cash, of the Obligations and the cancellation of all credit facilities under the Credit Agreement, whether pursuant to the CCAA Plan or otherwise. Under the Support Agreement, the Supporting Secured Noteholders agreed to proceed with the Credit Bid Acquisition, which may be used as a stalking horse bid in the Borrower's SISP.
- Q. The Borrower has requested that the Lenders agree to forbear in the Relief Period (as defined below) from exercising their rights and remedies in respect of the Specified Events of Default and Swap Documents Cross Events of Default (as defined below) and in response thereto the Lenders have agreed to provide the interim relief set out herein, to provide the Borrower with sufficient time in which to pursue and implement the CBCA Plan or a CCAA Restructuring.
- R. As a result of the Specified Events of Default, events of default have occurred under the Swap Documents (collectively, the "**Swap Documents Cross Events of Default**") with the Swap Lenders and the obligations thereunder, absent this Agreement, would be crystallized upon termination resulting in Swap Indebtedness owing by the Borrower to the Swap Lenders. The Borrower has requested that the Swap Lenders similarly agree to forbear in the Relief Period.
- S. The Lenders and Swap Lenders are willing to forbear from exercising certain of their rights and remedies in respect of the Specified Events of Default and Swap Documents Cross Events of Default during the Relief Period, on the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements between the Parties contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Interpretation**

(a) Credit Agreement Definitions

Each capitalized term used and not otherwise defined in this Agreement shall have the meaning given to it in the Credit Agreement.

(b) Other Definitions

In this Agreement the following terms have the following meanings:

- (i) “**Additional Event of Default**” is defined in Section 7(a).
- (ii) “**Administrative Agent**” is defined in the Recitals hereto.
- (iii) “**Agreement**” means this agreement, including all Schedules, as it may be supplemented or amended by written agreement between the Parties.
- (iv) “**BIA**” means the *Bankruptcy and Insolvency Act* (Canada).
- (v) “**Borrower**” is defined in the Recitals hereto.
- (vi) “**Borrower Financial Advisors**” means Evercore Capital L.L.C. and TD Securities Inc. in their capacities as financial and asset sale advisors to the Borrower.
- (vii) “**Borrowing Base Shortfall Event of Default**” is defined in the Recitals hereto.
- (viii) “**Cash Collateralized LCs**” means each Existing LC that has an expiry date or auto-renewal date on or prior to December 31, 2016.
- (ix) “**Cashflow Forecast**” is defined in Section 6(vi).
- (x) “**CBCA**” means the *Canada Business Corporations Act* (Canada).
- (xi) “**CBCA Event of Default**” is defined in the Recitals hereto.
- (xii) “**CBCA Interim Order**” means the interim order sought in respect of the commencement of the CBCA Restructuring and granted by the Alberta Court of Queen’s Bench on August 5, 2016, and as amended on August 29, 2016.
- (xiii) “**CBCA Plan**” is defined in the Recitals hereto.

- (xiv) “**CBCA Restructuring**” is defined in the Recitals hereto.
- (xv) “**Claims**” is defined in Section 4.
- (xvi) “**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada).
- (xvii) “**CCAA Event of Default**” is defined in the Recitals hereto.
- (xviii) “**CCAA Plan**” is defined in Section 3(g).
- (xix) “**CCAA Restructuring**” is defined in the Recitals hereto.
- (xx) “**Commitment Letter**” is defined in the Recitals hereto.
- (xxi) “**Credit Agreement**” is defined in the Recitals hereto.
- (xxii) “**Credit Bid Acquisition**” is defined in the Recitals hereto.
- (xxiii) “**DIP**” is defined in Section 3(j)(vii).
- (xxiv) “**Effective Date**” is defined in the Recitals hereto, and which shall also be the date on which the conditions to the effectiveness of this Agreement in Section 6 are satisfied.
- (xxv) “**Existing LCs**” is defined in Section 2(a)(viii).
- (xxvi) “**Existing Indebtedness**” is defined in Section 2(a)(viii).
- (xxvii) “**First Forbearance Agreement**” is defined in the Recitals hereto.
- (xxviii) “**Forbearance Fee**” is defined in Section 3(i).
- (xxix) “**Intercreditor Agreement**” means the Intercreditor and Priority Agreement dated as of July 2, 2015 among the Administrative Agent, Computershare Trust Company of Canada, as Second Lien Representative, and the Loan Parties.
- (xxx) “**LC Cash Collateral**” means the cash deposited by the Borrower to the Administrative Agent as collateral security for contingent obligations in connection with the Cash Collateralized LCs in accordance with Section 10.12 of the Credit Agreement.
- (xxxii) “**Lender**” and “**Lenders**” is defined in the Recitals hereto.
- (xxxiii) “**Lender Financial Advisor**” is defined in Section 3(d).
- (xxxiiii) “**Loan Party**” and “**Loan Parties**” is defined in the Recitals hereto.
- (xxxv) “**Outside Date**” is defined in Section 3(a).

- (xxxv) **“Parties”** means the Lenders, Swap Lenders, Administrative Agent and the Borrower, collectively, and **“Party”** means any one of them.
 - (xxxvi) **“Releasees”** is defined in Section 4.
 - (xxxvii) **“Releasers”** is defined in Section 4.
 - (xxxviii) **“Relief Period”** is defined in Section 3(a).
 - (xxxix) **“Second Lien Noteholder Commitment”** is defined in the Recitals hereto.
 - (xl) **“Secured Note Indenture”** is defined in the Recitals hereto.
 - (xli) **“Secured Note Indenture Cross Event of Default”** is defined in the Recitals hereto.
 - (xlii) **“Secured Notes”** is defined in the Recitals hereto.
 - (xliii) **“SISP”** is defined in the Recitals hereto.
 - (xliv) **“Specified Events of Default”** is defined in the Recitals hereto.
 - (xlv) **“Support Agreement”** is defined in the Recitals hereto.
 - (xlvi) **“Support Agreement Event of Default”** is defined in the Recitals hereto.
 - (xlvii) **“Supporting Secured Noteholders”** is defined in the Recitals hereto.
 - (xlviii) **“Swap Documents Cross Events of Default”** is defined in the Recitals hereto.
 - (xlix) **“Unsecured Note Indenture”** is defined in the Recitals hereto.
 - (l) **“Unsecured Note Indenture Cross Event of Default”** is defined in the Recitals hereto.
 - (li) **“Unsecured Note Payment Event of Default”** is defined in the Recitals hereto.
 - (lii) **“Unsecured Notes”** is defined in the Recitals hereto.
- (c) Rules of Interpretation
- (A) Number and Gender. In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word

“including” in this Agreement is to be construed as meaning “including, without limitation”.

- (B) Headings. Headings, subheadings and any table of contents or index contained in this Agreement are inserted for convenience of reference only, and will not affect the construction or interpretation of the Agreement.
- (C) Subdivisions. Unless otherwise expressly stated, reference herein to a Schedule or to an Article, Section, paragraph or other subdivision is a reference to such Schedule to this Agreement, or such Article, Section, paragraph or other subdivision of this Agreement.
- (D) Time. Time is and will be of the essence of this Agreement. Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends. If the last day of the time period is not a Banking Day, the time period will end on the next Banking Day.
- (E) Statutes, Regulations and Rules. Unless otherwise expressly stated, any reference in this Agreement to any applicable Law is and will be a reference to that applicable Law as amended, supplemented, re-enacted or replaced from time to time, and, in the case of a statute, shall include all regulations and rules in force and effect in respect of such statute.
- (F) Monetary References. Whenever an amount of money is referred to herein, such amount will, unless otherwise expressly stated, be in Canadian Dollars.
- (G) Consent of the Lenders. Whenever the term “satisfactory to the Lenders” or “acceptable to the Lenders” or “consent of the Lenders” is used herein, the threshold for such satisfaction, acceptance or consent shall be determined in accordance with the terms of the Credit Agreement.

(d) Schedules

The following is a list of the Schedules to this Agreement:

- Schedule “A” – SISP
- Schedule “B” – Existing Indebtedness and Existing LCs

2. Acknowledgments

(a) Acknowledgments of the Borrower

The Borrower acknowledges, confirms, represents, warrants, covenants, and agrees that:

- (i) each of the Recitals set out above is true and correct in all material respects, and that such Recitals form an essential part of this Agreement upon which the Lenders are relying;
- (ii) except for the CCAA Event of Default (which has not yet occurred), the Specified Events of Default have occurred and are continuing during the Relief Period, and are each an Event of Default under the Credit Agreement and other Loan Documents that entitles the Lenders to immediately exercise their rights and remedies under the Credit Agreement and the other Loan Documents and enforce Security in respect thereof and under applicable Law;
- (iii) except for the CCAA Event of Default (which has not yet occurred), the Swap Documents Cross Events of Default have occurred and are continuing during the Relief Period, and are each an event of default under the Swap Documents that entitles the Swap Lenders to exercise their rights and remedies under the Swap Documents and enforce security in respect thereof and under applicable Law, all in accordance with the terms of the Credit Agreement;
- (iv) no Default or Event of Default under the Credit Agreement exists other than the Specified Events of Default, and no default or event of default under the Swap Documents exists other than the Swap Documents Cross Events of Default;
- (v) the Lenders have not waived the Specified Events of Default and the Swap Lenders have not waived the Swap Documents Cross Events of Default, and nothing contained in this Agreement or the transactions contemplated by this Agreement is or will be deemed to constitute any such waiver;
- (vi) the Credit Agreement, the Security, the other Loan Documents, the Swap Documents, the Obligations, the Existing Indebtedness and the Swap Indebtedness constitute legal, valid and binding obligations of the Loan Parties, enforceable against them in accordance with their respective terms, and the Lenders have and shall continue to have valid, enforceable and perfected first priority Liens created pursuant to the Security, subject only to Liens expressly permitted in the Loan Documents and as may have otherwise been agreed to in writing by the Lenders;

- (vii) to the knowledge of the Borrower, the Security has been properly perfected and registered, as the case may be, in all applicable jurisdictions;
- (viii) as of the Effective Date, the Aggregate Principal Amount owing is \$370,920,485.00, together with the accrued interest, fees, costs, expenses and other charges now payable by the Borrower to the Lenders in accordance with the Credit Agreement and this Agreement, as set out in Schedule "B" (including the Letters of Credit which remain outstanding under the Credit Agreement as of the date hereof as outlined in Schedule "B" (the "Existing LCs")), plus the Swap Indebtedness and all other Obligations owing by the Borrower (collectively, the "Existing Indebtedness");
- (ix) as of the Effective Date, the aggregate amount of the Cash Collateralized LCs is approximately \$8.3 million, for which \$561,600.00 in LC Cash Collateral has been provided;
- (x) the Existing Indebtedness is unconditionally owing by the Borrower to the Lenders, without any valid claim for set-off, counterclaim, damages or any other defence of any kind, nature or description whatsoever;
- (xi) absent this Agreement, the Lenders are otherwise entitled to immediately accelerate and demand full payment of the Existing Indebtedness;
- (xii) the Loan Parties do not have any Claims of any kind whatsoever against the Lenders, or any of its employees, advisors, officers, directors, affiliates or representatives;
- (xiii) further interest, fees, costs, expenses and other charges shall continue to accrue and be incurred on and in respect of the Existing Indebtedness in accordance with the Credit Agreement, the other Loan Documents, the Swap Documents and this Agreement in the applicable amounts and at the applicable rates set out therein and herein;
- (xiv) subject to applicable Law and the relief granted by the Lenders and Swap Lenders hereunder, the Lenders and Swap Lenders are and will be entitled to the rights, remedies and benefits provided for in the Loan Documents, the Swap Documents, this Agreement and under applicable Law;
- (xv) the Lenders and Swap Lenders have informed the Loan Parties that they have conditionally agreed to forbear from exercising their rights and remedies under the Credit Agreement and the Swap Documents in respect of the Specified Events of Default and the Swap Documents Cross Events of Default, respectively, only because the Parties have agreed to the terms and conditions stated in this Agreement;

- (xvi) the SISP has been commenced and is being conducted in accordance with the steps, timelines and details set out in Schedule "A" hereto;
- (xvii) based on the advice of the Borrower Financial Advisors, whether conducted in a CBCA proceeding, CCAA proceeding or otherwise, the SISP is commercially reasonable in all respects (including the proposed length thereof and the steps to be taken and the SISP milestones as shown in Schedule "A"), and permits the Borrower to canvass thoroughly the market with a view to the best interests of the Borrower and its stakeholders, and that the Lenders are relying on this in entering into this Agreement;
- (xviii) a Borrowing Base Shortfall occurred as set forth in the notice delivered by the Administrative Agent to the Borrower dated April 29, 2016, and is continuing. Pursuant to Section 16.1(s) of the Credit Agreement, the failure to eliminate the Borrowing Base Shortfall by July 28, 2016, was an Event of Default; and
- (xix) as a result of the Specified Events of Default, including the Borrowing Base Shortfall, the Borrower is not entitled to any Drawdown under the Credit Agreement, and nothing in this Agreement alters or suspends this or otherwise affects any of the Lenders' rights or remedies in respect of the Specified Events of Default.

(b) Acknowledgments of the Loan Parties

Each of the Loan Parties acknowledges, confirms and agrees that it accepts and does not and will not contest or dispute the validity, truth and accuracy of the acknowledgements, confirmations, representations, warranties, covenants, and agreements of the Borrower set out in Section 2(a) above. Each Loan Party represents and warrants that it does not possess any knowledge that the Borrower's acknowledgements, confirmations, representations, warranties, covenants, and agreements set out in Section 2(a) above are or may be incorrect or incomplete in any way.

(c) Acknowledgement of Lenders

Notwithstanding any provision of the Intercreditor Agreement, including without limitation the Standstill Period (as defined in the Intercreditor Agreement), the Lenders hereby acknowledge and agree that the Supporting Secured Noteholders may immediately pursue the Credit Bid Acquisition in any CCAA proceedings, as contemplated by the Support Agreement and this Agreement, and in accordance with the terms of this Agreement, the Support Agreement and section 6.2 of the Intercreditor Agreement.

3. Relief

(a) Forbearance of Further Enforcement Action

In reliance upon the acknowledgments, confirmations, representations, warranties, covenants and agreements of the Loan Parties contained in this Agreement, and subject to the terms and conditions of this Agreement and any documents or instruments executed in connection herewith, the Lenders agree to forbear from exercising their rights and remedies under the Loan Documents and/or applicable Laws arising solely from any Specified Events of Default, including the Swap Lenders and their right to terminate any of the Swap Documents or their obligations thereunder solely because of the Swap Documents Cross Events of Default, for the period (such period being referred to herein as the “**Relief Period**”) commencing on the Effective Date and ending on the earlier of:

- (i) indefeasible repayment in full, in cash of the Obligations, and the cancellation of all credit facilities under the Credit Agreement;
 - (ii) 2:00 p.m. (Calgary time) on October 31, 2016, unless (A) implementation of the CBCA Plan is delayed beyond this date solely due to requisite approvals under the *Investment Canada Act* (Canada) and/or *Competition Act* (Canada), in which case the applicable date shall be 2:00 p.m. (Calgary time) on November 30, 2016 or (B) the Borrower has commenced proceedings under the CCAA, in which case the applicable date shall be 2:00 p.m. (Calgary time) on December 31, 2016; and
 - (iii) the occurrence or existence of an Additional Event of Default,
- (such earlier date being the “**Outside Date**”).

Effective immediately on the Outside Date (except in the case of the occurrence of item (i) above), the agreement of the Lenders and Swap Lenders to forbear from exercising their rights and remedies as set forth herein shall automatically and without further notice, demand or any other requirement by the Lenders made to the Borrower expire and be of no further force and effect (but, for certainty, this Agreement shall not terminate and shall remain in full force and effect), it being expressly agreed that the effect of such expiration will be to permit the Lenders and Swap Lenders to exercise, without further notice or demand, their rights and remedies immediately, including, without limitation, applying to a court of competent jurisdiction to enforce any private or other remedies available to the Lenders or Swap Lenders or to seek the appointment, subject to applicable Law, of any permanent or interim receiver or receiver and manager or any trustee in bankruptcy under the BIA as against the Loan Parties, or to privately appoint a receiver and manager or receiver against the Loan Parties. The Outside Date may only be extended with the written consent of the Lenders.

(b) No Other Waivers and Reservation of Rights

No waiver or indulgence by the Lenders or Swap Lenders of any of their rights and remedies hereunder, or under the Credit Agreement, Swap Documents, the Security, other

Loan Documents or applicable Law shall be construed as a waiver of any other or subsequent right or remedy of the Lenders or Swap Lenders, and no delay or omission in the exercise or enforcement by the Lenders or Swap Lenders of their rights and remedies hereunder, under the Credit Agreement, Swap Documents the Security, other Loan Documents or applicable Law shall be construed as a waiver of any right or remedy of the Lenders or the Swap Lenders, and they, subject to Section 4, reserve all rights, claims and remedies that they have or may have against the Loan Parties hereunder or under the Credit Agreement, Swap Documents, the Security, the other Loan Documents or applicable Law. Without limiting the foregoing:

- (i) the Lenders and Swap Lenders have not waived, and are not by this Agreement waiving, and have no intention of waiving, any Default or Event of Default (including the Specified Events of Default or the Swap Documents Cross Events of Default) that exist or may be continuing on the Effective Date or any Additional Event of Default (whether the same as or similar to the Specified Events of Default or otherwise); and
- (ii) subject to Section 3(a) of this Agreement, the Lenders and Swap Lenders reserve the right, in their sole discretion, to exercise any or all of their rights or remedies under any of the Loan Documents or applicable Law as a result of the Specified Events of Default, Swap Documents Cross Events of Default, or any Additional Events of Default, and the Lenders have not waived any such rights or remedies.

(c) Tolling

As of the date hereof and continuing until 30 days following the Outside Date, and whether or not demand for payment or a notice of intention to enforce security has previously been delivered by the Administrative Agent or the Lenders to the Borrower, the Parties hereby agree to toll and suspend the running of the applicable statutes of limitations, laches or other doctrines related to the passage of time in relation to the Existing Indebtedness, the Loan Documents (including the Security), the Swap Documents, and any rights, remedies or benefits arising from the Loan Documents, the Swap Documents and any other related matters, and each of the Parties confirms that this Agreement is intended to be an agreement to suspend or extend the limitation period provided by Section 3(1)(a) of the *Limitations Act* (Alberta), as well as the limitation period provided by Section 3(1)(b) of the *Limitations Act* (Alberta), in accordance with the provisions of Section 7(1) of the *Limitations Act* (Alberta), and any contractual time limitation on the commencement of proceedings, any claims or defenses based upon any applicable statute of limitations, contractual limitations, or any time related doctrine including waiver, acquiescence or laches.

(d) Lender Financial Advisor

The Loan Parties acknowledge that PricewaterhouseCoopers Inc. has been engaged as a financial advisor (the "**Lender Financial Advisor**") to assist the Lenders in the evaluation of the Borrower's financial information, asset or business valuations, forecasts and reporting as well as evaluating the CBCA Restructuring, SISP, potential CCAA restructuring,

financings (including DIP/debtor-in-possession financings), equity infusions, take-overs, or other restructuring proposals or proposed corporate transactions. The Borrower shall give full access to the Lenders and/or the Lender Financial Advisor to its management, properties, projects, systems and books and records and will pay for the reasonable fees and disbursements of the Lender Financial Advisor in accordance with the engagement letter with PricewaterhouseCoopers Inc. dated June 28, 2016.

(e) Interest

During the Relief Period, interest will continue to accrue and be payable to the Lenders on the Obligations at the default rate provided in the Credit Agreement.

