

# Update Plan of Arrangement - No Amendment - Proof of Filing

**Service Request Number:** 32163245

**Corporate Access Number:** 2022333393

**Legal Entity Name:** WESTJET AIRLINES LTD.

**Legal Entity Status:** Active

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## Attachment

Attachment Type	Microfilm Bar Code	Date Recorded
Restrictions on Share Transfers	ELECTRONIC	2019/12/06
Other Rules or Provisions	ELECTRONIC	2019/12/06
Statutory Declaration	10000207117967964	2019/12/06
Share Structure	ELECTRONIC	2019/12/06
Articles/Plan of Arrangement/Court Order	10000907117967965	2019/12/11

**Registration Authorized By:** HARRY TAYLOR  
OFFICER

The Registrar of Corporations certifies that the information contained in this proof of filing is an accurate reproduction of the data contained in the specified service request in the official public records of Corporate Registry.



10000907117967965

202233393

# Articles of Arrangement

*Business Corporations Act*  
Section 193

This information is collected in accordance with the *Business Corporations Act*. It is required to update an Alberta corporation's articles for the purpose of issuing a certificate of amendment. Collection is authorized under s. 33(a) of the *Freedom of Information and Protection of Privacy Act*. Questions about the collection can be directed to Service Alberta Contact Centre staff at [cr@gov.ab.ca](mailto:cr@gov.ab.ca) or (780) 427-7013 (toll-free 310-0000) within Alberta.

**1. Name of Corporation**

**2. Corporate Access Number**

WESTJET AIRLINES LTD.

202233393

**3. In accordance with the order approving the arrangement, the articles of the corporation are amended as follows:**

Reference is made to the plan of arrangement (the "**Plan of Arrangement**") involving WestJet Airlines Ltd. ("**WestJet**"), the holders of common voting shares and variable voting shares of WestJet, the holders of stock options of WestJet, Kestrel Bidco Inc. and Kestrel Midco Inc. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Plan of Arrangement.

These Articles of Arrangement are filed pursuant to Section 193(1)(f) of the *Business Corporations Act* (Alberta).

In accordance with the Order of the Court of Queen's Bench of Alberta granted on July 26, 2019 (the "**Court Order**"), a certified copy of which is attached hereto as Schedule "A", approving the arrangement pursuant to Section 193 of the *Business Corporations Act* (Alberta), the Plan of Arrangement, a copy of which is attached hereto as Schedule "B" (which schedules are incorporated into and form a part hereof), is hereby effected.

The Plan of Arrangement does not effect any amendment to the Articles of the Corporation.

**4. Authorized Representative/Authorized Signing Authority for the corporation:**

Taylor, Harry

Executive Vice President, Finance and  
Chief Financial Officer

\_\_\_\_\_  
Last Name, First Name, Middle Name

\_\_\_\_\_  
Relationship to Corporation

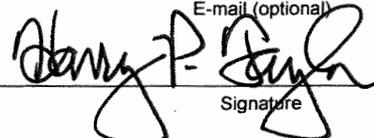
\_\_\_\_\_  
Telephone Number

Not Applicable.

DEC 11 2019

\_\_\_\_\_  
E-mail (optional)

\_\_\_\_\_  
Date

  
Signature

SD. 7965

**SCHEDULE "A"**  
**TO THE**  
**ARTICLES OF ARRANGEMENT**  
**CERTIFIED COPY OF COURT ORDER**



COURT FILE NUMBER 1901-08265  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

IN THE MATTER OF SECTION 193 OF THE *BUSINESS CORPORATIONS ACT*, RSA 2000, c B-9, AS AMENDED

AND IN THE MATTER OF A PROPOSED ARRANGEMENT INVOLVING WESTJET AIRLINES LTD., KESTREL BIDCO INC., AN AFFILIATE OF ONEX CORPORATION, AND THE SECURITYHOLDERS OF WESTJET AIRLINES LTD.

APPLICANT WESTJET AIRLINES LTD.

RESPONDENT NOT APPLICABLE

DOCUMENT **FINAL ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
**BLAKE, CASSELS & GRAYDON LLP**  
3500, 855 – 2 Street S.W.  
Calgary, Alberta T2P 4J8

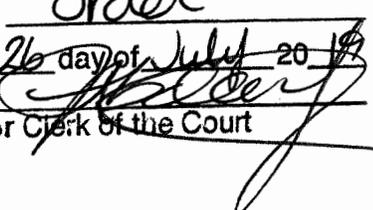
Attention: David V. Tupper  
Ross Bentley  
Brendan MacArthur-Stevens

Telephone: 403-260-9722  
403-260-9720  
403-260-9603

Facsimile: 403-260-9700

Email: [david.tupper@blakes.com](mailto:david.tupper@blakes.com)  
[ross.bentley@blakes.com](mailto:ross.bentley@blakes.com)  
[brendan.macarthur-stevens@blakes.com](mailto:brendan.macarthur-stevens@blakes.com)

File: 73386/56

hereby certify this to be a true copy of  
the original Order  
dated this 26 day of July 2019  
  
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: July 26, 2019  
NAME OF JUDGE WHO MADE THIS ORDER: Justice Campbell  
LOCATION OF HEARING: Calgary Courts Centre

**UPON** the originating application (the "**Originating Application**") and the final Order application (the "**Final Order Application**") of WestJet Airlines Ltd. ("**WestJet**") for approval of an arrangement (the "**Arrangement**") pursuant to section 193 of the *Business Corporations Act*, RSA 2000, c B-9, as amended (the "**ABCA**");

**AND UPON** reading the Originating Application, the Final Order Application, the interim Order of this Court granted June 18, 2019 by Justice Dario (the "**Interim Order**"), the affidavit of Veronica Tang, sworn June 12, 2019 and submitted in support of the Originating Application, and the further affidavit of Veronica Tang, sworn July 23, 2019 and submitted in support of the Final Order Application;

**AND UPON** being advised by counsel for WestJet that service of notice of the Final Order Application has been done in accordance with the Interim Order or as otherwise accepted by the Court;

**AND UPON** being advised by counsel for WestJet that no notices of intention to appear have been filed in respect of the Final Order Application;

**AND UPON** being satisfied that the meeting (the "**Meeting**") of the holders of common voting shares and variable voting shares and of the holders of stock options of WestJet (collectively, the "**Securityholders**") was called and conducted in accordance with the terms of the Interim Order;

**AND UPON** being satisfied that WestJet has sought and obtained the approval of the Arrangement by the Securityholders in the manner and by the requisite majorities required by the Interim Order;

**AND UPON** being satisfied that it is impracticable to achieve the Arrangement under any other provision of the ABCA;

**AND UPON** being satisfied that the statutory requirements to approve the Arrangement have been fulfilled and that the Arrangement has been put forward in good faith;

**AND UPON** being satisfied that the terms and conditions of the Arrangement and the procedures related thereto are fair and reasonable, substantively and procedurally, to the Securityholders and other affected persons and that the Arrangement should be approved;

AND UPON HEARING from counsel for WestJet and counsel for the purchaser, Kestrel Bidco Inc., an affiliate of Onex Corporation;

**IT IS HEREBY ORDERED THAT:**

1. The Arrangement proposed by WestJet, with the terms set forth in **Schedule "A"** to this final Order (the "**Final Order**"), is approved by the Court pursuant to section 193 of the ABCA.
2. The terms and conditions of the Arrangement, and the procedures related thereto, are fair and reasonable, substantively and procedurally, to the Securityholders and all other affected persons.
3. The articles of arrangement of the Arrangement (the "**Articles of Arrangement**") may be filed pursuant to section 193 of the ABCA on such date as WestJet determines in accordance with the terms of the Arrangement Agreement.
4. Service of notice of the Originating Application, the Final Order Application, the notice of Meeting, and the Interim Order is good and sufficient. Service of this Final Order shall be made on all persons who appear on this Application, either by counsel or in person, but is otherwise dispensed with.
5. WestJet may, on notice to such parties as the Court may order, seek leave at any time prior to the filing of the Articles of Arrangement to vary this Final Order or seek advice and directions as to the implementation of this Final Order.