(f) Reporting

During the Relief Period, and without limiting any reporting obligations of the Loan Parties under the Loan Documents, the Borrower shall promptly upon request provide to the Administrative Agent and the Lender Financial Advisor timely, complete and accurate information regarding the Loan Parties and their property, assets, affairs, activities and developments, including, without limitation:

- (A) on the 15th calendar day and last calendar day of each month (unless, in each case, such day is not a Banking Day, in which case, the next Banking Day), a comparison report of actual versus forecast results and a material variance analysis against the Cashflow Forecast, which report shall be in form and substance satisfactory to the Administrative Agent, acting reasonably, and shall be provided to the Administrative Agent by not later than 5:00 p.m. (Calgary time) on the applicable day for the bi-monthly period ending on such day, starting on Monday, September 15, 2016, in respect of the period from September 1, 2016 to September 15, 2016 inclusive;
- (B) detailed updates on the status and progress of the CBCA Restructuring and any CCAA Restructuring (including any proposed debt financing commitment and the preparation of definitive documentation in connection therewith, and the status of negotiations of the CBCA Restructuring and any CCAA Restructuring with stakeholders), on a weekly basis and, in any case, promptly upon the request of the Administrative Agent or its counsel or the Lender Financial Advisor;
- (C) the Borrower shall provide the Lender Financial Advisor and counsel to the Administrative Agent, with access to the Borrower's financial advisors who are assisting with the SISP and shall provide the Lender Financial Advisor and counsel to the Administrative Agent with updates on the status and progress of the SISP on a weekly basis and, in any case, promptly upon request

of the Lender Financial Advisor or counsel to the Administrative Agent, as follows:

(i) a list of any new parties signing non-disclosure agreements or that have been given access to the data room in the past week;

(ii) any material written or oral communication between each potential investor or purchaser and the Borrower or Borrower Financial Advisors, including with respect to:

- 1) indications of interest or changes thereto (including contemplated structure, sources of financing, timeline, and other relevant matters);
- 2) withdrawal of participation in the SISP;
- 3) feedback after any site visit; and
- 4) potential investors or purchasers or their representatives attending site visits or participating in management meetings or communications with the Borrower or the Borrower Financial Advisors; and

(iii) forthwith upon receipt of same by the Borrower and in any event not later than one (1) Banking Day following receipt of same by the Borrower: a copy of any bid, offer, term sheet, proposal or agreement (whether binding or non-binding), process letter, correspondence and other documents with respect to the SISP or any proposed purchase and sale of all or any part of any Loan Party's assets out of the ordinary course or any recapitalization, refinancing, restructuring or similar transaction and any material notices related thereto,

provided that: (i) the Lender Financial Advisor and counsel to the Administrative Agent, shall maintain the confidentiality of, and not provide to the Administrative Agent or any other Lender any such information in respect of the SISP; and (ii) but, for greater certainty, the Lender Financial Advisor and counsel to the Administrative Agent may report to the Administrative Agent and other Lenders in generic or non-specific terms that maintains the confidentiality of such information, including expressing any views or opinions that they have formed upon receiving and reviewing the information in question, and from and after the commencement of any CCAA Restructuring, the Lender Financial Advisor and counsel to the Administrative Agent may disclose to any Lender which has executed a separate confidentiality agreement satisfactory to the Borrower (acting reasonably) any of the information provided pursuant to this paragraph (f)(C)(iii);

- (D) forthwith upon receipt of same by the Borrower and in any event not later than one (1) Banking Day following receipt of same by the Borrower: a copy of any notice received by any Loan Party in which any creditor, landlord or other Person delivers a notice of default, demand, claim, acceleration, termination, or enforcement, or any threat or statement of intention to do any of the foregoing, in respect of any alleged or actual claim or obligation of any Loan Party, in an amount in excess of \$1,000,000, including, for certainty, any builders' liens or construction liens placed on the assets of any Loan Party;
- (E) immediate notice of any material adverse change after the date hereof in the business, assets or financial condition of any of the Loan Parties, or the occurrence of any Default, Event of Default, Additional Event of Default or any event that with notice or lapse of time or both would constitute an Event of Default or Additional Event of Default; and
- (F) all other information that is requested by the Administrative Agent or the Lender Financial Advisor from time to time, acting reasonably.

(g) CBCA Restructuring and SISP

At all times following the Effective Date, the Borrower shall conduct and advance the CBCA Restructuring in accordance with this Agreement and the Support Agreement and the timelines set forth herein and therein. The Borrower will not amend, supplement, re-enact or replace the Support Agreement without the consent of the Lenders provided that such consent is only required to the extent such amendment, supplement, re-enactment or replacement is adverse to the Lenders. Without limitation: (i) a meeting of affected persons to vote on the CBCA Plan shall have occurred by not later than September 30, 2016; (ii) the granting of a CBCA Final Order approving the CBCA Plan, in form and substance satisfactory to the Lenders (acting reasonably), shall have occurred by not later than October 7, 2016; (iii) the CBCA Plan shall be implemented by not later than October 31, 2016 (save and except that if implementation is delayed beyond this date solely due to requisite approvals under the *Investment Canada Act* (Canada) and/or *Competition Act* (Canada), then implementation shall occur by not later than November 30, 2016; and (iv) the CCAA Restructuring, including any plan of arrangement under the CCAA (a "CCAA Plan") or CCAA sale transaction, shall be implemented by not later than December 31, 2016. The Borrower shall provide the Lenders with a copy of all draft CBCA Restructuring, CCAA Restructuring or SISP documents substantially contemporaneously with distribution to the holders of Secured Notes pursuant to the Support Agreement.

At all times following the Effective Date, the Borrower shall conduct and advance the SISP with the objective of, among other things, soliciting, exploring, assessing and negotiating possible transactions for: (i) capital investments in the Borrower's business or any part thereof; (ii) joint venture or partnership opportunities; and/or (iii) the sale of the Loan Parties or their assets or any part thereof, in each case with a view to unconditionally and

irrevocably repaying in full in cash all of the Obligations. No transaction shall be pursued or completed by the Borrower that does not provide for the unconditional and irrevocable repayment in full in cash of the Obligations, without the written consent of the Lenders. The Lender Financial Advisor shall be provided access to any physical or electronic data room that will be established in connection with the CBCA Restructuring, any CCAA Restructuring, Credit Bid Acquisition, SISP, or any proposed debt financing commitment. Each transaction proposal accepted by the Borrower pursuant to the Credit Bid Acquisition, SISP, or otherwise, must be acceptable to the Lenders, but shall be deemed to be acceptable to the Lenders if: (i) it provides for the unconditional and irrevocable repayment of the Obligations in full in cash; (ii) such repayment in full shall occur on or before (A) the implementation date of the CBCA Plan and in any event by not later than October 31, 2016 (save and except that if implementation is delayed beyond this date solely due to requisite approvals under the *Investment Canada Act* (Canada) and/or *Competition Act* (Canada), then implementation shall occur by not later than November 30, 2016), or (B) on or before the completion of the CCAA Restructuring, including the implementation date of any CCAA Plan or closing date of any CCAA sale transaction, and in any event not later than December 31, 2016; and (iii) the closing of such transaction is not subject to conditions precedent that are not acceptable to the Lenders, acting reasonably.

The Borrower shall from time to time at the Administrative Agent's or Lender Financial Advisor's request promptly cause its respective management and legal and financial advisors, including the Borrower Financial Advisors and any chief restructuring officer appointed, to make themselves available for any discussions or to provide any information reasonably required by the Administrative Agent or the Lender Financial Advisor. The Borrower shall provide, or cause to be provided to, the Lender Financial Advisor and Torys LLP, in its capacity as counsel to the Lenders, with information as to the process of the SISP, the CBCA Restructuring or the CCAA Restructuring, that either such party may reasonably request. In addition, the Borrower: (a) shall provide, or cause to be provided to, the Lender Financial Advisor with access to any data room that is set up in relation to the SISP, (b) shall provide the Lenders with the same level of information and documents related to the SISP, CBCA Restructuring, and CCAA Restructuring as it provides to holders of Secured Notes or Unsecured Notes; and (c) shall provide the Lender Financial Advisor and Torys LLP with the same information and documents related to the SISP, CBCA Restructuring, and CCAA Restructuring as it provides to any advisor, consultant, representative or counsel of the Secured Notes or the Unsecured Notes.

(h) Acknowledgment and Agreement as to Process.

The Loan Parties acknowledge and agree that, pursuant to the Support Agreement and this Agreement, in the event that the CBCA Restructuring cannot be effected, a sale transaction will be pursued pursuant to a CCAA proceeding. No transaction shall be pursued or completed by the Loan Parties in a CCAA proceeding that does not provide for the unconditional and irrevocable repayment in full in cash of the Obligations, without the written consent of the Lenders. If the CBCA Restructuring cannot be effected, the Loan Parties covenant that they shall seek a form of CCAA Initial Order that is satisfactory to the Lenders, acting reasonably, including: (i) containing an express approval of a sales and investment process that is consistent with the SISP (including having the same steps and timelines set out therein, except that to the extent that a CCAA proceeding is commenced following the meeting of creditors in the CBCA

Restructuring (expected to occur not later than September 30, 2016), the deadline for the submission of indicative offers will be no more than 30 days following commencement of the CCAA proceeding); (ii) a declaration that the Obligations owing to the Lenders shall be unaffected by any plan of compromise or arrangement; (iii) providing for the payment of interest as and when required under the Credit Agreement; (iv) containing court-ordered charges that, to the extent such court-ordered charges rank in priority to or are *pari passu* with the Security, are satisfactory to the Lenders in both amount and priority; and (v) approving a cash flow forecast that is satisfactory to the Lenders.

(i) Forbearance Fee

The Borrower shall pay to the Administrative Agent, on behalf of the Lenders, a non-refundable fee (the "**Forbearance Fee**") to compensate such Lenders for the additional time incurred and to be incurred, and the costs and risks borne and to be borne, in connection with the forbearance contemplated herein and in monitoring the ongoing affairs of the Borrower, as follows: (i) \$150,000 to be paid on the Effective Date; and (ii) \$175,000 to be paid earlier of (A) the implementation date of the CBCA Plan, and (B) the date immediately prior to the date of commencement of any CCAA Proceeding, to be paid to the Lenders, to be divided proportionally based upon their Individual Commitment Amounts. The Forbearance Fee is in addition to all other fees, interest, costs and expenses payable in connection with the Loan Documents, and may be charged by the Administrative Agent to any account of the Borrower maintained by the Administrative Agent. The fees will be fully earned by the Agent on the date hereof despite any failure by any Party to comply with any other term of this Agreement.

(j) Additional Agreements

The Borrower agrees to the following, and the Credit Agreement is hereby amended accordingly irrespective of whether the Relief Period terminates or not:

- (i) Adherence to Agreements. During the Relief Period, the Borrower shall strictly adhere to all of the terms, conditions and covenants of this Agreement, the Loan Documents and the Swap Documents, including, without limitation, terms requiring prompt payment of principal, interest, fees and other amounts when due, except to the extent that such terms, conditions and covenants are otherwise specifically amended by this Agreement.
- (ii) Corporate Status. The Loan Parties shall maintain their respective existence as valid and subsisting corporations or partnerships, as applicable, except for the continuance and amalgamation of the Borrower as contemplated under the CBCA Plan.
- (iii) Public Disclosure Obligations. The Borrower shall comply with all of its public disclosure obligations.
- (iv) Spending Restrictions. During the Relief Period, the Borrower shall not: (i) make any material acquisitions or investments; (ii) engage in any new hedging activities; (iii) consensually create any further Liens,

provided that, subject to the Second Lien Note Intercreditor Agreement, any steps taken for or on behalf of the holders of Secured Notes necessary to ensure that their existing security is valid and perfected, including the filing of additional liens and fixed charges to perfect such existing security shall be permitted; (iv) make or provide any capital contributions or financial assistance to third parties; (v) make any discretionary bonus payments to any management or employees; (vi) make any expenditures except in accordance with the Cashflow Forecast, subject to a negative variance not to exceed 15% in the aggregate on a cumulative basis (as tested on a bi-monthly basis), without the prior written consent of the Lenders, but excluding expenditures relating to required payments by the Borrower during the Relief Period pursuant to independent operator notices and any required reimbursement of professional and advisory expenses incurred during the Relief Period; or (vii) make any payment to or in respect of Secured Note Indenture or Unsecured Note Indenture, or the holders of the Secured Notes or the Unsecured Notes, including any payment of fees or expenses of the indenture trustee or the holders of Secured Notes or the Unsecured Notes, or their respective advisors, unless and until the Obligations have been repaid in full. Notwithstanding the foregoing, the Loan Parties may pay the fees and expenses of the ad hoc committee of holders of Secured Notes in accordance with the Cashflow Forecast.

- (v) Operation of Business. Notwithstanding anything else in the Loan Documents, the Loan Parties shall not, other than in the ordinary course of business and consistent with past practice, incur or enter into any new material liability or obligation, of any nature or kind, during the Relief Period, except in accordance with the CBCA Restructuring, any CCAA Restructuring or SISP, without the prior consent of the Lenders.
- (vi) Liens. The Borrower shall remain current in the payment of any obligations to its employees and governmental obligations (including all taxes and the remittance of all source deductions and sales taxes for which any of the Loan Parties is responsible) or any other payable or other secured claim that is capable of ranking in priority to or *pari passu* with the Obligations.
- (vii) Right of First Refusal regarding DIP Financing and Insolvency Proceeding. To the extent the Borrower receives any solicited or unsolicited offer(s) from any party other than the Lenders regarding a debtor-in-possession financing (“DIP”), the Borrower shall provide such offer to the Lenders on the same Banking Day such offer is received, and the Lenders are hereby granted a right of first refusal over any such offer(s), which may be exercised by the Lenders within five (5) Banking Days of receiving such offer.

- (viii) Bank Accounts. The Borrower will not, and will not permit any other Loan Party to, establish or maintain any operating accounts, deposit accounts or other bank or securities accounts with any financial institution except the Administrative Agent.
- (ix) Cash Collateralization of Letters of Credit. The Borrower shall provide LC Cash Collateral for all of the Cash Collateralized LCs (except the Cash Collateralized LCs for which LC Cash Collateral has already been provided, as acknowledged in Section 2(a)(ix)) from existing cash on hand in the face amount of each applicable Cash Collateralized LC as follows: (i) \$2,700,000 on the Effective Date; and (ii) the balance on September 26, 2016, and such LC Cash Collateral will be held and applied in accordance with Section 10.12 of the Credit Agreement. This cash collateral arrangement shall be effected by the Agent restricting the applicable amounts from the Borrower's cash on hand without further notice or instruction. The Loan Parties agree to take all such further actions or execute all such further documents that may be reasonably requested by the Administrative Agent to give effect to the foregoing.
- (x) Notices to Agent. The notice information for the Agent in Section 20.1(b) of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

(i) For Drawdowns, Rollovers, Conversions and Repayments:

The Toronto-Dominion Bank, as Agent
Ernst & Young Tower
222 Bay Street, 15th Floor
Toronto, Ontario M5K 1A2
Attention: Vice President, Loan Syndications-Agency
Fax: (416) 982-5535
E-mail: tdsagencyadmin@tdsecurities.com

(ii) For all other notices:

The Toronto-Dominion Bank, as Agent
TD Bank Tower
66 Wellington Street West, 9th Floor
Toronto, Ontario M5K 1A2
Attention: Vice President, Loan Syndications-Agency
E-mail: Andrew.Ford@tdsecurities.com

4. General Release / Covenant Not To Sue

In consideration of, among other things, the Administrative Agent's and Lenders' execution and delivery of this Agreement, each of the Loan Parties, on behalf of itself and their

respective agents, representatives, officers, directors, shareholders, advisors, employees, subsidiaries, affiliates, successors and assigns (collectively, "**Releasors**"), hereby forever waives, releases and discharges, to the fullest extent permitted by applicable Law, each Releasee from any and all claims (including, without limitation, crossclaims, counterclaims, claims of lender liability, rights of set-off and recoupment), actions, causes of action, suits, debts, accounts, interests, liens, promises, warranties, damages and consequential damages, demands, judgments, executions, costs, expenses or claims whatsoever (collectively, the "**Claims**"), that such Releasor now has or hereafter may have, of whatsoever nature and kind, whether known or unknown, whether arising at law or in equity, against any or all of the Administrative Agent, the Lead Arranger, the Lenders, the Issuing Lenders and the Swap Lenders in any capacity and their respective affiliates, subsidiaries, shareholders and "controlling persons" (within the meaning of any applicable Laws), and their respective successors and assigns and each and all of the officers, directors, employees, agents, attorneys and other representatives of each of the foregoing (collectively, the "**Releasees**"), in each case based in whole or in part on facts, whether or not now known, existing before the Effective Date, that relate to, arise out of or otherwise are in connection with:

- (i) any or all of the Obligations, Loan Documents, transactions contemplated hereby or any actions or omissions in connection therewith;
- (ii) any aspect of the dealings or relationships between or among the Loan Parties, on the one hand, and any or all of the Administrative Agent, the Lead Arranger, the Lenders, the Issuing Lenders and the Swap Lenders, on the other hand, relating to any or all of the indebtedness, documents, transactions, actions or omissions referenced in clause (i) hereof; or
- (iii) any aspect of the dealings or relationships between or among any or all of the Agent, the Issuing Lenders and the Lead Arranger, on the one hand, and the Lenders and the Swap Lenders, on the other hand, to the extent such dealings or relationships relate to any or all of the indebtedness, documents, transactions, actions or omissions referenced in clause (i) hereof.

and the Loan Parties are not aware of any such Claims against any of the Releasees. The entering into of this Agreement by the Loan Parties shall constitute a ratification, adoption, and confirmation by such Parties of the foregoing general release of such Claims against the Releasees that are based in whole or in part on facts, whether or not now known or unknown. In entering into this Agreement, the Loan Parties consulted with, and have been represented by, legal counsel and expressly disclaims any reliance on any representations, acts or omissions by any of the Releasees and hereby agrees and acknowledges that the validity and effectiveness of the releases set forth above do not depend in any way on any such representations, acts and/or omissions or the accuracy, completeness or validity hereof. Each of the Loan Parties, on behalf of itself and all other Releasors, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise), and will not encourage or support, directly or indirectly, any other Releasor or other Person in suing, or commencing any proceedings or exercising or

purporting to exercise rights or remedies against, any Releasee on the basis of any Claim released, remised and discharged by the Borrower hereunder. The provisions of this Section 4 shall survive the termination of this Agreement, the Credit Agreement, and the other Loan Documents, and payment in full of the Obligations. Notwithstanding the foregoing, the foregoing releases and covenants not to sue shall not apply, as to any Releasee, to any Claim which is determined by a court of competent jurisdiction, in a final and non-appealable judgment, to have resulted from the gross negligence, wilful misconduct, or breach of this Agreement of or by such Releasee.

5. Representations and Warranties

Each of the Loan Parties hereby represents and warrants to the Lenders as follows:

- (i) this Agreement, the Loan Documents, the Swap Documents and any other agreements or documents entered into pursuant to this Agreement have been duly authorized, executed and delivered to the Lenders and the Swap Lenders by them, as applicable to the extent a party thereto, are in full force and effect, as modified hereby, and constitute legal, valid and binding obligations enforceable against it in accordance with their terms;
- (ii) each of the representations and warranties made by on or behalf of the Loan Parties to the Lenders in any of the Loan Documents and Swap Documents was true and correct when made, and in all material respects, or in all respects to the extent such representations and warranties are already qualified by materiality, remains true and correct on the Effective Date (except to the extent stated to be made only as of a specified date, and except to the extent that any such representation or warranty is not true or correct by virtue of the Specified Events of Default), with the same full force and effect as if each of those representations and warranties had been made by the applicable Loan Party on the date of, and within, this Agreement;
- (iii) there is no matter, fact or event that is known to it that has not been disclosed to the Lenders that is likely to have a material adverse effect on the performance of their obligations under this Agreement, and it has conducted such investigations as it considers reasonably necessary to make this representation and warranty;
- (iv) all remittances owing by the Loan Parties to the federal and provincial governments and agencies in respect of income taxes, provincial sales tax, goods and services tax, harmonized sales taxes, employee payroll remittances, wages, pension plan obligations, vacation pay and similar obligations and source deductions are current and in good standing; and

- (v) the authorization, execution and delivery and performance of this Agreement by it will not violate any applicable Law or any order, declaration or judgment binding on it, any consent, license, permit or approval to which it is party or beneficiary, or any agreement to which it is a party and will not result in, or require, the creation or imposition of any lien on any of its assets, property or undertaking.

6. Conditions to Effectiveness

This Agreement, including, without limitation, the agreement of the Lenders to forbear enforcement contained herein, shall not be effective unless and until:

- (i) the Lenders have received a copy of this Agreement, duly authorized, executed and delivered by the Loan Parties;
- (ii) the Administrative Agent shall have received \$150,000 on account of the portion of the Forbearance Fee due on the Effective Date, and \$2,700,000 on account of the required LC Cash Collateral pursuant to Section 3(j)(ix);
- (iii) the reasonable legal fees and expenses of Torys LLP, and the fees and expenses of any other advisor or consultant to the Lenders (including, without limitation, the Lender Financial Advisor), for which invoices have been provided to the Borrower prior to the Effective Date, have been paid;
- (iv) no Default or Event of Default (other than the Specified Events of Default) has occurred and is continuing;
- (v) the Support Agreement remains in full force and effect, unamended, and has not been terminated;
- (vi) the Borrower has provided an operating budget setting forth the weekly forecasted revenues and expenses from the Effective Date through to and including the December 31, 2016, which budget shall be in form and substance satisfactory to the Lenders, acting reasonably (the "**Cashflow Forecast**");
- (vii) the preliminary interim order granted in respect of the commencement of the CBCA Restructuring and the CBCA Interim Order shall be and remain in full force and effect, unamended; and
- (viii) the Lenders shall have received a certificate of an officer of each of the Loan Parties indicating that each of the representations and warranties set forth in Section 5 is true and correct in all material respects and that no Default or Event of Default (other than the Specified Events of Default) has occurred and is continuing.

7. **Events of Default under the Agreement**

(a) Events of Default

The following shall each be and be considered to be an “**Additional Event of Default**” under this Agreement (without limiting any event, action or occurrence that constitutes a Default or Event of Default under the Credit Agreement or any other Loan Document):

- (i) any Event of Default (other than the Specified Events of Default and Swap Documents Cross Events of Default) that is existing as of the Effective Date or that may occur at any time on or after the Effective Date;
- (ii) non-payment of interest, principal or other amounts when due in accordance herewith, or any other monetary obligations set out herein;
- (iii) if the obligations under the Secured Notes, Secured Note Indenture, Unsecured Notes, or Unsecured Note Indenture are accelerated or if the trustee under the Secured Note Indenture issues a notice to the Administrative Agent under section 5.1(a) of the Second Lien Note Intercreditor Agreement between the Lenders and the Secured Note holders;
- (iv) if any material breach by any Loan Party or the Initial Consenting Holders (as defined in the Support Agreement) occurs under the Support Agreement or the Support Agreement is terminated;
- (v) if the Support Agreement or SISP are amended, supplemented, re-enacted or replaced in any manner that the Lenders determine, in their sole discretion, are materially adverse or prejudicial to their interests, without the prior written consent of the Lenders;
- (vi) if any CBCA Restructuring transaction or CCAA Restructuring transaction or other document or pleading is filed (including a plan of arrangement or CCAA Plan) by the Borrower in the CBCA Restructuring or any CCAA Initial Order, or any order is sought or granted in the CBCA Restructuring or any CCAA Restructuring, that is not in form and substance satisfactory to the Lenders, acting reasonably, or if the CBCA Restructuring is unsuccessful (including, as a result of a failure to obtain the requisite approvals of affected persons voting on the CBCA Plan at a meeting of affected persons to vote on the CBCA Plan or the court’s refusal to grant a CBCA Final Order in form and substance satisfactory to the Lenders) and is not replaced reasonably promptly by a CCAA Initial Order in form and substance satisfactory to the Lenders, acting reasonably, pursued pursuant to a CCAA proceeding;

- (vii) failure by the Borrower to satisfy any of the CBCA Restructuring or any CCAA Restructuring or SISP milestones, approvals, steps, and other requirements by the dates set out herein or in the Support Agreement (as the same may be amended in accordance with the Support Agreement, provided such amendment is not materially adverse or prejudicial to the Lenders' interests, as the Lenders' determine in their sole discretion, without the prior written consent of the Lenders), the result of which failure is adverse or prejudicial to the Lenders' interests, as determined in their sole discretion, without the prior written consent of the Lenders, provided that the failure to satisfy any of the foregoing milestones, approvals, steps, and other requirements in respect of the CBCA Restructuring shall not be an Additional Event of Default if such failure is followed reasonably promptly by the commencement of the CCAA Restructuring and the CCAA Initial Order is in full force and effect and in form and substance satisfactory to the Lenders, acting reasonably;
- (viii) any Loan Party, as the case may be, fails to comply with, breaches, or defaults in the performance or observance of any of the terms, conditions, covenants, agreements or undertakings under or provided for in the Commitment Letter or the Second Lien Noteholder Commitment, or in any definitive documentation entered into by such Loan Parties in connection therewith, or any Commitment Letter, Second Lien Noteholder Commitment or definitive documentation are otherwise terminated;
- (ix) if the mandate of the Borrower Financial Advisors is terminated for any reason and a new financial advisor satisfactory to the Lenders, is not engaged within 10 Banking Days following the earlier of the Borrower: (i) receiving notice from the Borrower Financial Advisors, or any one of them, of such termination, or (ii) otherwise having actual knowledge of such termination;
- (x) failure by the Borrower to provide reports or other information when required pursuant to this Agreement (and such failure continues for a period of three (3) Banking Days following the earlier of the Borrower: (i) receiving notice of such failure from the Administrative Agent, and (ii) having actual knowledge thereof);
- (xi) other than in respect of the CBCA Restructuring or any CCAA Restructuring, any insolvency, bankruptcy, restructuring or similar proceedings described in Sections 16.1(f) and (g) of the Credit Agreement are commenced by or against any of the Loan Parties, in Canada or elsewhere, or any action is taken by any of the Loan Parties in furtherance of any such proceedings;

- (xii) any Loan Party, as the case may be, fails to comply with or defaults in the performance or observance of any of the terms, conditions, covenants, agreements or undertakings under or provided for in this Agreement;
- (xiii) any Loan Party, as the case may be, fails to comply with, breaches, or defaults in the performance or observance of any of the terms, conditions, covenants, agreements or undertakings under or provided for in the other Loan Documents (other than in respect of the Specified Events of Default or other Additional Events of Default set out elsewhere in this Section 7(a)) and such failure continues for a period of 2 days following the earlier of the Borrower; (i) receiving notice of such failure from the Administrative Agent, and (ii) having actual knowledge thereof, provided such period shall not, in any event, extend past the Relief Period;
- (xiv) if the CBCA Interim Order or CCAA Initial Order are replaced, amended or varied in any manner that is not satisfactory to the Lenders, acting reasonably, or if the CBCA Interim Order ceases to be in full force and effect, unless the CCAA Restructuring is commenced reasonably promptly thereafter and the CCAA Initial Order is in full force and effect and in form and substance satisfactory to the Lenders, acting reasonably;
- (xv) enforcement by any creditor of any material claim or Lien against the Borrower or any of its assets, property or undertaking (and for the purpose of this clause, a claim or the aggregate value of multiple claims held by the same or related Persons shall be material if in an amount in excess of \$10,000,000); and
- (xvi) any challenge is made to the legality, validity, binding nature or enforceability of this Agreement, the Obligations, the Existing Indebtedness, the Credit Agreement, Security, or any other Loan Document by any Loan Party.

(b) Events of Default

Nothing in this Agreement shall prejudice the Lenders' or Swap Lenders' rights to pursue any of their remedies including, without limitation, enforcing the Security: (i) prior to the effectiveness of this Agreement; (ii) upon the Outside Date (whether arising from the expiration or termination of the Relief Period or otherwise); or (iii) in respect of rights or remedies other than in respect of the Specified Events of Default and the Swap Documents Cross Events of Default.

8. General Provisions

(a) Entire Agreement

This Agreement, together with the other Loan Documents and the agreements and other documents to be delivered pursuant to this Agreement, constitute the entire agreement between the Lenders on the one hand, and the Loan Parties on the other hand, pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no representations, warranties, waivers or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement, the Loan Documents or any other agreements and documents delivered pursuant to this Agreement.

(b) LC Acknowledgement

The parties acknowledge and agree that notwithstanding anything else set forth in the Loan Documents, the Existing LCs are to be treated as Fronted Letters of Credit for purposes of Article 10 and Section 16.3 of the Credit Agreement.

(c) Severability

If the whole or any portion of this Agreement or application thereof to any circumstance will be held invalid or unenforceable to an extent that does not affect the operation of this Agreement in a fundamental way, the remainder of this Agreement or its application to any circumstance other than to which it has been held invalid or unenforceable, will not be affected thereby and will be valid and enforceable to the fullest extent permitted by applicable Law.

(d) Loan Documents

In all respects, other than as expressly set out herein, the provisions of the Credit Agreement, Swap Documents and the other Loan Documents shall continue to apply unamended and shall remain in full force and effect, and all such Loan Documents are hereby specifically ratified, restated, and confirmed by all Parties hereto as of the Effective Date. This Agreement is and shall be deemed to be a Loan Document for all purposes of the Credit Agreement.

(e) Governing Law

This Agreement will be governed by and construed in accordance with the law in force in the Province of Alberta and the federal laws of Canada applicable therein, from time to time.

(f) Attornment

The Parties hereto do hereby irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Alberta for all matters arising out of or relating to this Agreement or any of the transactions contemplated thereby and to the extent legally permitted, waive any right they may have to, or to apply for, trial by jury in connection with any

matter, action, proceeding, claim or counterclaim arising out of or relating to the Agreement or any of the transactions contemplated hereby.

(g) Conflicts

To the extent that there is any inconsistency or ambiguity between the provisions of this Agreement and the Credit Agreement or any other Loan Document, the provisions of this Agreement will govern to the extent necessary to eliminate such conflict, inconsistency or ambiguity.

(h) Further Assurances

The parties hereto shall execute and deliver such supplemental documents and take such supplemental action as may be necessary or desirable to give effect to the provisions and purposes of this Agreement, all at the expense of the Borrower.

(i) Enurement

This Agreement shall be binding upon and enure to the benefit of each of the Parties and its respective successors and permitted assigns.

(j) Costs and Expenses

The Borrower hereby absolutely and unconditionally agrees to pay to and fully indemnify the Lenders, on demand by the Lenders at any time and as often as may be required, whether or not all or any of the transactions contemplated by this Agreement are consummated, all reasonable fees and disbursements of any counsel to the Lenders, any other consultant (financial, appraiser, technical, or otherwise, including any Lender Financial Advisor) or agent and all other expenses incurred by the Lenders in connection with this Agreement or the Loan Documents, including, without limitation: (a) reasonable legal expenses in connection with the preparation, negotiation and interpretation of this Agreement, the other agreements or documents contemplated by this Agreement or the Loan Documents; (b) all reasonable expenses of advisors and consultants to the Lenders (including, for certainty, (i) legal expenses on a full indemnity basis and (ii) all costs and expenses of any advisor or consultant incurred in connection with the protection and enforcement of this Agreement or the Security, or the SISF, or in connection with any proceeding in respect of bankruptcy, insolvency, winding up, receivership, dissolution, reorganization, liquidation, moratorium, arrangement or assignment for the benefit of creditors involving any Party, in each of the foregoing events whether under the CBCA, BIA, CCAA, or any similar federal, state, provincial or foreign bankruptcy, insolvency, reorganization, receivership or similar law. To the extent the Borrower does not satisfy such existing and future fees and disbursements, and other expenses that are due and payable under this Agreement or the Credit Agreement within 14 days of receiving an invoice in respect of such fees and disbursement or notice of expenses that are due and payable, the Borrower specifically authorizes the Administrative Agent to debit from any of the Borrower's accounts with the Administrative Agent the amount of any such existing and future fees and disbursements, and other expenses that are due and payable under this Agreement or the Credit Agreement. Details of such debits made to any bank accounts of the Borrower shall be provided promptly to the Borrower by the Administrative Agent. The Borrower specifically waives all rights it may have

to assess any of the legal, agents or other fees previously paid or payable by the Administrative Agent to its solicitors or payable to its solicitors, agents or others in connection with or in any way related to the Borrower up to the date of this Agreement arising under any law or statute.

(k) Survival of Representations and Warranties

All representations and warranties made in this Agreement or any other document furnished in connection herewith shall survive the execution and delivery of this Agreement and such other document, and no investigation by the Lenders or any closing shall affect the representations and warranties or the rights of the Lenders to rely upon such representations and warranties.

(l) Assignment

The Loan Parties shall not be entitled to assign any of their respective rights and/or obligations hereunder or any interest herein without the prior written consent of the Lenders.

(m) Execution

This Agreement may be executed in any number of counterparts (including by facsimile transmission or other electronic transmission) and by different Parties in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same instrument.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above mentioned.

LIGHTSTREAM RESOURCES LTD.,
as Borrower

Per:




Name: **Peter D. Scott**
Title: **Senior Vice President
and CFO**

Per:


Name:
Title:

1863359 ALBERTA LTD., as Loan Party

Per: 
Name: Peter D. Scott
Title: Senior Vice President
and CFO


Per: _____
Name:
Title:

LTS RESOURCES PARTNERSHIP, as
Loan Party, by its managing partner,
LIGHTSTREAM RESOURCES LTD.

Per: 
Name: Peter D. Scott
Title: Senior Vice President
and CFO

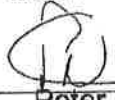
Per: _____
Name:
Title:

1863360 ALBERTA LTD., as Loan Party

Per: 
Name: Peter D. Scott
Title: Senior Vice President
and CFO

Per: _____
Name:
Title:

**BAKKEN RESOURCES
PARTNERSHIP, as Loan Party, by its
managing partner, LIGHTSTREAM
RESOURCES LTD.**

Per: 
Name: Peter D. Scott
Title: Senior Vice President
and CFO

Per: _____
Name:
Title:

THE TORONTO-DOMINION BANK,
as Administrative Agent


Per:  _____

Name: Andrew Ford
Title: Vice President, Loan Syndications Agency

Per: _____

Name:
Title:

**THE TORONTO-DOMINION BANK,
as Lender**

Per: 
Name: David Radomsky
Title: Managing Director

Per: 
Name: Glen Cameron
Title: Director

Second Forbearance Agreement – Lightstream

ROYAL BANK OF CANADA, as Lender

Per: _____


Name: *[Signature]*
Title: *[Signature]*

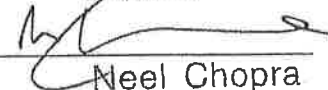
Per: _____

Name:
Title:

Second Forbearance Agreement – Lightstream

THE BANK OF NOVA SCOTIA, as
Lender

Per: 
Name: **Clare Horan**
Title: **Director**

Per: 
Name: **Neel Chopra**
Title: **Director**

Second Forbearance Agreement – Lightstream

02284-2103 21834982.12

CANADIAN IMPERIAL BANK OF
COMMERCE, as Lender

Per: DOUG BROWN
Name: **Vice-President & Deputy**
Title:

Per: S. Sarin
Name: **SUPRIYA SARIN**
Title: **Senior Director**

Second Forbearance Agreement – Lightstream

WELLS FARGO BANK N.A.,
CANADIAN BRANCH, as Lender

Per: _____

Name:

Title:


DAN LINDQUIST
Managing Director

Per: _____

Name:

Title:

Second Forbearance Agreement - Lightstream

02284-2103 21834982.12

**BANK OF AMERICA, N.A., CANADA
BRANCH, as Lender**

Per: 
Name: JAMES K.G. CAMPBELL
Title: DIRECTOR

Per: _____
Name:
Title:

Second Forbearance Agreement – Lightstream

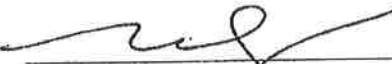
**CREDIT SUISSE AG, TORONTO
BRANCH, as Lender**

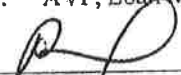
Per: Szymon Ordys
Name: SZYMON ORDYS
Title: AUTHORIZED SIGNATORY

Per: [Signature]
Name:
Title: Chris Gage
Authorized Signatory

Second Forbearance Agreement – Lightstream

HSBC BANK CANADA, as Lender

Per: 
Name: Natalie Coates
Title: AVP, Loan Management Unit

Per: 
Name: Paul Irving
Title: VP, Loan Management Unit

Second Forbearance Agreement – Lightstream

UNION BANK, CANADA BRANCH, as
Lender

Per: _____

Name:


Beau Filkowski

Title:

Vice President

Per: _____

Name:

Title:

Second Forbearance Agreement – Lightstream

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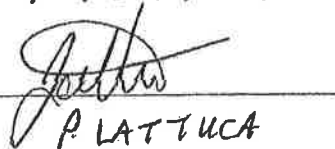
CAISSE CENTRALE DESJARDINS, as
Lender

Per:



Name: V. PRESIDENT
Title:

Per:




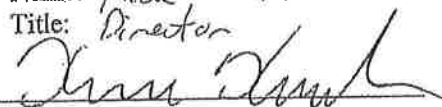
Name: P. LATTUCA
Title: MANAGER

Second Forbearance Agreement – Lightstream

Erreur ! Nom de propriété de document inconnu.
02284-2103 21834982.10

ALBERTA TREASURY BRANCHES,
as Lender

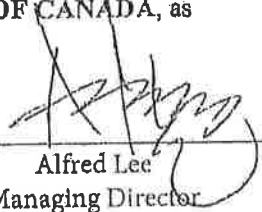
Per: 
Name: Rick Miller
Title: Director

Per: 
Name: **Kevin Kynoch**
Title: **Senior Director Energy**

Second Forbearance Agreement – Lightstream

**SUMITOMO MITSUI BANKING
CORPORATION OF CANADA, as
Lender**

Per: _____


Name: Alfred Lee
Title: Managing Director

Per: _____

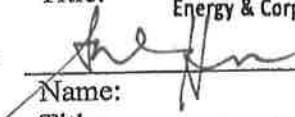
Name:
Title:

Second Forbearance Agreement – Lightstream

02284-2103 21834982.12

**CANADIAN WESTERN BANK, as
Lender**

Per: 
Name: **Kuno Ryckborst**
Title: **Senior Manager,
Energy & Corporate Banking**

Per: 
Name: **Amln Haque**
Title: **Manager,
Energy & Corporate Banking**

UNITED OVERSEAS BANK
LIMITED, VANCOUVER BRANCH, as
Lender

Per: Jane Taylor

Name:

Title: **Jane Taylor**

VP, Corporate Banking

Per: _____

Name:

Title:

Second Forbearance Agreement – Lightstream

NATIONAL BANK OF CANADA, as
Lender

Per:

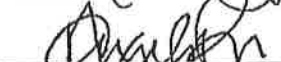


Name:

M. D. LONGFIELD

Title:

Per:



Name:

Angela Becker

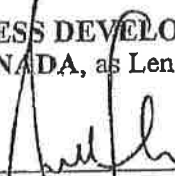
Title:

Director
Credit Capital Markets

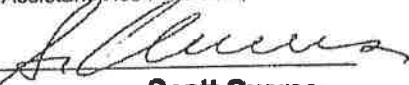
Second Forbearance Agreement - Lightstream

**BUSINESS DEVELOPMENT BANK
OF CANADA, as Lender**

Per:


Name: Russell W. French
Title: Assistant Vice President, BRU

Per:

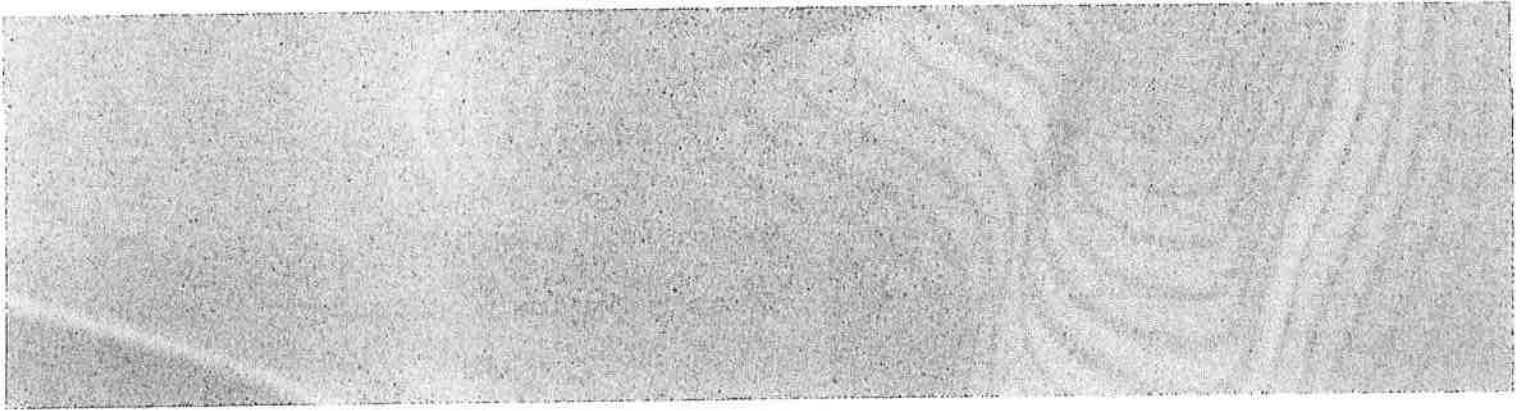

Name: **Scott Overes**
Title: **Director, Syndicated Financing
Directeur, Financement syndiqué
Wholesale Financing | Financement indirect**

SCHEDULE "A"

SISP

Activity	Deadline
Opening of Virtual Data room	July 13, 2016
Commencement of Technical Presentations	Week of July 20, 2016
Indicative offers submitted	Week of October 7, 2016
Closing of a SISP transaction in accordance with the second paragraph of section 3(g) of this Agreement	December 31, 2016

TD Securities



LIGHTSTREAM RESOURCES LTD.
CORPORATE OFFERING | JULY 2016

TD Energy Advisors / TD Securities Inc.
421 – 7th Avenue S.W., 36th Floor, Calgary, Alberta T2P 4K9 • Telephone: 403 503 4848 • Fax: 403 503 4849
www.tdenergyadvisors.com



Introduction

Lightstream Resources Ltd. (the "Company") has engaged TD Securities Inc. ("TD") to manage a process to divest all of the Company's assets (the "Offering"). The Company is a predominantly-light oil Canadian exploration and production company with a focused asset portfolio in three core areas: Bakken, Cardium and Swan Hills. Interested parties are encouraged to review the Offering from an asset value perspective, independent of the current capitalization.