  
Justice of the Court of Queen's Bench of Alberta

**Schedule "A"**

**ARRANGEMENT**

[Balance of page intentionally left blank. Text of Arrangement follows on next page.]

**SCHEDULE A****PLAN OF ARRANGEMENT****PLAN OF ARRANGEMENT  
UNDER SECTION 193 OF THE  
BUSINESS CORPORATIONS ACT (ALBERTA)****ARTICLE 1  
INTERPRETATION****Section 1.1 Definitions**

Unless indicated otherwise, any capitalized term used herein but not defined shall have the meaning given to it in the Arrangement Agreement and the following terms shall have the respective meanings set out below (and grammatical variations of such terms shall have corresponding meanings):

“**ABCA**” means the *Business Corporations Act* (Alberta).

“**Arrangement**” means an arrangement of the Company under Section 193 of the ABCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations hereto made in accordance with the terms of the Arrangement Agreement or Section 5.1 or made at the direction of the Court in the Final Order with the prior written consent of the Company and the Purchaser, each acting reasonably.

“**Arrangement Agreement**” means the arrangement agreement made as of May 12, 2019 between the Purchaser and the Company (including the Schedules thereto) as it may be amended, modified or supplemented from time to time in accordance with its terms.

“**Arrangement Resolution**” means the special resolution approving this Plan of Arrangement to be considered at the Company Meeting by the Shareholders and Company Optionholders entitled to vote thereon pursuant to the Interim Order.

“**Business Day**” means any day of the year, other than a Saturday, a Sunday or a day on which major banks are closed for business in Calgary, Alberta or Toronto, Ontario or, for purposes of the definition of Marketing Period and the date on which the Effective Date occurs, New York, New York.

“**Certificate of Arrangement**” means the proof of filing to be issued by the Registrar pursuant to subsection 193(12) of the ABCA in respect of the Articles of Arrangement.

“**Company**” means WestJet Airlines Ltd.

“**Company Meeting**” means the special meeting of Shareholders and Company Optionholders, including any adjournment or postponement of such special meeting in accordance with the terms of this Agreement, to be called and held in accordance with the Interim Order to consider the Arrangement Resolution.

**“Company Optionholder”** means a holder of Company Options.

**“Company Options”** means the outstanding options to purchase Shares issued pursuant to the Stock Option Plan.

**“Company Securityholders”** means, collectively, the Shareholders and the Company Optionholders.

**“Consideration”** means \$31.00 in cash per Share.

**“Court”** means the Court of Queen’s Bench of Alberta, or other court as applicable.

**“Depositary”** means AST Trust Company of Canada or such other Person as the Company and the Purchaser mutually agree on.

**“Dissent Rights”** has the meaning given to it in Section 3.1.

**“Dissenting Holder”** means a registered Shareholder as of the record date of the Company Meeting who (a) has validly exercised its Dissent Rights in strict compliance with the Dissent Right provisions of this Plan of Arrangement, (b) has not withdrawn or been deemed to have withdrawn such exercise of Dissent Rights, and (c) is ultimately entitled to be paid the fair value for his, her or its Shares, but only in respect of Shares in respect of which Dissent Rights are validly exercised by such registered Shareholder.

**“Effective Date”** means the date shown on the Certificate of Arrangement giving effect to the Arrangement.

**“Effective Time”** means 1:01 a.m., Calgary time, on the Effective Date, or such other time as the Parties agree to in writing before the Effective Date.