INVESTMENT HIGHLIGHTS

- **High-netback, light oil production base**
 - » Strong operating netback of \$17.18/boe⁽¹⁾ driven by low operating costs of \$12.57/boe⁽²⁾ and a light oil-weighted production stream
 - » At current pricing, Lightstream's assets generate strong free cash flow to support future growth
- **Two major core areas account for 93% of current production**
 - » Total production of 25,921 boe/d; 67% Oil and Liquids⁽²⁾
 - » The vast majority of Lightstream's production comes from two Business Units:
 - › The Cardium Business Unit: 14,680 boe/d (51% Oil and Liquids)⁽²⁾
 - › The Saskatchewan Business Unit: 9,355 boe/d (93% Oil and Liquids)⁽²⁾
 - » Low base decline rate of 23%
- **Long-life reserves; significant oil-in-place with low current recovery factors**
 - » 142 mmmboe of 2P reserves, almost 50% PDP⁽³⁾; 15 year RLI
 - » ~2.3 billion barrels of Discovered Petroleum-Initially-in-Place ("DPIIP")
 - › Cardium Business Unit current recovery factor of 3.3%
 - › Saskatchewan Business Unit current recovery factor of 2.9%
- **Business provides compelling upside from large inventory of economic drilling locations and secondary recovery projects**
 - » 486 booked⁽⁴⁾, 1,036 unbooked drilling locations
 - » Secondary recovery projects implemented in the Bakken and the Swan Hills core areas with natural gas flood and waterflood ultimate recoveries expected to be 15-25%
- **Strong environmental liability position⁽⁴⁾**
 - » Alberta LMR: 3.22
 - » Saskatchewan LMR: 3.47
 - » BC LMR: 1.03

(1) Based on May 2016 Lease Operating Statement values

(2) Average based on Lease Operating Statements Jan-May 2016

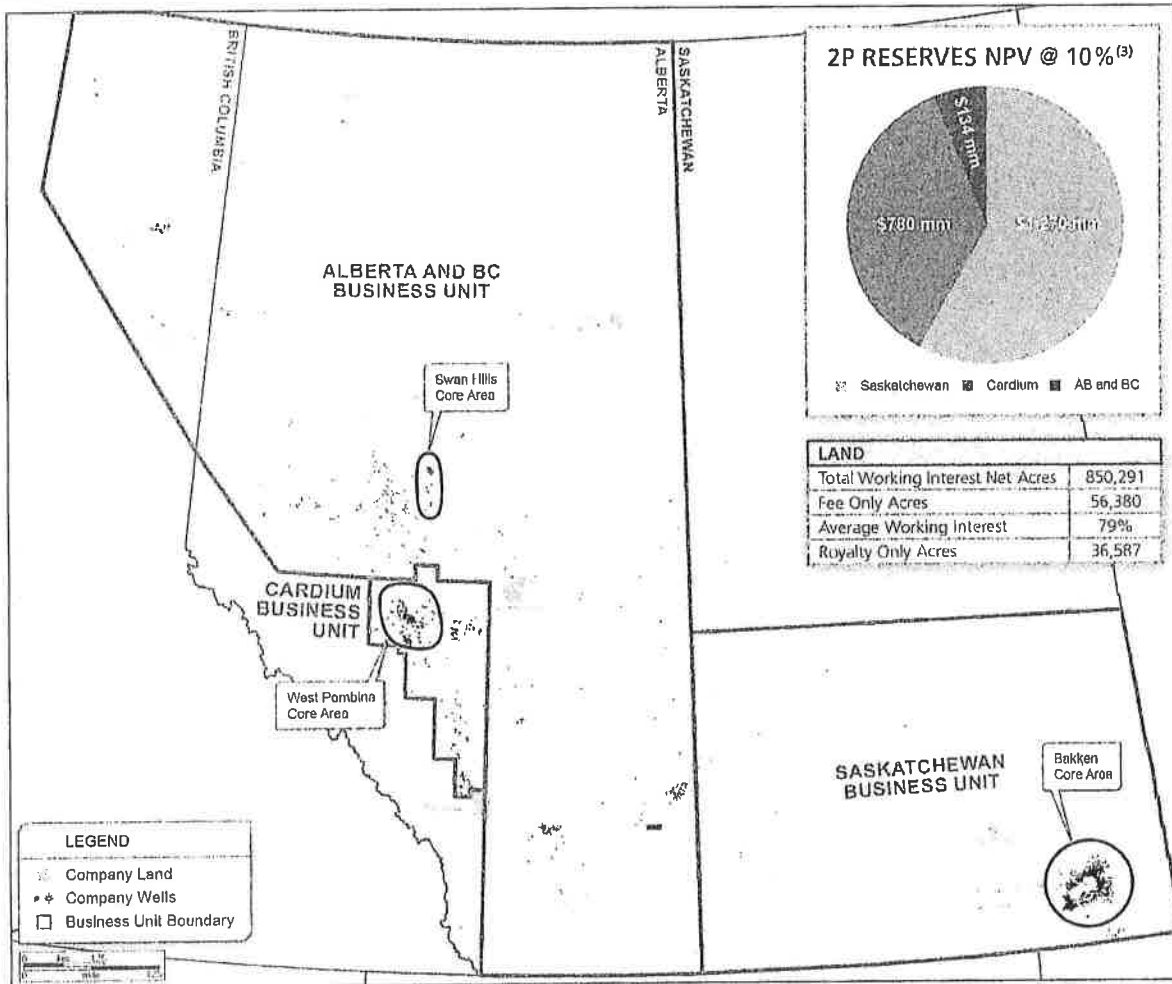
(3) Sproule December 31, 2015 Reserves Report, January 1, 2016 pricing per Sproule

(4) As of June 2016

Business Highlights

Production of 25,921 boe/d⁽¹⁾ concentrated in three oil and liquids-rich core assets results in high netbacks, predictable declines and strong support for over 1,500 booked and unbooked drilling locations.

OFFERING MAP



OFFERING SUMMARY

BUSINESS UNIT	TOTAL PRODUCTION ⁽¹⁾	OIL AND LIQUIDS SPLIT ⁽¹⁾	NET OPERATING INCOME ⁽²⁾	1P VOLUMES ⁽³⁾	2P VOLUMES ⁽³⁾	1P NPV10 ⁽³⁾	2P NPV10 ⁽³⁾
	(boe/d)	(%)	(\$mm)	(mmboe)	(mmboe)	(\$mm)	(\$mm)
Cardium	14,680	51%	28.7	45.7	66.2	582	1,180
Saskatchewan	9,355	93%	21.8	36.4	63.1	730	1,270
AB and BC	1,886	57%	-0.7	7.5	13.1	73	134
TOTAL	25,921	67%	50.3	89.6	142.4	1,385	2,184

(1) Average based on Lease Operating Statements Jan-May 2016

(2) Company actuals from Lease Operating Statements Jan-May 2016, average WTI price during period was US\$37.48/bbl

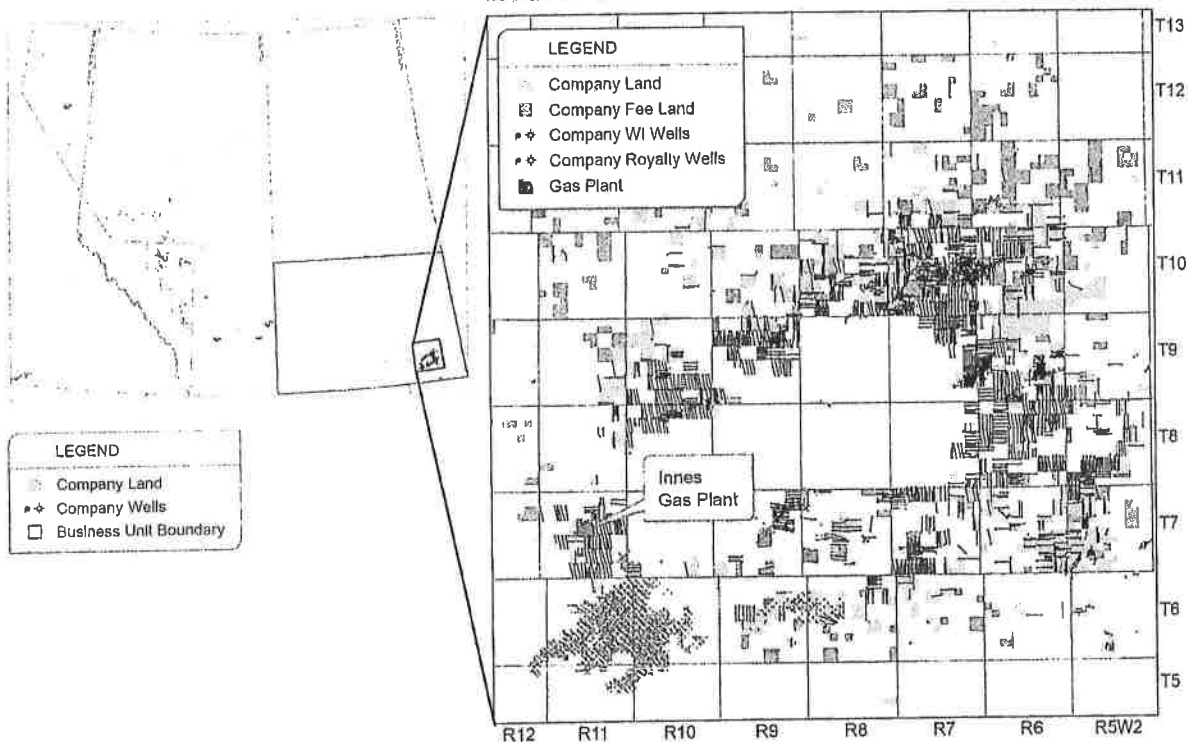
(3) Sproule December 31, 2015 Reserves Report, January 1, 2016 pricing per Sproule

Saskatchewan Business Unit Summary

- The Bakken zone is the core asset within the Saskatchewan Business Unit and is one of Canada's largest unconventional oil reservoirs with significant remaining recoverable volumes
- Significant, high-working interest position in 286,000 net acres of Contiguous Crown, Private Freehold, and Corporate Fee Title land
 - » Corporate Fee Title land of ~56,000 acres
- Lightstream's land position in the Bakken reservoir is estimated to contain an DPIP of 1.4 billion barrels with cumulative recovery of 2.9% (July 2016) across the lands
 - » Significant opportunity for EOR via both natural gas and water injection
- Additional low risk development and exploration upside provided by Mississippian prospects
- High netback of \$23.07/boe⁽¹⁾
 - » 42.1-45.4 °API Bakken light oil production of 7,841 boe/d⁽²⁾
 - » 30.2-33.0 °API Mississippian light oil production of 1,492 boe/d⁽²⁾
 - » 32 boe/d⁽²⁾ of royalty production
- 62.8 mmboe of 2P reserves (December 31, 2015)
- Total inventory of Bakken and Mississippian locations (booked and unbooked) of 805 and 209, respectively

BUSINESS UNIT	SASKATCHEWAN
PRODUCTION⁽¹⁾	
Jan-May 2016	
Average Production	9,355 boe/d
Oil and NGLs	93%
FINANCIALS⁽¹⁾	
Jan-May 2016	
Net Operating Income	\$21.8 mn
Capex	\$2.5 mm
Opex	\$15.95/boe
Free Cash Flow	\$19.3 mm
RESERVES	
Sproule 31-Dec-15	
2P NPV @10%	\$1,270 mm
2P Reserves Volumes	63,061 mboe
UPSIDE OPPORTUNITIES	
Undeveloped Land	146,097 net acres
Booked Locations	293 net
Unbooked Locations	721 net

BAKKEN CORE AREA MAP



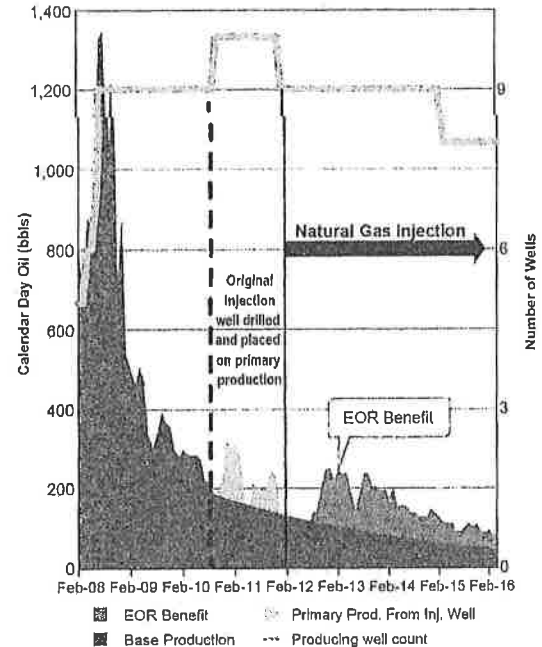
4 (1) Based on May 2016 Lease Operating Statement values
 (2) Average based on Company field estimate production
 (3) Average based on Company Lease Operating Statements Jan-May 2016



Saskatchewan Business Unit Opportunities

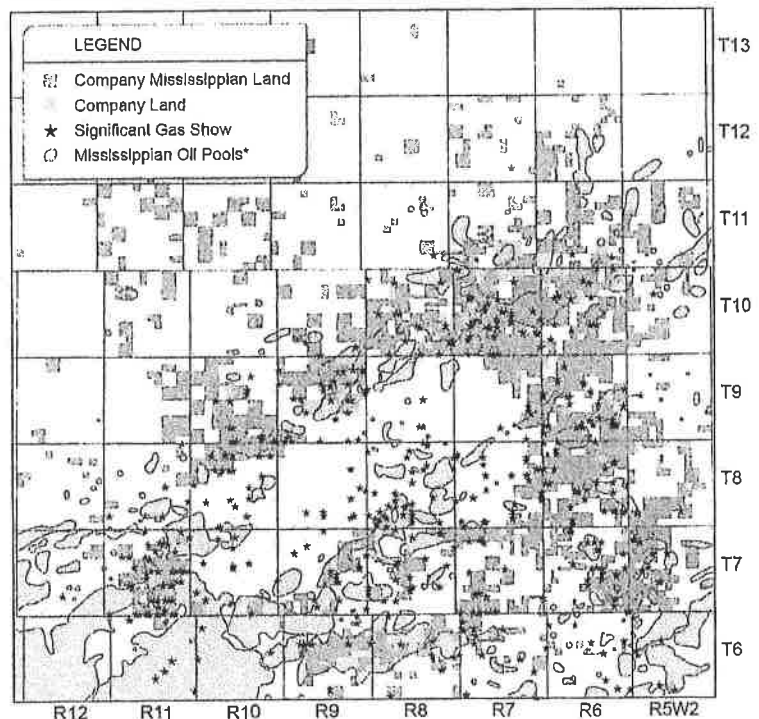
- Lightstream has developed the Bakken into an asset generating significant free cashflow with an extensive existing infrastructure and large inventory of infill, step-out and field extension locations
- Current inventory >800 Bakken drilling locations, Lightstream has also implemented two natural gas injection schemes, one at Creelman and one at Midale
 - » Patterns have demonstrated positive results and enhanced recovery since operations began in 2011
- EOR schemes are expected to increase the recovery factor to 15 – 25%
- Sproule recognizes a total of 622 mboe of remaining reserves for the 16-34 EOR pattern (December 31, 2015)
 - » EUR increased reserves by 32.5% due to secondary recovery (to-date)
- Majority of the Bakken landbase suitable for either natural gas or waterflooding efforts

EOR PERFORMANCE CHART (16-34 PATTERN)



- Mississippian hydrocarbon accumulations exist along the various subcrop edges of the formations and their sub-units, as well in structurally defined erosional highs
- Lightstream has developed a large database of Mississippian gas shows which, when combined with seismic, has significantly de-risked a large inventory of highly economic Mississippian drilling locations
 - » Drilling down to the Bakken provides a free look at the Mississippian horizon
- Current total Mississippian inventory of 209 locations
 - » Only 34 locations booked
- Creelman/Frobisher discovery at 101/09-35-008-10W2/00 key analog to further development

MISSISSIPPIAN SIGNIFICANT GAS SHOWS MAP



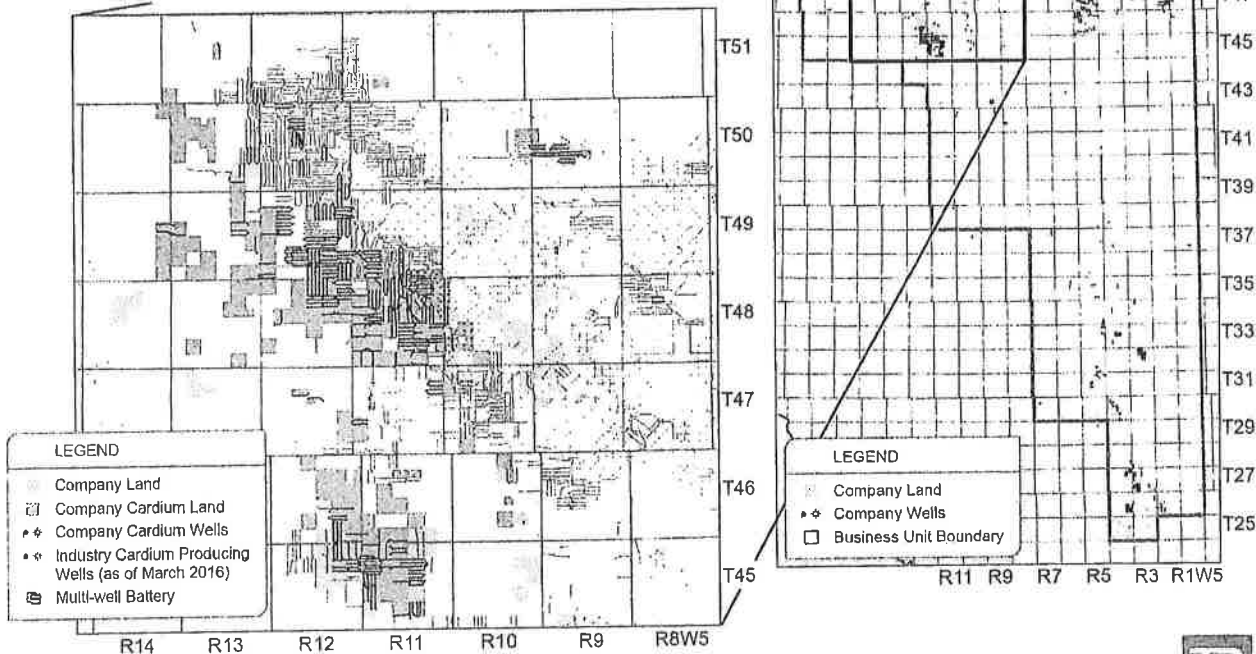
*Sherwin GeoEdges Inc.

Cardium Business Unit Summary

- Predictable base production of 14,879 boe/d⁽¹⁾ declining at 14%
 - » Cardium Formation: 11,517 boe/d⁽¹⁾; 61% Oil and Liquids
 - » Falher/Notikewin Formations: 2,884 boe/d⁽¹⁾; 14% Oil and Liquids
- Attractive land base of ~183,000 net acres of land
 - » Largely concentrated in the West Pembina and Brazeau areas where horizontal drilling and multi-stage fracturing have unlocked additional reserves
 - » 152,468 net acres of Cardium Rights
 - » 31,504 net acres of Mannville Rights
- Minimal expiry concerns in the most prospective areas
- Almost 80% of the 2P reserves are concentrated in West Pembina and Brazeau
- Very attractive LMR of 5.0 due to recent nature of development
- Sufficient inventory available to achieve steady production of ~15,000 boe/d while generating free cash flow
 - » 430 booked, unbooked and contingent net locations targeting the Cardium (395) and Mannville (35) formations
- Recent Company activity has focused on the liquids-rich Mannville gas opportunities at Brazeau

BUSINESS UNIT	CARDIUM
PRODUCTION⁽¹⁾	
Jan-May 2016	
Average Production	14,680 boe/d
Oil and NGLs	51%
FINANCIALS⁽²⁾	
Jan-May 2016	
Net Operating Income	\$28.7 mm
Capex	\$1.3 mm
Opex	\$9.05/boe
Free Cash Flow	\$27.4 mm
RESERVES	
Sproule 31-Dec-15	
2P NPV @10%	\$780 mm
2P Reserves Volumes	66,231 mboe
UPSIDE OPPORTUNITIES	
Undeveloped Land	77,053 net acres
Booked Locations	151 net
Unbooked Locations	279 net

WEST PEMBINA CORE AREA MAP

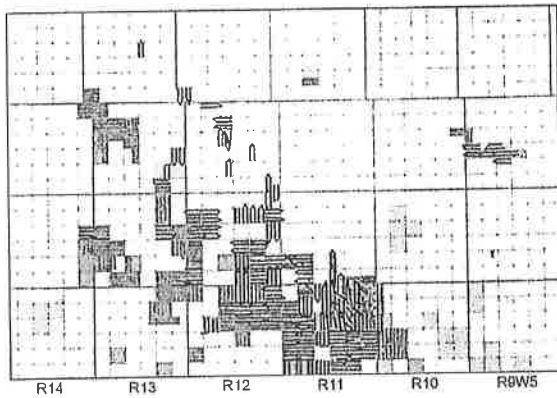


6 (1) Average based on Company field estimate production
 (2) Average based on Company Lease Operating Statements Jan-May 2016

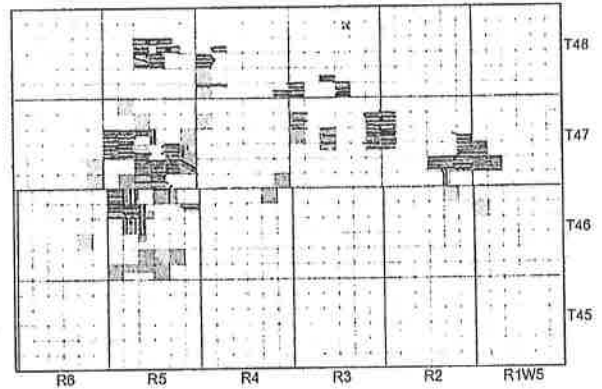


Cardium Formation Opportunities

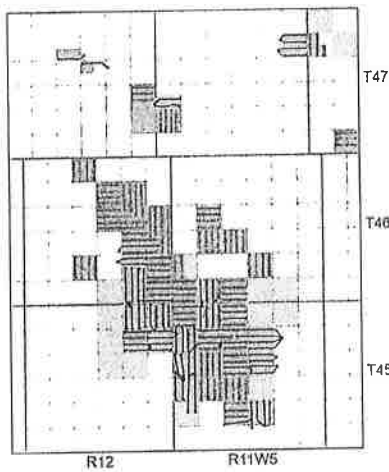
WEST PEMBINA



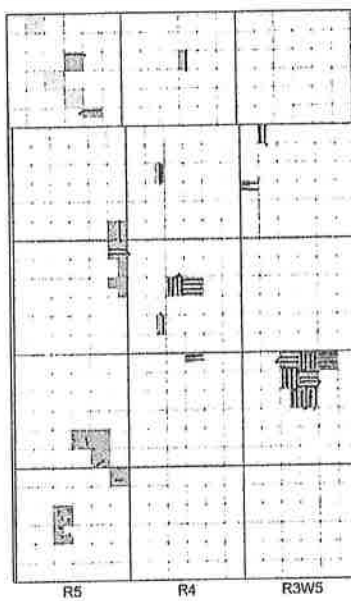
EAST PEMBINA



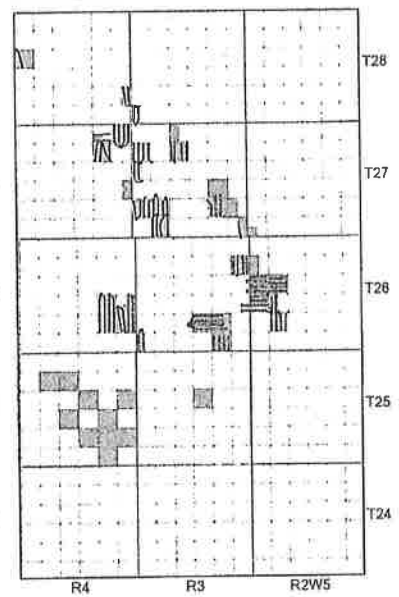
BRAZEAU



GARRINGTON



LOCHEND



LEGEND	
	Company Cardium Land
	Company Land
	Company Cardium Wells
	Booked Locations
	Unbooked Locations

CARDIUM LOCATION INVENTORY			
CORE AREA	BOOKED	UNBOOKED	CONTINGENT
West Pembina	66.9	89.3	15.3
East Pembina	25.4	42.2	8.8
Brazeau	42.0	48.3	11.9
Garrington	6.0	1.6	2.0
Lochend	8.9	14.9	9.3
Other	0.9	0.9	0.0
TOTAL	150.1	197.2	47.3

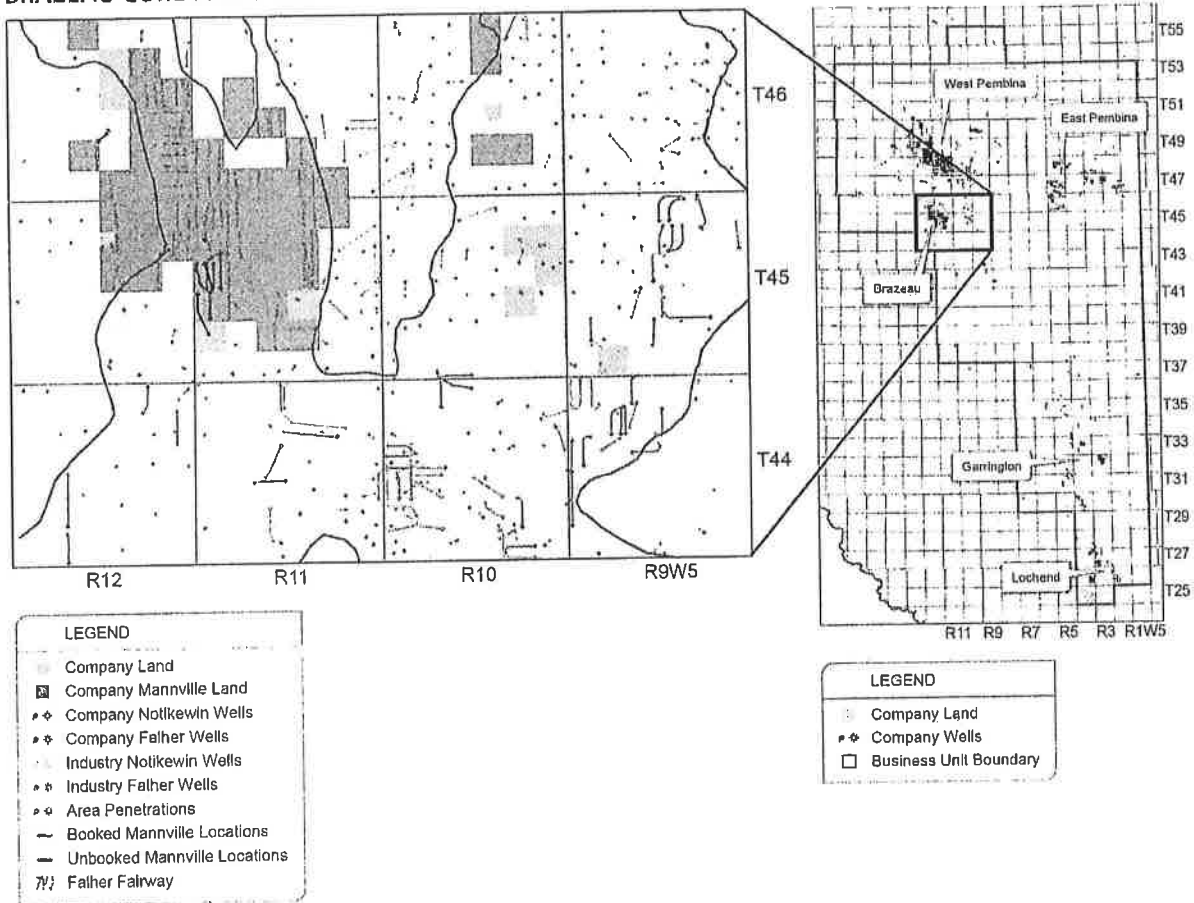
NEED TO KNOW

- Oil-weighted focused area currently being exploited with infills and step-out drilling
 - » 89% of Cardium inventory located in West Pembina, East Pembina and Brazeau
- Waterflood EUR implemented in July 2014
- Company operates key facilities and infrastructure

Other Cardium Business Unit Opportunities

- Existing Cardium infrastructure allows Mannville formations such as the Falher and Notikewin to be optimally developed
- Considerable Mannville (Falher/Notikewin) industry activity in the Brazeau region with 204 producing horizontal wells and current production of ~380 mmcfe/d
- Lightstream has 5.1 net wells on production and to date an inventory of ~35 net Mannville locations

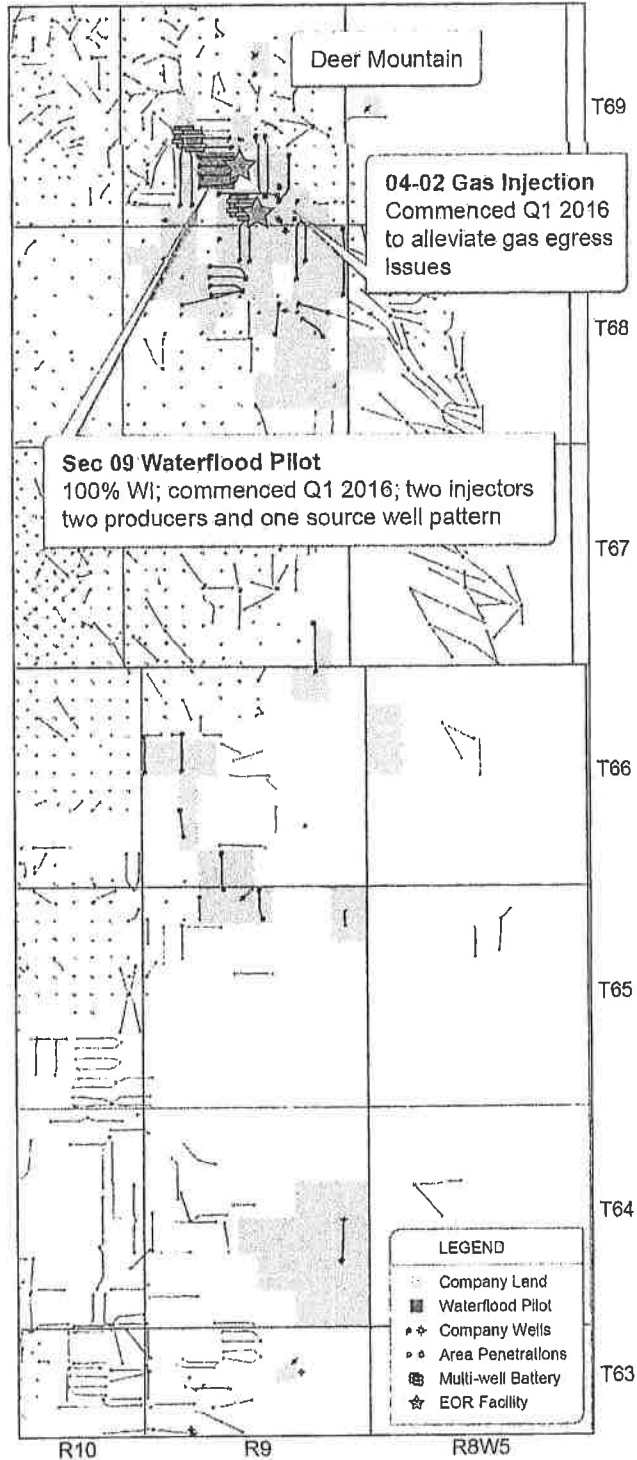
BRAZEAU CORE AREA MAP



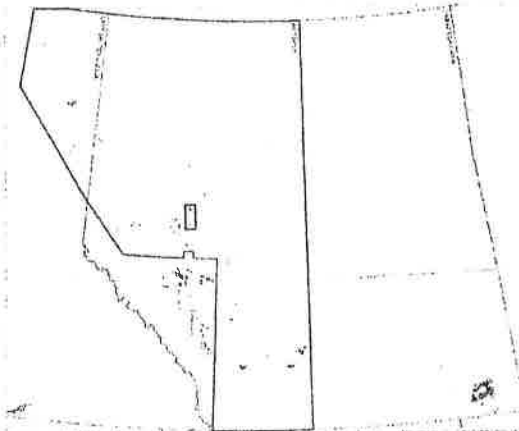
Alberta and British Columbia Business Unit Summary

- The Alberta/BC Business Unit is comprised of the Swan Hills core asset and other legacy production from Southern Alberta and West Central Alberta and BC
- The Swan Hills region features high impact development and exploration upside with large DPIIP of ~8 mmbbl/section at Deer Mountain
- The Deer Mountain area also contains significant EOR potential due to proven projects in close proximity, LTS owned infrastructure and a high working interest
- 317 boe/d currently shut-in due to 3rd party gas system constraints
 - » Company is currently re-injecting solution gas to maintain oil production

SWAN HILLS CORE AREA MAP



BUSINESS UNIT	SWAN HILLS	OTHER AB/BC
PRODUCTION⁽¹⁾		
Jan-May 2016		
Average Production	887 boe/d	1,000 boe/d
Oil and NGLs	96%	23%
FINANCIALS⁽¹⁾		
Jan-May 2016		
Net Operating Income	\$1.9 mm	-\$2.1 mm
Capex	\$1.0 mm	\$1.4 mm
Opex	19.79/boe	\$26.12/boe
Free Cash Flow	\$0.9 mm	-\$3.5 mm
RESERVES		
Sproule 31-Dec-15		
2P NPV @10%	\$117 mm	\$17 mm
2P Reserves Volumes	9,999 mboe	3,131 mboe
UPSIDE OPPORTUNITIES		
Undeveloped Land	18,413 net acres	196,258 net acres
Booked Locations	39 net	2 net
Unbooked Locations	33 net	0 net



(1) Average based on Company Lease Operating Statements Jan-May 2016

Process and Contacts

Lightstream Resources Ltd. has engaged TD Securities to manage a process to divest the Company's entire Canadian asset portfolio. The Company is a light oil-focused Canadian exploration and production company with a diverse producing and resource portfolio. Although the offering is separated into three packages (Saskatchewan, Cardium, and Alberta/British Columbia) the Company's strong preference is to complete an en bloc transaction.

It is the intention of the Company and TD to conduct the Offering process such that it minimizes any disruption to the Company's operations. Interested Parties should not contact the Company directly regarding any aspect of the Offering.

A Confidentiality Agreement can be found on the TD Energy Advisors website www.tdeneryadvisors.com. Virtual data room access may be obtained upon executing and submitting a Confidentiality Agreement via email to the attention of Tom Hades (tom.hades@tdsecurities.com). All other inquiries, communications or additional information requests related to the Offering should be directed to one of the following individuals at TD Securities.

TD SECURITIES TD Canada Trust Tower Suite 3600, 421 - 7th Ave SW Calgary, AB T2P 4K9 Tel: 403-503-4848	
TD Energy Advisors	Investment Banking
Mark Kuhn Managing Director, Head of TD Energy Advisors T: 403 503 4852 mark.kuhn@tdsecurities.com	Greg Saksida Managing Director T: 403 292 1806 greg.saksida@tdsecurities.com
Ruben Contreras, P.Eng Director T: 403 503 4853 ruben.contreras@tdsecurities.com	Scott Barron Managing Director T: 403 292 1283 scott.barron@tdsecurities.com
Diego Cuba, P.Eng Associate T: 403 503 4859 diego.cuba@tdsecurities.com	Michael Charron Vice President T: 403 299 8505 michael.charron@tdsecurities.com

Timing

- Virtual Data Room: July 13, 2016
- Technical Presentations: Commencing week of July 20, 2016
- Indicative Offer to be Submitted: Week of ~~OCTOBER 7~~ 2016

Disclaimer

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SCHEDULE "B"

EXISTING INDEBTEDNESS

Type of Advance	Aggregate Principal Amount (Cdn \$)
Canadian Prime Rate Loans	\$359,000,000.00
Letters of Credit	\$11,920,485.00
<u>TOTAL:</u>	\$370,920,485.00

Existing LCs

LC #	Beneficiary	Current Amount	CCY	Issue Date	Actual Expiry	Date upon which LC will auto-renew
S197698	Enbridge Pipelines (Sask) Inc.	3,500,000.00	CAD	02-Jun-11	01-Jun-17	02-May-17
S198072	Mountain View County	50,000.00	CAD	02-Jun-11	21-Sep-17	22-Aug-17
S198490	Rockyview County	50,000.00	CAD	02-Jun-11	03-Mar-17	01-Feb-17
S202018	BC Oil and Gas Commission	4,423,885.00	CAD	09-Dec-14	09-Dec-16	09-Nov-16
S202146	Enmax Commercial Services Inc.	540,000.00	CAD	09-Feb-15	05-Feb-17	07-Dec-16
S202147	Pembina Pipelines Ltd.	800,000.00	CAD	09-Feb-15	05-Feb-17	07-Nov-16
S202196	Husky Oil Operations Limited	100,000.00	CAD	27-Feb-15	24-Feb-17	25-Jan-17
S202752	Harmattan Gas Processing LP	300,000.00	CAD	15-Oct-15	01-Oct-17	01-Sep-17
S202753	AltaGas Processing Partnership	50,000.00	CAD	15-Oct-15	01-Oct-17	01-Sep-17
S202831	NOVA Gas Transmission Ltd.	161,600.00	CAD	18-Nov-15	12-Nov-17	14-Aug-17
S202891	Keyera Partnership	1,600,000.00	CAD	15-Dec-15	04-Dec-16	05-Oct-16
S202917	Suncor Energy Products	300,000.00	CAD	22-Dec-15	02-Dec-16	02-Nov-16
S203168	Apache Canada Ltd.	45,000.00	CAD	22-Apr-16	19-Apr-17	20-Mar-17
Total LCs Outstanding		11,920,485.00				

TAB 5

2009 CarswellOnt 4467
Ontario Superior Court of Justice [Commercial List]

Nortel Networks Corp., Re

2009 CarswellOnt 4467, [2009] O.J. No. 3169, 179 A.C.W.S. (3d) 265, 55 C.B.R. (5th) 229

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL
NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL
CORPORATION AND NORTEL NETWORKS TECHNOLOGY CORPORATION (Applicants)

APPLICATION UNDER THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Morawetz J.

Heard: June 29, 2009

Written reasons: July 23, 2009

Docket: 09-CL-7950

Counsel: Derrick Tay, Jennifer Stam for Nortel Networks Corporation, et al
Lyndon Barnes, Adam Hirsh for Board of Directors of Nortel Networks Corporation, Nortel Networks Limited
J. Carfagnini, J. Pasquariello for Monitor, Ernst & Young Inc.
M. Starnino for Superintendent of Financial Services, Administrator of PBGF
S. Philpott for Former Employees
K. Zych for Noteholders
Pamela Huff, Craig Thorburn for MatlinPatterson Global Advisors LLC, MatlinPatterson Global Opportunities
Partners III L.P., Matlin Patterson Opportunities Partners (Cayman) III L.P.
David Ward for UK Pension Protection Fund
Leanne Williams for Flextronics Inc.
Alex MacFarlane for Official Committee of Unsecured Creditors
Arthur O. Jacques, Tom McRae for Felske & Sylvain (de facto Continuing Employees' Committee)
Robin B. Schwill, Matthew P. Gottlieb for Nortel Networks UK Limited
A. Kauffman for Export Development Canada
D. Ullman for Verizon Communications Inc.
G. Benchetrit for IBM

Subject: Insolvency; Estates and Trusts

Headnote

Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Miscellaneous issues

Telecommunication company entered protection under Companies' Creditors Arrangement Act ("Act") —
Company decided to pursue "going concern" sales for various business units — Company entered into sale
agreement with respect to assets in Code Division Multiple Access business and Long-Term Evolution Access assets
— Company was pursuing sale of its other business units — Company brought motion for approval of bidding
procedures and asset sale agreement — Motion granted — Court has jurisdiction to authorize sales process under

Act in absence of formal plan of compromise or arrangement and creditor vote — Sale by company which preserved its business as going concern was consistent with objectives of Act — Unless sale was undertaken at this time, long-term viability of business would be in jeopardy.

Bankruptcy and insolvency --- Administration of estate — Sale of assets — Jurisdiction of court to approve sale

Telecommunication company entered protection under Companies' Creditors Arrangement Act ("Act") — Company decided to pursue "going concern" sales for various business units — Company entered into sale agreement with respect to assets in Code Division Multiple Access business and Long-Term Evolution Access assets — Company was pursuing sale of its other business units — Company brought motion for approval of bidding procedures and asset sale agreement — Motion granted — Court has jurisdiction to authorize sales process under Act in absence of formal plan of compromise or arrangement and creditor vote — Sale by company which preserved its business as going concern was consistent with objectives of Act — Unless sale was undertaken at this time, long-term viability of business would be in jeopardy.

MOTION by company for approval of bidding procedures for sale of business and asset sale agreement.

Morawetz J.:

Introduction

1 On June 29, 2009, I granted the motion of the Applicants and approved the bidding procedures (the "Bidding Procedures") described in the affidavit of Mr. Riedel sworn June 23, 2009 (the "Riedel Affidavit") and the Fourteenth Report of Ernst & Young, Inc., in its capacity as Monitor (the "Monitor") (the "Fourteenth Report"). The order was granted immediately after His Honour Judge Gross of the United States Bankruptcy Court for the District of Delaware (the "U.S. Court") approved the Bidding Procedures in the Chapter 11 proceedings.