**“Final Order”** means the final order of the Court pursuant to section 193 of the ABCA in a form acceptable to the Company and the Purchaser, each acting reasonably, approving the Arrangement, as such order may be amended, modified, supplemented or varied by the Court (with the consent of the Company and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn, abandoned or denied, as affirmed or as amended (provided that any such amendment is acceptable to the Company and the Purchaser, each acting reasonably) on appeal.

**“Interim Order”** means the interim order of the Court pursuant to section 193 of the ABCA in a form acceptable to the Company and the Purchaser, each acting reasonably, providing for, among other things, the calling and holding of the Company Meeting, as such order may be amended, modified, supplemented or varied by the Court with the consent of the Company and the Purchaser, each acting reasonably.

**“Letter of Transmittal”** means the letter of transmittal sent to holders of Shares for use in connection with the Arrangement.

“**Lien**” means mortgages, charges, pledges, hypothecs, assignments by way of security, conditional sales or other title retention arrangements, security created under the *Bank Act* (Canada), liens, encumbrances, security interests or other interests in property howsoever created or arising, whether fixed or floating, perfected or not, which secure payment or performance of an obligation and, including, in any event, the rights of lessors under capital or financing leases and any other lease financing.

“**Midco**” means Kestrel Midco Inc.

“**Midco Option Plan**” means the stock option plan of Midco to be established by the board of directors of Midco on or prior to the Effective Date.

“**Midco Options**” means options to purchase Midco Shares granted pursuant to the Midco Option Plan.

“**Midco Shares**” means non-voting common shares in the capital of Midco.

“**Midco Transfer Agreement**” means the agreement to be entered into between Midco and the Purchaser pursuant to which Midco will transfer to the Purchaser the Rollover Shares acquired by Midco.

“**Parties**” means, collectively, the Company and the Purchaser, and “**Party**” means any one of them.

“**Person**” includes any individual, partnership, limited partnership, association, body corporate, organization, joint venture, trust, estate, trustee, executor, administrator, legal representative, Governmental Entity, syndicate or other entity, whether or not having legal status.

“**Plan of Arrangement**” means this plan of arrangement, subject to any amendments or variations made in accordance with the Arrangement Agreement or Section 5.1 or made at the direction of the Court in the Final Order with the prior written consent of the Company and the Purchaser, each acting reasonably.

“**Purchaser**” means Kestrel Bidco Inc., a corporation incorporated under the laws of the Province of Alberta.

“**Rollover Agreement**” means each exchange and subscription agreement between a Rollover Securityholder and Midco, pursuant to which each Rollover Securityholder agrees to (a) transfer Shares to Midco in consideration for Midco Shares pursuant to the Plan of Arrangement, (b) exchange Company Options for Midco Options, in a manner that complies with the requirements for an exchange of options under subsection 7(1.4) of the Tax Act, pursuant to the Plan of Arrangement, and (c) subscribe for additional Midco Shares for cash on the Effective Date.

“**Rollover Options**” means Company Options held by a Rollover Securityholder that are to be exchanged for Midco Options pursuant to a Rollover Agreement in accordance with the Plan of Arrangement.

“**Rollover Securityholder**” means a holder of Shares or Company Options that is a party to a Rollover Agreement with Midco as of the Effective Time.

“**Rollover Shares**” means Shares held by a Rollover Securityholder that are to be exchanged for Midco Shares pursuant to a Rollover Agreement in accordance with the Plan of Arrangement.

“**Shareholders**” means the registered holders of the Shares.

“**Shares**” means, collectively, the Common Voting Shares and the Variable Voting Shares.

“**Stock Option Plan**” means the 2009 stock option plan of the Company dated as of May 5, 2009.