2 I also approved the Asset Sale Agreement dated as of June 19, 2009 (the "Sale Agreement") among Nokia Siemens Networks B.V. ("Nokia Siemens Networks" or the "Purchaser"), as buyer, and Nortel Networks Corporation ("NNC"), Nortel Networks Limited ("NNL"), Nortel Networks, Inc. ("NNI") and certain of their affiliates, as vendors (collectively the "Sellers") in the form attached as Appendix "A" to the Fourteenth Report and I also approved and accepted the Sale Agreement for the purposes of conducting the "stalking horse" bidding process in accordance with the Bidding Procedures including, the Break-Up Fee and the Expense Reimbursement (as both terms are defined in the Sale Agreement).

3 An order was also granted sealing confidential Appendix "B" to the Fourteenth Report containing the schedules and exhibits to the Sale Agreement pending further order of this court.

4 The following are my reasons for granting these orders.

5 The hearing on June 29, 2009 (the "Joint Hearing") was conducted by way of video conference with a similar motion being heard by the U.S. Court. His Honor Judge Gross presided over the hearing in the U.S. Court. The Joint Hearing was conducted in accordance with the provisions of the Cross-Border Protocol, which had previously been approved by both the U.S. Court and this court.

6 The Sale Agreement relates to the Code Division Multiple Access ("CDMA") business Long-Term Evolution ("LTE") Access assets.

7 The Sale Agreement is not insignificant. The Monitor reports that revenues from CDMA comprised over 21% of Nortel's 2008 revenue. The CDMA business employs approximately 3,100 people (approximately 500 in Canada) and the LTE business employs approximately 1,000 people (approximately 500 in Canada). The purchase price under the Sale Agreement is \$650 million.

Background

8 The Applicants were granted CCAA protection on January 14, 2009. Insolvency proceedings have also been commenced in the United States, the United Kingdom, Israel and France.

9 At the time the proceedings were commenced, Nortel's business operated through 143 subsidiaries, with approximately 30,000 employees globally. As of January 2009, Nortel employed approximately 6,000 people in Canada alone.

10 The stated purpose of Nortel's filing under the CCAA was to stabilize the Nortel business to maximize the chances of preserving all or a portion of the enterprise. The Monitor reported that a thorough strategic review of the company's assets and operations would have to be undertaken in consultation with various stakeholder groups.

11 In April 2009, the Monitor updated the court and noted that various restructuring alternatives were being considered.

12 On June 19, 2009, Nortel announced that it had entered into the Sale Agreement with respect to its assets in its CMDA business and LTE Access assets (collectively, the "Business") and that it was pursuing the sale of its other business units. Mr. Riedel in his affidavit states that Nortel has spent many months considering various restructuring alternatives before determining in its business judgment to pursue "going concern" sales for Nortel's various business units.

13 In deciding to pursue specific sales processes, Mr. Riedel also stated that Nortel's management considered:

- (a) the impact of the filings on Nortel's various businesses, including deterioration in sales; and
- (b) the best way to maximize the value of its operations, to preserve jobs and to continue businesses in Canada and the U.S.

14 Mr. Riedel notes that while the Business possesses significant value, Nortel was faced with the reality that:

- (a) the Business operates in a highly competitive environment;
- (b) full value cannot be realized by continuing to operate the Business through a restructuring; and
- (c) in the absence of continued investment, the long-term viability of the Business would be put into jeopardy.

15 Mr. Riedel concluded that the proposed process for the sale of the Business pursuant to an auction process provided the best way to preserve the Business as a going concern and to maximize value and preserve the jobs of Nortel employees.

16 In addition to the assets covered by the Sale Agreement, certain liabilities are to be assumed by the Purchaser. This issue is covered in a comprehensive manner at paragraph 34 of the Fourteenth Report. Certain liabilities to employees are included on this list. The assumption of these liabilities is consistent with the provisions of the Sale Agreement that requires the Purchaser to extend written offers of employment to at least 2,500 employees in the Business.

17 The Monitor also reports that given that certain of the U.S. Debtors are parties to the Sale Agreement and given the desire to maximize value for the benefit of stakeholders, Nortel determined and it has agreed with the Purchaser that the Sale Agreement is subject to higher or better offers being obtained pursuant to a sale process under s. 363 of the U.S. Bankruptcy Code and that the Sale Agreement shall serve as a "stalking horse" bid pursuant to that process.

18 The Bidding Procedures provide that all bids must be received by the Seller by no later than July 21, 2009 and that the Sellers will conduct an auction of the purchased assets on July 24, 2009. It is anticipated that Nortel will ultimately seek a final sales order from the U.S. Court on or about July 28, 2009 and an approval and vesting order from this court in respect of the Sale Agreement and purchased assets on or about July 30, 2009.

19 The Monitor recognizes the expeditious nature of the sale process but the Monitor has been advised that given the nature of the Business and the consolidation occurring in the global market, there are likely to be a limited number of parties interested in acquiring the Business.

20 The Monitor also reports that Nortel has consulted with, among others, the Official Committee of Unsecured Creditors (the "UCC") and the bondholder group regarding the Bidding Procedures and is of the view that both are supportive of the timing of this sale process. (It is noted that the UCC did file a limited objection to the motion relating to certain aspects of the Bidding Procedures.)

21 Given the sale efforts made to date by Nortel, the Monitor supports the sale process outlined in the Fourteenth Report and more particularly described in the Bidding Procedures.

22 Objections to the motion were filed in the U.S. Court and this court by MatlinPatterson Global Advisors LLC, MatlinPatterson Global Opportunities Partners III L.P. and Matlin Patterson Opportunities Partners (Cayman) III L.P. (collectively, "MatlinPatterson") as well the UCC.

23 The objections were considered in the hearing before Judge Gross and, with certain limited exceptions, the objections were overruled.

Issues and Discussion

24 The threshold issue being raised on this motion by the Applicants is whether the CCAA affords this court the jurisdiction to approve a sales process in the absence of a formal plan of compromise or arrangement and a creditor vote. If the question is answered in the affirmative, the secondary issue is whether this sale should authorize the Applicants to sell the Business.

25 The Applicants submit that it is well established in the jurisprudence that this court has the jurisdiction under the CCAA to approve the sales process and that the requested order should be granted in these circumstances.

26 Counsel to the Applicants submitted a detailed factum which covered both issues.

27 Counsel to the Applicants submits that one of the purposes of the CCAA is to preserve the going concern value of debtors companies and that the court's jurisdiction extends to authorizing sale of the debtor's business, even in the absence of a plan or creditor vote.

28 The CCAA is a flexible statute and it is particularly useful in complex insolvency cases in which the court is required to balance numerous constituents and a myriad of interests.

29 The CCAA has been described as "skeletal in nature". It has also been described as a "sketch, an outline, a supporting framework for the resolution of corporate insolvencies in the public interest". *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 45 C.B.R. (5th) 163 (Ont. C.A.) at paras. 44, 61, leave to appeal refused [2008] S.C.C.A. No. 337 (S.C.C.). ("ATB Financial").

30 The jurisprudence has identified as sources of the court's discretionary jurisdiction, *inter alia*:

- (a) the power of the court to impose terms and conditions on the granting of a stay under s. 11(4) of the CCAA;
- (b) the specific provision of s. 11(4) of the CCAA which provides that the court may make an order "on such terms as it may impose"; and
- (c) the inherent jurisdiction of the court to "fill in the gaps" of the CCAA in order to give effect to its objects. *Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re* (1998), 5 C.B.R. (4th) 299 (Ont. Gen.

Div. [Commercial List]) at para. 43; *PSINET Ltd., Re* (2001), 28 C.B.R. (4th) 95 (Ont. S.C.J. [Commercial List]) at para. 5, *ATB Financial, supra*, at paras. 43-52.

31 However, counsel to the Applicants acknowledges that the discretionary authority of the court under s. 11 must be informed by the purpose of the CCAA.

Its exercise must be guided by the scheme and object of the Act and by the legal principles that govern corporate law issues. *Re Stelco Inc.* (2005), 9 C.B.R. (5th) 135 (Ont. C.A.) at para. 44.

32 In support of the court's jurisdiction to grant the order sought in this case, counsel to the Applicants submits that Nortel seeks to invoke the "overarching policy" of the CCAA, namely, to preserve the going concern. *Residential Warranty Co. of Canada Inc., Re* (2006), 21 C.B.R. (5th) 57 (Alta. Q.B.) at para. 78.

33 Counsel to the Applicants further submits that CCAA courts have repeatedly noted that the purpose of the CCAA is to preserve the benefit of a going concern business for all stakeholders, or "the whole economic community":

The purpose of the CCAA is to facilitate arrangements that might avoid liquidation of the company and allow it to continue in business to the benefit of the whole economic community, including the shareholders, the creditors (both secured and unsecured) and the employees. *Citibank Canada v. Chase Manhattan Bank of Canada* (1991), 5 C.B.R. (3rd) 167 (Ont. Gen. Div.) at para. 29. *Re Consumers Packaging Inc.* (2001) 27 C.B.R. (4th) 197 (Ont. C.A.) at para. 5.

34 Counsel to the Applicants further submits that the CCAA should be given a broad and liberal interpretation to facilitate its underlying purpose, including the preservation of the going concern for the benefit of all stakeholders and further that it should not matter whether the business continues as a going concern under the debtor's stewardship or under new ownership, for as long as the business continues as a going concern, a primary goal of the CCAA will be met.

35 Counsel to the Applicants makes reference to a number of cases where courts in Ontario, in appropriate cases, have exercised their jurisdiction to approve a sale of assets, even in the absence of a plan of arrangement being tendered to stakeholders for a vote. In doing so, counsel to the Applicants submits that the courts have repeatedly recognized that they have jurisdiction under the CCAA to approve asset sales in the absence of a plan of arrangement, where such sale is in the best interests of stakeholders generally. *Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re, supra*, *Re PSINet, supra*, *Consumers Packaging Inc., Re* [2001 CarswellOnt 3482 (Ont. C.A.)], *supra*, *Stelco Inc., Re* (2004), 6 C.B.R. (5th) 316 (Ont. S.C.J. [Commercial List]) at para. 1, *Tiger Brand Knitting Co., Re* (2005), 9 C.B.R. (5th) 315 (Ont. S.C.J.), *Caterpillar Financial Services Ltd. v. Hard-Rock Paving Co.* (2008), 45 C.B.R. (5th) 87 (Ont. S.C.J.) and *Lehndorff General Partner Ltd., Re* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List]).

36 In *Re Consumers Packaging, supra*, the Court of Appeal for Ontario specifically held that a sale of a business as a going concern during a CCAA proceeding is consistent with the purposes of the CCAA:

The sale of Consumers' Canadian glass operations as a going concern pursuant to the Owens-Illinois bid allows the preservation of Consumers' business (albeit under new ownership), and is therefore consistent with the purposes of the CCAA.

...we cannot refrain from commenting that Farley J.'s decision to approve the Owens-Illinois bid is consistent with previous decisions in Ontario and elsewhere that have emphasized the broad remedial purpose of flexibility of the CCAA and have approved the sale and disposition of assets during CCAA proceedings prior to a formal plan being tendered. *Re Consumers Packaging, supra*, at paras. 5, 9.

37 Similarly, in *Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re, supra*, Blair J. (as he then was) expressly affirmed the court's jurisdiction to approve a sale of assets in the course of a CCAA proceeding before

a plan of arrangement had been approved by creditors. *Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re, supra*, at paras. 43, 45.

38 Similarly, in *PSINet Limited, supra*, the court approved a going concern sale in a CCAA proceeding where no plan was presented to creditors and a substantial portion of the debtor's Canadian assets were to be sold. Farley J. noted as follows:

[If the sale was not approved,] there would be a liquidation scenario ensuing which would realize far less than this going concern sale (which appears to me to have involved a transparent process with appropriate exposure designed to maximize the proceeds), thus impacting upon the rest of the creditors, especially as to the unsecured, together with the material enlarging of the unsecured claims by the disruption claims of approximately 8,600 customers (who will be materially disadvantaged by an interrupted transition) plus the job losses for approximately 200 employees. *Re PSINet Limited, supra*, at para. 3.

39 In *Re Stelco Inc., supra*, in 2004, Farley J. again addressed the issue of the feasibility of selling the operations as a going concern:

I would observe that usually it is the creditor side which wishes to terminate CCAA proceedings and that when the creditors threaten to take action, there is a realization that a liquidation scenario will not only have a negative effect upon a CCAA applicant, but also upon its workforce. Hence, the CCAA may be employed to provide stability during a period of necessary financial and operational restructuring - and if a restructuring of the "old company" is not feasible, then there is the exploration of the feasibility of the sale of the operations/enterprise as a going concern (with continued employment) in whole or in part. *Re Stelco Inc, supra*, at para. 1.

40 I accept these submissions as being general statements of the law in Ontario. The value of equity in an insolvent debtor is dubious, at best, and, in my view, it follows that the determining factor should not be whether the business continues under the debtor's stewardship or under a structure that recognizes a new equity structure. An equally important factor to consider is whether the case can be made to continue the business as a going concern.

41 Counsel to the Applicants also referred to decisions from the courts in Quebec, Manitoba and Alberta which have similarly recognized the court's jurisdiction to approve a sale of assets during the course of a CCAA proceeding. *Boutiques San Francisco Inc., Re* (2004), 7 C.B.R. (5th) 189 (C.S. Que.), *Winnipeg Motor Express Inc., Re* (2008), 49 C.B.R. (5th) 302 (Man. Q.B.) at paras. 41, 44, and *Calpine Canada Energy Ltd., Re* (2007), 35 C.B.R. (5th) 1 (Alta. Q.B.) at para. 75.

42 Counsel to the Applicants also directed the court's attention to a recent decision of the British Columbia Court of Appeal which questioned whether the court should authorize the sale of substantially all of the debtor's assets where the debtor's plan "will simply propose that the net proceeds from the sale...be distributed to its creditors". In *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.* (2008), 46 C.B.R. (5th) 7 (B.C. C.A.) ("*Cliffs Over Maple Bay*"), the court was faced with a debtor who had no active business but who nonetheless sought to stave off its secured creditor indefinitely. The case did not involve any type of sale transaction but the Court of Appeal questioned whether a court should authorize the sale under the CCAA without requiring the matter to be voted upon by creditors.

43 In addressing this matter, it appears to me that the British Columbia Court of Appeal focussed on whether the court should grant the requested relief and not on the question of whether a CCAA court has the jurisdiction to grant the requested relief.

44 I do not disagree with the decision in *Cliffs Over Maple Bay*. However, it involved a situation where the debtor had no active business and did not have the support of its stakeholders. That is not the case with these Applicants.

45 The *Cliffs Over Maple Bay* decision has recently been the subject of further comment by the British Columbia Court of Appeal in *Asset Engineering LP v. Forest & Marine Financial Ltd. Partnership*, 2009 BCCA 319 (B.C. C.A.).

46 At paragraphs 24 - 26 of the *Forest and Marine* decision, Newbury J.A. stated:

24. In *Cliffs Over Maple Bay*, the debtor company was a real estate developer whose one project had failed. The company had been dormant for some time. It applied for CCAA protection but described its proposal for restructuring in vague terms that amounted essentially to a plan to "secure sufficient funds" to complete the stalled project (Para. 34). This court, per Tysoe J.A., ruled that although the Act can apply to single-project companies, its purposes are unlikely to be engaged in such instances, since mortgage priorities are fully straight forward and there will be little incentive for senior secured creditors to compromise their interests (Para. 36). Further, the Court stated, the granting of a stay under s. 11 is "not a free standing remedy that the court may grant whenever an insolvent company wishes to undertake a "restructuring"...Rather, s. 11 is ancillary to the fundamental purpose of the CCAA, and a stay of proceedings freezing the rights of creditors should only be granted in furtherance of the CCAA's fundamental purpose". That purpose has been described in *Meridian Developments Inc. v. Toronto Dominion Bank* (1984) 11 D.L.R. (4th) 576 (Alta. Q.B.):

The legislation is intended to have wide scope and allow a judge to make orders which will effectively maintain the status quo for a period while the insolvent company attempts to gain the approval of its creditors for a proposed arrangement which will enable the company to remain in operation for what is, hopefully, the future benefit of both the company and its creditors. [at 580]

25. The Court was not satisfied in *Cliffs Over Maple Bay* that the "restructuring" contemplated by the debtor would do anything other than distribute the net proceeds from the sale, winding up or liquidation of its business. The debtor had no intention of proposing a plan of arrangement, and its business would not continue following the execution of its proposal - thus it could not be said the purposes of the statute would be engaged...

26. In my view, however, the case at bar is quite different from *Cliffs Over Maple Bay*. Here, the main debtor, the Partnership, is at the centre of a complicated corporate group and carries on an active financing business that it hopes to save notwithstanding the current economic cycle. (The business itself which fills a "niche" in the market, has been carried on in one form or another since 1983.) The CCAA is appropriate for situations such as this where it is unknown whether the "restructuring" will ultimately take the form of a refinancing or will involve a reorganization of the corporate entity or entities and a true compromise of the rights of one or more parties. The "fundamental purpose" of the Act - to preserve the *status quo* while the debtor prepares a plan that will enable it to remain in business to the benefit of all concerned - will be furthered by granting a stay so that the means contemplated by the Act - a compromise or arrangement - can be developed, negotiated and voted on if necessary...

47 It seems to me that the foregoing views expressed in *Forest and Marine* are not inconsistent with the views previously expressed by the courts in Ontario. The CCAA is intended to be flexible and must be given a broad and liberal interpretation to achieve its objectives and a sale by the debtor which preserves its business as a going concern is, in my view, consistent with those objectives.

48 I therefore conclude that the court does have the jurisdiction to authorize a sale under the CCAA in the absence of a plan.

49 I now turn to a consideration of whether it is appropriate, in this case, to approve this sales process. Counsel to the Applicants submits that the court should consider the following factors in determining whether to authorize a sale under the CCAA in the absence of a plan:

- (a) is a sale transaction warranted at this time?
- (b) will the sale benefit the whole "economic community"?

- (c) do any of the debtors' creditors have a *bona fide* reason to object to a sale of the business?
- (d) is there a better viable alternative?

I accept this submission.

50 It is the position of the Applicants that Nortel's proposed sale of the Business should be approved as this decision is to the benefit of stakeholders and no creditor is prejudiced. Further, counsel submits that in the absence of a sale, the prospects for the Business are a loss of competitiveness, a loss of value and a loss of jobs.

51 Counsel to the Applicants summarized the facts in support of the argument that the Sale Transaction should be approved, namely:

- (a) Nortel has been working diligently for many months on a plan to reorganize its business;
- (b) in the exercise of its business judgment, Nortel has concluded that it cannot continue to operate the Business successfully within the CCAA framework;
- (c) unless a sale is undertaken at this time, the long-term viability of the Business will be in jeopardy;
- (d) the Sale Agreement continues the Business as a going concern, will save at least 2,500 jobs and constitutes the best and most valuable proposal for the Business;
- (e) the auction process will serve to ensure Nortel receives the highest possible value for the Business;
- (f) the sale of the Business at this time is in the best interests of Nortel and its stakeholders; and
- (g) the value of the Business is likely to decline over time.

52 The objections of MatlinPatterson and the UCC have been considered. I am satisfied that the issues raised in these objections have been addressed in a satisfactory manner by the ruling of Judge Gross and no useful purpose would be served by adding additional comment.

53 Counsel to the Applicants also emphasize that Nortel will return to court to seek approval of the most favourable transaction to emerge from the auction process and will aim to satisfy the elements established by the court for approval as set out in *Royal Bank v. Soundair Corp.* (1991), 7 C.B.R. (3d) 1 (Ont. C.A.) at para. 16.

Disposition

54 The Applicants are part of a complicated corporate group. They carry on an active international business. I have accepted that an important factor to consider in a CCAA process is whether the case can be made to continue the business as a going concern. I am satisfied having considered the factors referenced at [49], as well as the facts summarized at [51], that the Applicants have met this test. I am therefore satisfied that this motion should be granted.

55 Accordingly, I approve the Bidding Procedures as described in the Riedel Affidavit and the Fourteenth Report of the Monitor, which procedures have been approved by the U.S. Court.

56 I am also satisfied that the Sale Agreement should be approved and further that the Sale Agreement be approved and accepted for the purposes of conducting the "stalking horse" bidding process in accordance with the Bidding Procedures including, without limitation the Break-Up Fee and the Expense Reimbursement (as both terms are defined in the Sale Agreement).

57 Further, I have also been satisfied that Appendix B to the Fourteenth Report contains information which is commercially sensitive, the dissemination of which could be detrimental to the stakeholders and, accordingly, I order that this document be sealed, pending further order of the court.

58 In approving the Bidding Procedures, I have also taken into account that the auction will be conducted prior to the sale approval motion. This process is consistent with the practice of this court.

59 Finally, it is the expectation of this court that the Monitor will continue to review ongoing issues in respect of the Bidding Procedures. The Bidding Procedures permit the Applicants to waive certain components of qualified bids without the consent of the UCC, the bondholder group and the Monitor. However, it is the expectation of this court that, if this situation arises, the Applicants will provide advance notice to the Monitor of its intention to do so.

Motion granted.