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

## **Section 1.2 Certain Rules of Interpretation**

In this Plan of Arrangement, unless otherwise specified:

- (1) **Headings, etc.** The division of this Plan of Arrangement into Articles and Sections and the insertion of headings are for convenient reference only and do not affect the construction or interpretation of this Plan of Arrangement.
- (2) **Currency.** All references to “dollars” or to “\$” are references to Canadian dollars, unless specified otherwise. In the event that any amounts are required to be converted from a foreign currency to Canadian dollars or vice versa, such amounts shall be converted using the most recent closing exchange rate of The Bank of Canada available before the relevant calculation date.
- (3) **Gender and Number.** Any reference to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (4) **Certain Phrases, etc.** The words (a) “including”, “includes” and “include” mean “including (or includes or include) without limitation”, (b) “or” is not exclusive, (c) “day” means “calendar day”, (d) “hereof”, “herein”, “hereunder” and words of similar import, shall refer to this Plan of Arrangement as a whole and not to any particular provision of this Plan of Arrangement, (e) “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”, (f) “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends and such phrase shall not mean simply “if”, and (g) unless stated otherwise, “Article” or “Section” followed by a number or letter mean and refer to the specified Article or Section of this Plan of Arrangement.
- (5) **Statutes and Rules.** Any reference to a statute or to a rule of a self-regulatory organization, including any stock exchange, refers to such statute or rule and all rules, resolutions and regulations, administrative policy statements, instruments, blanket orders, notices, directions and rulings issued or adopted under it, as it or they may have been or may from time to time be amended or re-enacted, unless stated otherwise.

- (6) **Date for Any Action.** If the date on which any action is required to be taken hereunder is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day. Any reference to a number of days shall refer to calendar days unless Business Days are specified.
- (7) **Time.** Time shall be of the essence in every matter or action contemplated hereunder. All times expressed herein are local time in Calgary, Alberta unless otherwise stipulated herein.

## ARTICLE 2 THE ARRANGEMENT

### Section 2.1 Arrangement Agreement

This Plan of Arrangement is made pursuant to the Arrangement Agreement.

### Section 2.2 Binding Effect

This Plan of Arrangement and the Arrangement shall become effective at the Effective Time, and shall be binding on the Purchaser, the Company, all Shareholders (including Dissenting Holders), all holders of Incentive Securities, the registrar and transfer agent of the Company, the Depository and all other Persons at and after the Effective Time, without any further act or formality required on the part of any Person.

### Section 2.3 Arrangement

Commencing at the Effective Time, each of the following events shall occur sequentially in the order set out below without any further authorization, act or formality, in each case, unless stated otherwise, effective as at five minute intervals starting at the Effective Time (provided that none of the following shall occur unless all of the following occur):

- (1) notwithstanding the terms of the DSU Plan, the KEP Plan, the ESU Plan or the TI Plan or any applicable award agreements in relation thereto, simultaneously:
  - (a) the DSU Plan shall be terminated and each DSU outstanding immediately prior to the Effective Time shall, without any further action or formality on behalf of the holder thereof and the Company, be deemed to be surrendered to the Company in exchange for, subject to Section 4.4, an amount equal to the Consideration, payable in cash to the holder in accordance with Section 4.1(5), in full satisfaction of the Company's obligations under such surrendered DSU;
  - (b) the KEP and TI Plan shall be terminated and each RSU granted under the KEP Plan or the TI Plan and outstanding immediately prior to the Effective Time (whether then vested or unvested) shall, without any further action or formality on behalf of the holder thereof and the Company, be deemed to be surrendered to the Company in exchange for, subject to Section 4.4, an amount equal to the Consideration, payable in cash to the holder in accordance with Section 4.1(5), in full satisfaction of the Company's obligations under such surrendered RSU;