TAB 6

Canada Federal Statutes Companies' Creditors Arrangement Act

R.S.C. 1985, c. C-36

Currency

An Act to facilitate compromises and arrangements between companies and their creditors

R.S.C. 1985, c. C-36, as am. R.S.C. 1985, c. 27 (2nd Supp.), ss. 10 (Sched., item 3), 11; S.C. 1990, c. 17, s. 4; 1992, c. 27, s. 90(1)(f); 1993, c. 28, s. 78 (Sched. III, item 20) [Repealed 1999, c. 3, s. 12 (Sched., item 4).]; 1993, c. 34, s. 52; 1996, c. 6, s. 167(1)(d), (2); 1997, c. 12, ss. 120-127; 1998, c. 19, s. 260; 1998, c. 30, s. 14(c); 1999, c. 3, s. 22; 1999, c. 28, s. 154; 2000, c. 30, ss. 156-158; 2001, c. 9, ss. 575-577; 2001, c. 34, s. 33; 2002, c. 7, ss. 133-135; 2004, c. 25, ss. 193-195; 2005, c. 3, ss. 15, 16; 2005, c. 47, ss. 124-131 [ss. 124, 126 amended 2007, c. 36, ss. 105, 106.]; 2007, c. 29, ss. 104-109; 2007, c. 36, ss. 61(1), (2), (3) (Fr.), (4), 62 (Fr.), 63-73, 74(1), (2) (Fr.), 75-82, 112(17), (20), (23) [s. 63 repealed 2007, c. 36, s. 112(15).]; 2009, c. 33, ss. 27-29; 2012, c. 16, s. 82; 2012, c. 31, ss. 419-421; 2015, c. 3, s. 37.

Currency

Federal English Statutes reflect amendments current to September 21, 2016

Federal English Regulations are current to Gazette Vol. 150:19 (September 21, 2016)

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Canada Federal Statutes
Companies' Creditors Arrangement Act
Short Title

R.S.C. 1985, c. C-36, s. 1

s 1. Short title

Currency

1.Short title

This Act may be cited as the *Companies' Creditors Arrangement Act*.

Currency

Federal English Statutes reflect amendments current to September 21, 2016

Federal English Regulations are current to Gazette Vol. 150:19 (September 21, 2016)

End of Document

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Canada Federal Statutes
Companies' Creditors Arrangement Act
Part II — Jurisdiction of Courts

R.S.C. 1985, c. C-36, s. 11.52

S 11.52

Currency

11.52

11.52(1) Court may order security or charge to cover certain costs

On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

11.52(2) Priority

The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Amendment History

2005, c. 47, s. 128; 2007, c. 36, s. 66

Currency

Federal English Statutes reflect amendments current to September 21, 2016

Federal English Regulations are current to Gazette Vol. 150:19 (September 21, 2016)

TAB 7

2010 ONSC 222

Ontario Superior Court of Justice [Commercial List]

Canwest Publishing Inc./Publications Canwest Inc., Re

2010 CarswellOnt 212, 2010 ONSC 222, [2010] O.J. No. 188, 184 A.C.W.S. (3d) 684, 63 C.B.R. (5th) 115

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, C-36, AS AMENDED AND IN THE MATTER
OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT
OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST
INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.**

Pepall J.

Judgment: January 18, 2010

Docket: CV-10-8533-00CL

Counsel: Lyndon Barnes, Alex Cobb, Duncan Ault for Applicant, LP Entities

Mario Forte for Special Committee of the Board of Directors

Andrew Kent, Hilary Clarke for Administrative Agent of the Senior Secured Lenders' Syndicate

Peter Griffin for Management Directors

Robin B. Schwill, Natalie Renner for Ad Hoc Committee of 9.25% Senior Subordinated Noteholders

David Byers, Maria Konyukhova for Proposed Monitor, FTI Consulting Canada Inc.

Subject: Insolvency; Corporate and Commercial

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Miscellaneous

CMI, entity of C Corp., obtained protection from creditors in Companies' Creditors Arrangement Act ("CCAA") proceedings in October 2009 — CPI, newspaper entities related to C, sought similar protection — CPI brought application for order pursuant to CCAA and for stay of proceedings and other benefits of order to be extended to CPI — Application granted — CPI was clearly insolvent — Community served by CPI was huge — Granting of order premised on anticipated going concern sale of newspaper business, which would serve interests of CPI and stakeholders and also community at large — Order requested would provide stability and enable CPI to pursue restructuring and preserve enterprise value for stakeholders — Without benefit of stay, CPI would have been required to pay approximately \$1.45 billion and would have been unable to continue operating business.

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Arrangements — Approval by creditors

CMI, entity of C Corp., obtained protection from creditors in Companies' Creditors Arrangement Act ("CCAA") proceedings in October 2009 — CPI, newspaper entities related to C, sought similar protection — CPI brought application for order pursuant to CCAA and for stay of proceedings and other benefits of order to be extended to CPI — Application granted — CPI was clearly insolvent — Community served by CPI was huge — Granting of order premised on anticipated going concern sale of newspaper business, which would serve interests of CPI and stakeholders and also community at large — Order requested would provide stability and enable CPI to pursue restructuring and preserve enterprise value for stakeholders — Without benefit of stay, CPI would have been required to pay approximately \$1.45 billion and would have been unable to continue operating business — In circumstances, it was appropriate to allow CPI to file and present plan only to secured creditors.

APPLICATION by entity of company already protected under Companies' Creditors Arrangement Act for similar protection.

Pepall J.:

Reasons for Decision

Introduction

1 Canwest Global Communications Corp. ("Canwest Global") is a leading Canadian media company with interests in (i) newspaper publishing and digital media; and (ii) free-to-air television stations and subscription based specialty television channels. Canwest Global, the entities in its Canadian television business (excluding CW Investments Co. and its subsidiaries) and the National Post Company (which prior to October 30, 2009 owned and published the National Post) (collectively, the "CMI Entities"), obtained protection from their creditors in a *Companies' Creditors Arrangement Act*¹ ("CCAA") proceeding on October 6, 2009.² Now, the Canwest Global Canadian newspaper entities with the exception of National Post Inc. seek similar protection. Specifically, Canwest Publishing Inc./Publications Canwest Inc. ("CPI"), Canwest Books Inc. ("CBI"), and Canwest (Canada) Inc. ("CCI") apply for an order pursuant to the CCAA. They also seek to have the stay of proceedings and the other benefits of the order extend to Canwest Limited Partnership/Canwest Société en Commandite (the "Limited Partnership"). The Applicants and the Limited Partnership are referred to as the "LP Entities" throughout these reasons. The term "Canwest" will be used to refer to the Canwest enterprise as a whole. It includes the LP Entities and Canwest Global's other subsidiaries which are not applicants in this proceeding.

2 All appearing on this application supported the relief requested with the exception of the Ad Hoc Committee of 9.25% Senior Subordinated Noteholders. That Committee represents certain unsecured creditors whom I will discuss more fully later.

3 I granted the order requested with reasons to follow. These are my reasons.

4 I start with three observations. Firstly, Canwest Global, through its ownership interests in the LP Entities, is the largest publisher of daily English language newspapers in Canada. The LP Entities own and operate 12 daily newspapers across Canada. These newspapers are part of the Canadian heritage and landscape. The oldest, The Gazette, was established in Montreal in 1778. The others are the Vancouver Sun, The Province, the Ottawa Citizen, the Edmonton Journal, the Calgary Herald, The Windsor Star, the Times Colonist, The Star Phoenix, the Leader-Post, the Nanaimo Daily News and the Alberni Valley Times. These newspapers have an estimated average weekly readership that exceeds 4 million. The LP Entities also publish 23 non-daily newspapers and own and operate a number of digital media and online operations. The community served by the LP Entities is huge. In addition, based on August 31, 2009 figures, the LP Entities employ approximately 5,300 employees in Canada with approximately 1,300 of those employees working in Ontario. The granting of the order requested is premised on an anticipated going concern sale of the newspaper business of the LP Entities. This serves not just the interests of the LP Entities and their stakeholders but the Canadian community at large.

5 Secondly, the order requested may contain some shortcomings; it may not be perfect. That said, insolvency proceedings typically involve what is feasible, not what is flawless.

6 Lastly, although the builders of this insolvent business are no doubt unhappy with its fate, gratitude is not misplaced by acknowledging their role in its construction.

Background Facts

(i) Financial Difficulties

7 The LP Entities generate the majority of their revenues through the sale of advertising. In the fiscal year ended August 31, 2009, approximately 72% of the LP Entities' consolidated revenue derived from advertising. The LP Entities have been seriously affected by the economic downturn in Canada and their consolidated advertising revenues declined substantially in the latter half of 2008 and in 2009. In addition, they experienced increases in certain of their operating costs.

8 On May 29, 2009 the Limited Partnership failed, for the first time, to make certain interest and principal reduction payments and related interest and cross currency swap payments totaling approximately \$10 million in respect of its senior secured credit facilities. On the same day, the Limited Partnership announced that, as of May 31, 2009, it would be in breach of certain financial covenants set out in the credit agreement dated as of July 10, 2007 between its predecessor, Canwest Media Works Limited Partnership, The Bank of Nova Scotia as administrative agent, a syndicate of secured lenders ("the LP Secured Lenders"), and the predecessors of CCI, CPI and CBI as guarantors. The Limited Partnership also failed to make principal, interest and fee payments due pursuant to this credit agreement on June 21, June 22, July 21, July 22 and August 21, 2009.

9 The May 29, 2009, defaults under the senior secured credit facilities triggered defaults in respect of related foreign currency and interest rate swaps. The swap counterparties (the "Hedging Secured Creditors") demanded payment of \$68.9 million. These unpaid amounts rank *pari passu* with amounts owing under the LP Secured Lenders' credit facilities.

10 On or around August 31, 2009, the Limited Partnership and certain of the LP Secured Lenders entered into a forbearance agreement in order to allow the LP Entities and the LP Secured Lenders the opportunity to negotiate a pre-packaged restructuring or reorganization of the affairs of the LP Entities. On November 9, 2009, the forbearance agreement expired and since then, the LP Secured Lenders have been in a position to demand payment of approximately \$953.4 million, the amount outstanding as at August 31, 2009. Nonetheless, they continued negotiations with the LP Entities. The culmination of this process is that the LP Entities are now seeking a stay of proceedings under the CCAA in order to provide them with the necessary "breathing space" to restructure and reorganize their businesses and to preserve their enterprise value for the ultimate benefit of their broader stakeholder community.

11 The Limited Partnership released its annual consolidated financial statements for the twelve months ended August 31, 2009 and 2008 on November 26, 2009. As at August 31, 2009, the Limited Partnership had total consolidated assets with a net book value of approximately \$644.9 million. This included consolidated current assets of \$182.7 million and consolidated non-current assets of approximately \$462.2 million. As at that date, the Limited Partnership had total consolidated liabilities of approximately \$1.719 billion (increased from \$1.656 billion as at August 31, 2008). These liabilities consisted of consolidated current liabilities of \$1.612 billion and consolidated non-current liabilities of \$107 million.

12 The Limited Partnership had been experiencing deteriorating financial results over the past year. For the year ended August 31, 2009, the Limited Partnership's consolidated revenues decreased by \$181.7 million or 15% to \$1.021 billion as compared to \$1.203 billion for the year ended August 31, 2008. For the year ended August 31, 2009, the Limited Partnership reported a consolidated net loss of \$66 million compared to consolidated net earnings of \$143.5 million for fiscal 2008.

(ii) Indebtedness under the Credit Facilities

13 The indebtedness under the credit facilities of the LP Entities consists of the following.

- (a) The LP senior secured credit facilities are the subject matter of the July 10, 2007 credit agreement already mentioned. They are guaranteed by CCI, CPI and CBI. The security held by the LP Secured Lenders has been reviewed by the solicitors for the proposed Monitor, FTI Consulting Canada Inc. and considered to be valid

and enforceable.³ As at August 31, 2009, the amounts owing by the LP Entities totaled \$953.4 million exclusive of interest.⁴

(b) The Limited Partnership is a party to the aforementioned foreign currency and interest rate swaps with the Hedging Secured Creditors. Defaults under the LP senior secured credit facilities have triggered defaults in respect of these swap arrangements. Demand for repayment of amounts totaling \$68.9 million (exclusive of unpaid interest) has been made. These obligations are secured.

(c) Pursuant to a senior subordinated credit agreement dated as of July 10, 2007, between the Limited Partnership, The Bank of Nova Scotia as administrative agent for a syndicate of lenders, and others, certain subordinated lenders agreed to provide the Limited Partnership with access to a term credit facility of up to \$75 million. CCI, CPI, and CBI are guarantors. This facility is unsecured, guaranteed on an unsecured basis and currently fully drawn. On June 20, 2009, the Limited Partnership failed to make an interest payment resulting in an event of default under the credit agreement. In addition, the defaults under the senior secured credit facilities resulted in a default under this facility. The senior subordinated lenders are in a position to take steps to demand payment.

(d) Pursuant to a note indenture between the Limited Partnership, The Bank of New York Trust Company of Canada as trustee, and others, the Limited Partnership issued 9.5% per annum senior subordinated unsecured notes due 2015 in the aggregate principal amount of US \$400 million. CPI and CBI are guarantors. The notes are unsecured and guaranteed on an unsecured basis. The noteholders are in a position to take steps to demand immediate payment of all amounts outstanding under the notes as a result of events of default.

14 The LP Entities use a centralized cash management system at the Bank of Nova Scotia which they propose to continue. Obligations owed pursuant to the existing cash management arrangements are secured (the "Cash Management Creditor").

(iii) LP Entities' Response to Financial Difficulties

15 The LP Entities took a number of steps to address their circumstances with a view to improving cash flow and strengthening their balance sheet. Nonetheless, they began to experience significant tightening of credit from critical suppliers and other trade creditors. The LP Entities' debt totals approximately \$1.45 billion and they do not have the liquidity required to make payment in respect of this indebtedness. They are clearly insolvent.

16 The board of directors of Canwest Global struck a special committee of directors (the "Special Committee") with a mandate to explore and consider strategic alternatives. The Special Committee has appointed Thomas Strike, the President, Corporate Development & Strategy Implementation, as Recapitalization Officer and has retained Gary Colter of CRS Inc. as Restructuring Advisor for the LP Entities (the "CRA"). The President of CPI, Dennis Skulsky, will report directly to the Special Committee.

17 Given their problems, throughout the summer and fall of 2009, the LP Entities have participated in difficult and complex negotiations with their lenders and other stakeholders to obtain forbearance and to work towards a consensual restructuring or recapitalization.

18 An ad hoc committee of the holders of the senior subordinated unsecured notes (the "Ad Hoc Committee") was formed in July, 2009 and retained Davies Ward Phillips & Vineberg as counsel. Among other things, the Limited Partnership agreed to pay the Committee's legal fees up to a maximum of \$250,000. Representatives of the Limited Partnership and their advisors have had ongoing discussions with representatives of the Ad Hoc Committee and their counsel was granted access to certain confidential information following execution of a confidentiality agreement. The Ad Hoc Committee has also engaged a financial advisor who has been granted access to the LP Entities' virtual data room which contains confidential information regarding the business and affairs of the LP Entities. There is no evidence

of any satisfactory proposal having been made by the noteholders. They have been in a position to demand payment since August, 2009, but they have not done so.

19 In the meantime and in order to permit the businesses of the LP Entities to continue to operate as going concerns and in an effort to preserve the greatest number of jobs and maximize value for the stakeholders of the LP Entities, the LP Entities have been engaged in negotiations with the LP Senior Lenders, the result of which is this CCAA application.

(iv) The Support Agreement, the Secured Creditors' Plan and the Solicitation Process

20 Since August 31, 2009, the LP Entities and the LP administrative agent for the LP Secured Lenders have worked together to negotiate terms for a consensual, prearranged restructuring, recapitalization or reorganization of the business and affairs of the LP Entities as a going concern. This is referred to by the parties as the Support Transaction.

21 As part of this Support Transaction, the LP Entities are seeking approval of a Support Agreement entered into by them and the administrative agent for the LP Secured Lenders. 48% of the LP Secured Lenders, the Hedging Secured Creditors, and the Cash Management Creditor (the "Secured Creditors") are party to the Support Agreement.

22 Three interrelated elements are contemplated by the Support Agreement and the Support Transaction: the credit acquisition, the Secured Creditors' plan (the "Plan"), and the sale and investor solicitation process which the parties refer to as SISP.

23 The Support Agreement contains various milestones with which the LP Entities are to comply and, subject to a successful bid arising from the solicitation process (an important caveat in my view), commits them to support a credit acquisition. The credit acquisition involves an acquisition by an entity capitalized by the Secured Creditors and described as AcquireCo. AcquireCo. would acquire substantially all of the assets of the LP Entities (including the shares in National Post Inc.) and assume certain of the liabilities of the LP Entities. It is contemplated that AcquireCo. would offer employment to all or substantially all of the employees of the LP Entities and would assume all of the LP Entities' existing pension plans and existing post-retirement and post-employment benefit plans subject to a right by AcquireCo., acting commercially reasonably and after consultation with the operational management of the LP Entities, to exclude certain specified liabilities. The credit acquisition would be the subject matter of a Plan to be voted on by the Secured Creditors on or before January 31, 2010. There would only be one class. The Plan would only compromise the LP Entities' secured claims and would not affect or compromise any other claims against any of the LP Entities ("unaffected claims"). No holders of the unaffected claims would be entitled to vote on or receive any distributions of their claims. The Secured Creditors would exchange their outstanding secured claims against the LP Entities under the LP credit agreement and the swap obligations respectively for their *pro rata* shares of the debt and equity to be issued by AcquireCo. All of the LP Entities' obligations under the LP secured claims calculated as of the date of closing less \$25 million would be deemed to be satisfied following the closing of the Acquisition Agreement. LP secured claims in the amount of \$25 million would continue to be held by AcquireCo. and constitute an outstanding unsecured claim against the LP Entities.

24 The Support Agreement contemplates that the Financial Advisor, namely RBC Dominion Securities Inc., under the supervision of the Monitor, will conduct the solicitation process. Completion of the credit acquisition process is subject to a successful bid arising from the solicitation process. In general terms, the objective of the solicitation process is to obtain a better offer (with some limitations described below) than that reflected in the credit acquisition. If none is obtained in that process, the LP Entities intend for the credit acquisition to proceed assuming approval of the Plan. Court sanction would also be required.

25 In more detailed terms, Phase I of the solicitation process is expected to last approximately 7 weeks and qualified interested parties may submit non-binding proposals to the Financial Advisor on or before February 26, 2010. Thereafter, the Monitor will assess the proposals to determine whether there is a reasonable prospect of obtaining a Superior Offer. This is in essence a cash offer that is equal to or higher than that represented by the credit acquisition. If there is such a prospect, the Monitor will recommend that the process continue into Phase II. If there is no such prospect,

the Monitor will then determine whether there is a Superior Alternative Offer, that is, an offer that is not a Superior Offer but which might nonetheless receive approval from the Secured Creditors. If so, to proceed into Phase II, the Superior Alternative Offer must be supported by Secured Creditors holding more than at least 33.3% of the secured claims. If it is not so supported, the process would be terminated and the LP Entities would then apply for court sanction of the Plan.

26 Phase II is expected to last approximately 7 weeks as well. This period allows for due diligence and the submission of final binding proposals. The Monitor will then conduct an assessment akin to the Phase 1 process with somewhat similar attendant outcomes if there are no Superior Offers and no acceptable Alternative Superior Offers. If there were a Superior Offer or an acceptable Alternative Superior Offer, an agreement would be negotiated and the requisite approvals sought.

27 The solicitation process is designed to allow the LP Entities to test the market. One concern is that a Superior Offer that benefits the secured lenders might operate to preclude a Superior Alternative Offer that could provide a better result for the unsecured creditors. That said, the LP Entities are of the view that the solicitation process and the support transaction present the best opportunity for the businesses of the LP Entities to continue as going concerns, thereby preserving jobs as well as the economic and social benefits of their continued operation. At this stage, the alternative is a bankruptcy or liquidation which would result in significant detriment not only to the creditors and employees of the LP Entities but to the broader community that benefits from the continued operation of the LP Entities' business. I also take some comfort from the position of the Monitor which is best captured in an excerpt from its preliminary Report:

The terms of the Support Agreement and SISP were the subject of lengthy and intense arm's length negotiations between the LP Entities and the LP Administrative Agent. The Proposed Monitor supports approval of the process contemplated therein and of the approval of those documents, but without in any way fettering the various powers and discretions of the Monitor.

28 It goes without saying that the Monitor, being a court appointed officer, may apply to the court for advice and directions and also owes reporting obligations to the court.