- (c) the ESU Plan shall be terminated and each RSU or PSU granted under the ESU Plan and outstanding immediately prior to the Effective Time (whether then vested or unvested) shall, without any further action or formality on behalf of the holder thereof and the Company, be deemed to be surrendered to the Company in exchange for, subject to Section 4.4, an amount equal to, (i) in the case of each RSU, the Consideration multiplied by the number of Shares covered by such RSU, and (ii) in the case of each PSU, the Consideration multiplied by the number of Shares covered by such PSU assuming 100% performance vesting, multiplied by a factor, being the ratio of (x) the period of time from the grant date of the PSU to the Effective Date, to (y) the term of the PSU, in each case payable in cash to the holder in accordance with Section 4.1(5), in full satisfaction of the Company's obligations under such surrendered RSU or PSU (as applicable);

whereupon all DSUs, RSUs and PSUs shall be, and shall be deemed to be, cancelled by the Company, all obligations in respect of the DSUs, RSUs and PSUs shall be deemed to be fully satisfied and the holders thereof shall cease to have any rights in respect thereof other than the right to receive the consideration contemplated under this Plan of Arrangement;

- (2) notwithstanding the terms of the Stock Option Plan or any applicable award agreements in relation thereto, the Stock Option Plan shall be cancelled and each Company Option (other than Rollover Options) whether vested or unvested, that has not, prior to the Effective Time, been exercised or surrendered in accordance with its terms shall, without any further action or formality on behalf of the holder thereof and the Company and without any payment by such Company Optionholder, be deemed to be transferred to the Company as follows:
  - (a) in respect of each Company Option outstanding at the Effective Time (other than Rollover Options) whether vested or unvested, that has an exercise price that is less than the Consideration, the applicable Company Option shall be deemed to be surrendered to the Company in exchange for, subject to Section 4.4, an amount equal to the amount by which the Consideration exceeds the exercise price thereof, payable in cash to the Company Optionholder in accordance with Section 4.1(5) in full satisfaction of the Company's obligations under such surrendered Company Option; and
  - (b) in respect of each Company Option outstanding at the Effective Time whether vested or unvested, that has an exercise price that is equal to or greater than the Consideration, the applicable Company Option shall be deemed to be surrendered to the Company in exchange for, subject to Section 4.4, an amount equal to \$0.05, payable in cash to the Company Optionholder in accordance with Section 4.1(5) in full satisfaction of the Company's obligations under such surrendered Company Option;

whereupon all Company Options (other than Rollover Options) shall be, and shall be deemed to be, cancelled by the Company, all obligations in respect of the Company Options (other than Rollover Options) shall be deemed to be fully satisfied, and the

holders thereof shall cease to have any rights in respect thereof other than the right to receive the consideration contemplated under this Plan of Arrangement.

- (3) each Share held by a Dissenting Holder described in Section 3.1 shall be transferred by the holder thereof to the Company in exchange for a debt claim against the Company for the amount determined in accordance with Section 3.1(a);
- (4) each Rollover Share shall be transferred by the holder thereof to Midco in exchange for such number of Midco Shares as set out in the applicable Rollover Agreement on the terms and conditions set out in the applicable Rollover Agreement.
- (5) simultaneous with the transactions set out in Section 2.3(4), each outstanding Share (other than a Share held by a Dissenting Holder described in Section 2.3(1) or a Rollover Share) shall be transferred to the Purchaser in exchange for, subject to Section 4.4, a cash payment to the holder equal to the Consideration;
- (6) each Rollover Option (whether then vested or unvested) shall be exchanged for such number of Midco Options as set out in the applicable Rollover Agreement on the terms and conditions set out in the applicable Rollover Agreement; and
- (7) each Rollover Share shall be transferred by Midco to the Purchaser in exchange for common shares of the Purchaser on the terms and conditions set out in the Midco Transfer Agreement.