29 As to the objection of the Ad Hoc Committee, I make the following observations. Firstly, they represent unsecured subordinated debt. They have been in a position to take action since August, 2009. Furthermore, the LP Entities have provided up to \$250,000 for them to retain legal counsel. Meanwhile, the LP Secured Lenders have been in a position to enforce their rights through a non-consensual court proceeding and have advised the LP Entities of their abilities in that regard in the event that the LP Entities did not move forward as contemplated by the Support Agreement. With the Support Agreement and the solicitation process, there is an enhanced likelihood of the continuation of going concern operations, the preservation of jobs and the maximization of value for stakeholders of the LP Entities. It seemed to me that in the face of these facts and given that the Support Agreement expired on January 8, 2010, adjourning the proceeding was not merited in the circumstances. The Committee did receive very short notice. Without being taken as encouraging or discouraging the use of the comeback clause in the order, I disagree with the submission of counsel to the Ad Hoc Committee to the effect that it is very difficult if not impossible to stop a process relying on that provision. That provision in the order is a meaningful one as is clear from the decision in *Muscletech Research & Development Inc., Re*⁵. On a come back motion, although the positions of parties who have relied bona fide on an Initial Order should not be prejudiced, the onus is on the applicants for an Initial Order to satisfy the court that the existing terms should be upheld.

Proposed Monitor

30 The Applicants propose that FTI Consulting Canada Inc. serve as the Monitor. It currently serves as the Monitor in the CMI Entities' CCAA proceeding. It is desirable for FTI to act; it is qualified to act; and it has consented to act. It has not served in any of the incompatible capacities described in section 11.7(2) of the CCAA. The proposed Monitor has an enhanced role that is reflected in the order and which is acceptable.

Proposed Order

31 As mentioned, I granted the order requested. It is clear that the LP Entities need protection under the CCAA. The order requested will provide stability and enable the LP Entities to pursue their restructuring and preserve enterprise value for their stakeholders. Without the benefit of a stay, the LP Entities would be required to pay approximately \$1.45 billion and would be unable to continue operating their businesses.

(a) *Threshold Issues*

32 The chief place of business of the Applicants is Ontario. They qualify as debtor companies under the CCAA. They are affiliated companies with total claims against them that far exceed \$5 million. Demand for payment of the swap indebtedness has been made and the Applicants are in default under all of the other facilities outlined in these reasons. They do not have sufficient liquidity to satisfy their obligations. They are clearly insolvent.

(b) *Limited Partnership*

33 The Applicants seek to extend the stay of proceedings and the other relief requested to the Limited Partnership. The CCAA definition of a company does not include a partnership or a limited partnership but courts have exercised their inherent jurisdiction to extend the protections of an Initial CCAA Order to partnerships when it was just and convenient to do so. The relief has been held to be appropriate where the operations of the partnership are so intertwined with those of the debtor companies that irreparable harm would ensue if the requested stay were not granted: *Canwest Global Communications Corp., Re*⁶ and *Lehndorff General Partner Ltd., Re*⁷.

34 In this case, the Limited Partnership is the administrative backbone of the LP Entities and is integral to and intertwined with the Applicants' ongoing operations. It owns all shared information technology assets; it provides hosting services for all Canwest properties; it holds all software licences used by the LP Entities; it is party to many of the shared services agreements involving other Canwest entities; and employs approximately 390 full-time equivalent employees who work in Canwest's shared services area. The Applicants state that failure to extend the stay to the Limited Partnership would have a profoundly negative impact on the value of the Applicants, the Limited Partnership and the Canwest Global enterprise as a whole. In addition, exposing the assets of the Limited Partnership to the demands of creditors would make it impossible for the LP Entities to successfully restructure. I am persuaded that under these circumstances it is just and convenient to grant the request.

(c) *Filing of the Secured Creditors' Plan*

35 The LP Entities propose to present the Plan only to the Secured Creditors. Claims of unsecured creditors will not be addressed.

36 The CCAA seems to contemplate a single creditor-class plan. Sections 4 and 5 state:

s.4 Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

s.5 Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

37 Case law has interpreted these provisions as authorizing a single creditor-class plan. For instance, Blair J. (as he then was) stated in *Philip Services Corp., Re*⁸: "There is no doubt that a debtor is at liberty, under the terms of sections 4 and 5 of the CCAA, to make a proposal to secured creditors or to unsecured creditors or to both groups."⁹

Similarly, in *Anvil Range Mining Corp., Re*¹⁰, the Court of Appeal stated: "It may also be noted that s. 5 of the CCAA contemplates a plan which is a compromise between a debtor company and its secured creditors and that by the terms of s. 6 of the Act, applied to the facts of this case, the plan is binding only on the secured creditors and the company and not on the unsecured creditors."¹¹

38 Based on the foregoing, it is clear that a debtor has the statutory authority to present a plan to a single class of creditors. In *Anvil Range Mining Corp., Re*, the issue was raised in the context of the plan's sanction by the court and a consideration of whether the plan was fair and reasonable as it eliminated the opportunity for unsecured creditors to realize anything. The basis of the argument was that the motions judge had erred in not requiring a more complete and in depth valuation of the company's assets relative to the claims of the secured creditors.

39 In this case, I am not being asked to sanction the Plan at this stage. Furthermore, the Monitor will supervise a vigorous and lengthy solicitation process to thoroughly canvass the market for alternative transactions. The solicitation should provide a good indication of market value. In addition, as counsel for the LP Entities observed, the noteholders and the LP Entities never had any forbearance agreement. The noteholders have been in a position to take action since last summer but chose not to do so. One would expect some action on their part if they themselves believed that they "were in the money". While the process is not perfect, it is subject to the supervision of the court and the Monitor is obliged to report on its results to the court.

40 In my view it is appropriate in the circumstances to authorize the LP Entities to file and present a Plan only to the Secured Creditors.

(D) DIP Financing

41 The Applicants seek approval of a DIP facility in the amount of \$25 million which would be secured by a charge over all of the assets of the LP Entities and rank ahead of all other charges except the Administration Charge, and ahead of all other existing security interests except validly perfected purchase money security interests and certain specific statutory encumbrances.

42 Section 11.2 of the CCAA provides the statutory jurisdiction to grant a DIP charge. In *Canwest Global Communications Corp., Re*¹², I addressed this provision. Firstly, an applicant should address the requirements contained in section 11.2 (1) and then address the enumerated factors found in section 11.2(4) of the CCAA. As that list is not exhaustive, it may be appropriate to consider other factors as well.

43 Applying these principles to this case and dealing firstly with section 11.2(1) of the CCAA, notice either has been given to secured creditors likely to be affected by the security or charge or alternatively they are not affected by the DIP charge. While funds are not anticipated to be immediately necessary, the cash flow statements project a good likelihood that the LP Entities will require the additional liquidity afforded by the \$25 million. The ability to borrow funds that are secured by a charge will help retain the confidence of the LP Entities' trade creditors, employees and suppliers. It is expected that the DIP facility will permit the LP Entities to conduct the solicitation process and consummate a recapitalization transaction of a sale of all or some of its assets. The charge does not secure any amounts that were owing prior to the filing. As such, there has been compliance with the provisions of section 11.2 (1).

44 Turning then to a consideration of the factors found in section 11.2(4) of the Act, the LP Entities are expected to be subject to these CCAA proceedings until July 31, 2010. Their business and financial affairs will be amply managed during the proceedings. This is a consensual filing which is reflective of the confidence of the major creditors in the current management configuration. All of these factors favour the granting of the charge. The DIP loan would enhance the prospects of a viable compromise or arrangement and would ensure the necessary stability during the CCAA process. I have already touched upon the issue of value. That said, in relative terms, the quantum of the DIP financing is not large and there is no readily apparent material prejudice to any creditor arising from the granting of the charge and approval of the financing. I also note that it is endorsed by the proposed Monitor in its report.

45 Other factors to consider in assessing whether to approve a DIP charge include the reasonableness of the financing terms and more particularly the associated fees. Ideally there should be some evidence on this issue. Prior to entering into the forbearance agreement, the LP Entities sought proposals from other third party lenders for a DIP facility. In this case, some but not all of the Secured Creditors are participating in the financing of the DIP loan. Therefore, only some would benefit from the DIP while others could bear the burden of it. While they may have opted not to participate in the DIP financing for various reasons, the concurrence of the non participating Secured Creditors is some market indicator of the appropriateness of the terms of the DIP financing.

46 Lastly, I note that the DIP lenders have indicated that they would not provide a DIP facility if the charge was not approved. In all of these circumstances, I was prepared to approve the DIP facility and grant the DIP charge.

(e) Critical Suppliers

47 The LP Entities ask that they be authorized but not required to pay pre-filing amounts owing in arrears to certain suppliers if the supplier is critical to the business and ongoing operations of the LP Entities or the potential future benefit of the payments is considerable and of value to the LP Entities as a whole. Such payments could only be made with the consent of the proposed Monitor. At present, it is contemplated that such suppliers would consist of certain newspaper suppliers, newspaper distributors, logistic suppliers and the Amex Bank of Canada. The LP Entities do not seek a charge to secure payments to any of its critical suppliers.

48 Section 11.4 of the CCAA addresses critical suppliers. It states:

11.4(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring a person to be a critical supplier to the company if the court is satisfied that the person is a supplier of goods and services to the company and that the goods or services that are supplied are critical to the company's continued operation.

(2) If the court declares the person to be a critical supplier, the court may make an order requiring the person to supply any goods or services specified by the court to the company on any terms and conditions that are consistent with the supply relationship or that the court considers appropriate.

(3) If the court makes an order under subsection (2), the court shall, in the order, declare that all or part of the property of the company is subject to a security or charge in favour of the person declared to be a critical supplier, in an amount equal to the value of the goods or services supplied upon the terms of the order.

(4) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

49 Mr. Byers, who is counsel for the Monitor, submits that the court has always had discretion to authorize the payment of critical suppliers and that section 11.4 is not intended to address that issue. Rather, it is intended to respond to a post-filing situation where a debtor company wishes to compel a supplier to supply. In those circumstances, the court may declare a person to be a critical supplier and require the person to supply. If the court chooses to compel a person to supply, it must authorize a charge as security for the supplier. Mr. Barnes, who is counsel for the LP Entities, submits that section 11.4 is not so limited. Section 11.4 (1) gives the court general jurisdiction to declare a supplier to be a "critical supplier" where the supplier provides goods or services that are essential to the ongoing business of the debtor company. The permissive as opposed to mandatory language of section 11.4 (2) supports this interpretation.

50 Section 11.4 is not very clear. As a matter of principle, one would expect the purpose of section 11.4 to be twofold: (i) to codify the authority to permit suppliers who are critical to the continued operation of the company to be paid and (ii) to require the granting of a charge in circumstances where the court is compelling a person to supply. If no charge is proposed to be granted, there is no need to give notice to the secured creditors. I am not certain that the distinction

between Mr. Byers and Mr. Barnes' interpretation is of any real significance for the purposes of this case. Either section 11.4(1) does not oust the court's inherent jurisdiction to make provision for the payment of critical suppliers where no charge is requested or it provides authority to the court to declare persons to be critical suppliers. Section 11.4(1) requires the person to be a supplier of goods and services that are critical to the companies' operation but does not impose any additional conditions or limitations.

51 The LP Entities do not seek a charge but ask that they be authorized but not required to make payments for the pre-filing provision of goods and services to certain third parties who are critical and integral to their businesses. This includes newsprint and ink suppliers. The LP Entities are dependent upon a continuous and uninterrupted supply of newsprint and ink and they have insufficient inventory on hand to meet their needs. It also includes newspaper distributors who are required to distribute the newspapers of the LP Entities; American Express whose corporate card programme and accounts are used by LP Entities employees for business related expenses; and royalty fees accrued and owing to content providers for the subscription-based online service provided by FPinfomart.ca, one of the businesses of the LP Entities. The LP Entities believe that it would be damaging to both their ongoing operations and their ability to restructure if they are unable to pay their critical suppliers. I am satisfied that the LP Entities may treat these parties and those described in Mr. Strike's affidavit as critical suppliers but none will be paid without the consent of the Monitor.

(f) Administration Charge and Financial Advisor Charge

52 The Applicants also seek a charge in the amount of \$3 million to secure the fees of the Monitor, its counsel, the LP Entities' counsel, the Special Committee's financial advisor and counsel to the Special Committee, the CRA and counsel to the CRA. These are professionals whose services are critical to the successful restructuring of the LP Entities' business. This charge is to rank in priority to all other security interests in the LP Entities' assets, with the exception of purchase money security interests and specific statutory encumbrances as provided for in the proposed order.¹³ The LP Entities also request a \$10 million charge in favour of the Financial Advisor, RBC Dominion Securities Inc. The Financial Advisor is providing investment banking services to the LP Entities and is essential to the solicitation process. This charge would rank in third place, subsequent to the administration charge and the DIP charge.

53 In the past, an administration charge was granted pursuant to the inherent jurisdiction of the court. Section 11.52 of the amended CCAA now provides statutory jurisdiction to grant an administration charge. Section 11.52 states:

On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the debtor company is subject to a security or charge - in an amount that the court considers appropriate - in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

54 I am satisfied that the issue of notice has been appropriately addressed by the LP Entities. As to whether the amounts are appropriate and whether the charges should extend to the proposed beneficiaries, the section does not contain any specific criteria for a court to consider in its assessment. It seems to me that factors that might be considered would include:

- (a) the size and complexity of the businesses being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the Monitor.

This is not an exhaustive list and no doubt other relevant factors will be developed in the jurisprudence.

55 There is no question that the restructuring of the LP Entities is large and highly complex and it is reasonable to expect extensive involvement by professional advisors. Each of the professionals whose fees are to be secured has played a critical role in the LP Entities restructuring activities to date and each will continue to be integral to the solicitation and restructuring process. Furthermore, there is no unwarranted duplication of roles. As to quantum of both proposed charges, I accept the Applicants' submissions that the business of the LP Entities and the tasks associated with their restructuring are of a magnitude and complexity that justify the amounts. I also take some comfort from the fact that the administrative agent for the LP Secured Lenders has agreed to them. In addition, the Monitor supports the charges requested. The quantum of the administration charge appears to be fair and reasonable. As to the quantum of the charge in favour of the Financial Advisor, it is more unusual as it involves an incentive payment but I note that the Monitor conducted its own due diligence and, as mentioned, is supportive of the request. The quantum reflects an appropriate incentive to secure a desirable alternative offer. Based on all of these factors, I concluded that the two charges should be approved.

(g) Directors and Officers

56 The Applicants also seek a directors and officers charge ("D & O charge") in the amount of \$35 million as security for their indemnification obligations for liabilities imposed upon the Applicants' directors and officers. The D & O charge will rank after the Financial Advisor charge and will rank *pari passu* with the MIP charge discussed subsequently. Section 11.51 of the CCAA addresses a D & O charge. I have already discussed section 11.51 in *Canwest Global Communications Corp., Re*¹⁴ as it related to the request by the CMI Entities for a D & O charge. Firstly, the charge is essential to the successful restructuring of the LP Entities. The continued participation of the experienced Boards of Directors, management and employees of the LP Entities is critical to the restructuring. Retaining the current officers and directors will also avoid destabilization. Furthermore, a CCAA restructuring creates new risks and potential liabilities for the directors and officers. The amount of the charge appears to be appropriate in light of the obligations and liabilities that may be incurred by the directors and officers. The charge will not cover all of the directors' and officers' liabilities in a worse case scenario. While Canwest Global maintains D & O liability insurance, it has only been extended to February 28, 2009 and further extensions are unavailable. As of the date of the Initial Order, Canwest Global had been unable to obtain additional or replacement insurance coverage.

57 Understandably in my view, the directors have indicated that due to the potential for significant personal liability, they cannot continue their service and involvement in the restructuring absent a D & O charge. The charge also provides assurances to the employees of the LP Entities that obligations for accrued wages and termination and severance pay will be satisfied. All secured creditors have either been given notice or are unaffected by the D & O charge. Lastly, the Monitor supports the charge and I was satisfied that the charge should be granted as requested.

(h) Management Incentive Plan and Special Arrangements

58 The LP Entities have made amendments to employment agreements with 2 key employees and have developed certain Management Incentive Plans for 24 participants (collectively the "MIPs"). They seek a charge in the amount of \$3 million to secure these obligations. It would be subsequent to the D & O charge.

59 The CCAA is silent on charges in support of Key Employee Retention Plans ("KERPs") but they have been approved in numerous CCAA proceedings. Most recently, in *Canwest Global Communications Corp., Re*¹⁵, I approved the KERP requested on the basis of the factors enumerated in *Grant Forest Products Inc., Re*¹⁶ and given that the Monitor had carefully reviewed the charge and was supportive of the request as were the Board of Directors, the Special Committee of the Board of Directors, the Human Resources Committee of Canwest Global and the Adhoc Committee of Noteholders.

60 The MIPs in this case are designed to facilitate and encourage the continued participation of certain senior executives and other key employees who are required to guide the LP Entities through a successful restructuring. The participants are critical to the successful restructuring of the LP Entities. They are experienced executives and have played critical roles in the restructuring initiatives to date. They are integral to the continued operation of the business during the restructuring and the successful completion of a plan of restructuring, reorganization, compromise or arrangement.

61 In addition, it is probable that they would consider other employment opportunities in the absence of a charge securing their payments. The departure of senior management would distract from and undermine the restructuring process that is underway and it would be extremely difficult to find replacements for these employees. The MIPs provide appropriate incentives for the participants to remain in their current positions and ensures that they are properly compensated for their assistance in the reorganization process.

62 In this case, the MIPs and the MIP charge have been approved in form and substance by the Board of Directors and the Special Committee of Canwest Global. The proposed Monitor has also expressed its support for the MIPs and the MIP charge in its pre-filing report. In my view, the charge should be granted as requested.

(i) Confidential Information

63 The LP Entities request that the court seal the confidential supplement which contains individually identifiable information and compensation information including sensitive salary information about the individuals who are covered by the MIPs. It also contains an unredacted copy of the Financial Advisor's agreement. I have discretion pursuant to Section 137(2) of the *Courts of Justice Act*¹⁷ to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record. That said, public access is an important tenet of our system of justice.

64 The threshold test for sealing orders is found in the Supreme Court of Canada decision of *Sierra Club of Canada v. Canada (Minister of Finance)*¹⁸. In that case, Iacobucci J. stated that an order should only be granted when: (i) it is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and (ii) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

65 In *Canwest Global Communications Corp., Re*¹⁹ I applied the *Sierra Club* test and approved a similar request by the Applicants for the sealing of a confidential supplement containing unredacted copies of KERPs for the employees of the CMI Entities. Here, with respect to the first branch of the *Sierra Club* test, the confidential supplement contains unredacted copies of the MIPs. Protecting the disclosure of sensitive personal and compensation information of this nature, the disclosure of which would cause harm to both the LP Entities and the MIP participants, is an important

commercial interest that should be protected. The information would be of obvious strategic advantage to competitors. Moreover, there are legitimate personal privacy concerns in issue. The MIP participants have a reasonable expectation that their names and their salary information will be kept confidential. With respect to the second branch of the *Sierra Club* test, keeping the information confidential will not have any deleterious effects. As in the *Canwest Global Communications Corp., Re* case, the aggregate amount of the MIP charge has been disclosed and the individual personal information adds nothing. The salutary effects of sealing the confidential supplement outweigh any conceivable deleterious effects. In the normal course, outside of the context of a CCAA proceeding, confidential personal and salary information would be kept confidential by an employer and would not find its way into the public domain. With respect to the unredacted Financial Advisor agreement, it contains commercially sensitive information the disclosure of which could be harmful to the solicitation process and the salutary effects of sealing it outweigh any deleterious effects. The confidential supplements should be sealed and not form part of the public record at least at this stage of the proceedings.

Conclusion

66 For all of these reasons, I was prepared to grant the order requested.

Application granted.

Footnotes

- 1 R.S.C. 1985, c. C. 36, as amended.
- 2 On October 30, 2009, substantially all of the assets and business of the National Post Company were transferred to the company now known as National Post Inc.
- 3 Subject to certain assumptions and qualifications.
- 4 Although not formally in evidence before the court, counsel for the LP Secured Lenders advised the court that currently \$382,889,000 in principal in Canadian dollars is outstanding along with \$458,042,000 in principal in American dollars.
- 5 2006 CarswellOnt 264 (Ont. S.C.J. [Commercial List]).
- 6 2009 CarswellOnt 6184 (Ont. S.C.J. [Commercial List]) at para. 29.
- 7 (1993), 9 B.L.R. (2d) 275 (Ont. Gen. Div. [Commercial List]).
- 8 1999 CarswellOnt 4673 (Ont. S.C.J. [Commercial List]).
- 9 Ibid at para. 16.
- 10 (2002), 34 C.B.R. (4th) 157 (Ont. C.A.), leave to appeal to S.C.C. refused (March 6, 2003) [2003 CarswellOnt 730 (S.C.C.)].
- 11 Ibid at para. 34.
- 12 Supra, note 7 at paras. 31-35.
- 13 This exception also applies to the other charges granted.
- 14 Supra note 7 at paras. 44-48.
- 15 Supra note 7.
- 16 [2009] O.J. No. 3344 (Ont. S.C.J. [Commercial List]).
- 17 R.S.O. 1990, c. C.43, as amended.

18 [2002] 2 S.C.R. 522 (S.C.C.).

19 *Supra*, note 7 at para. 52.

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