### ARTICLE 3 RIGHTS OF DISSENT

#### Section 3.1 Rights of Dissent

Subject to Section 3.1(a), each registered Shareholder as of the record date for the Company Meeting may exercise dissent rights with respect to the Shares held by such holder as of such date (the “**Dissent Rights**”) in connection with the Arrangement pursuant to and in the manner set forth in Section 191 of the ABCA, as modified by the Interim Order and this Article 3; provided that, notwithstanding Section 191 of the ABCA, the written objection to the Arrangement Resolution must be received by the Company not later than 5:00 p.m. (Calgary time) two Business Days immediately preceding the date of the Company Meeting (as it may be adjourned or postponed from time to time). Dissenting Holders who validly exercise their Dissent Rights shall be deemed to have transferred the Shares held by them and in respect of which Dissent Rights have been validly exercised to the Company, without any further act or formality, as provided in Section 2.3(3), and if they:

- (a) ultimately are entitled to be paid fair value for such Shares, they shall: (i) in respect of such Shares be treated as not having participated in the transactions in Article 2 (other than Section 2.3(3)), (ii) be entitled to be paid, subject to Section 4.4, the fair value of such Shares by the Company, which fair value shall be determined as of the close of business on the day before the Arrangement Resolution was adopted at the Company Meeting, and (iii) not be entitled to any other payment or consideration, including any payment that would be payable

under the Arrangement had such holders not exercised their Dissent Rights in respect of such Shares; or

- (b) ultimately are not entitled, for any reason, to be paid fair value for such Shares, they shall in respect of such Shares be treated as having participated in the Arrangement on the same basis as a non-Dissenting Holder of Shares (and shall be entitled to receive the Consideration from the Purchaser in the same manner as such non-Dissenting Holders).

### **Section 3.2 Recognition of Dissenting Holders**

- (1) In no circumstances shall the Purchaser, the Company, the Depository or any other Person be required to recognize a Person exercising Dissent Rights: (a) unless, as of the deadline for exercising Dissent Rights (as set forth in Section 3.1), such Person is the registered holder of those Shares in respect of which such Dissent Rights are sought to be exercised, (b) if such Person has voted or instructed a proxy holder to vote such Shares in favour of the Arrangement Resolution, or (c) unless such Person has strictly complied with the procedures for exercising Dissent Rights and does not withdraw such dissent prior to the Effective Time.
- (2) For greater certainty, in no case shall the Purchaser, the Company or any other Person be required to recognize Dissenting Holders as holders of the Shares in respect of which Dissent Rights have been validly exercised after the completion of the transfers under Section 2.3(3).
- (3) In addition to any other restrictions under Section 191 of the ABCA, none of the following shall be entitled to exercise Dissent Rights: (a) holders of Incentive Securities, (b) Shareholders who vote or have instructed a proxyholder to vote Shares in favour of the Arrangement Resolution, (c) any Person (including any beneficial owner of Shares) who is not a registered Shareholder, and (d) the Purchaser or its Affiliates.

## **ARTICLE 4 EXCHANGE OF CERTIFICATES AND PAYMENTS**

### **Section 4.1 Payment of Consideration**

- (1) Following receipt of the Final Order and prior to the Effective Date, in accordance with Section 2.9 of the Arrangement Agreement, the Purchaser shall deposit, or shall cause to be deposited, for the benefit of the Shareholders, cash with the Depository in the aggregate amount equal to the payments in respect of the Shares required by this Plan of Arrangement, with the amount per Share in respect of which Dissent Rights have been exercised being deemed to be the Consideration for this purpose.
- (2) The consideration contemplated by Section 4.1(1) shall be held by the Depository as agent and nominee for such Shareholders in accordance with the provisions of Article 4 hereof. Upon surrender to the Depository for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Shares that were transferred pursuant to Section 2.3(3) and Section 2.3(5) together with a duly completed

and executed Letter of Transmittal and such additional documents and instruments as the Depository may reasonably require, the holder of such surrendered certificate shall be entitled to receive, and the Depository shall deliver (and the Purchaser shall cause the Depository to deliver), to such holder, a cheque (or other form of immediately available funds) representing the cash which such holder has the right to receive pursuant to this Plan of Arrangement in respect of such Shares, without interest and less any amounts withheld pursuant to Section 4.4, and any certificate so surrendered shall forthwith be cancelled.

- (3) After the Effective Time and until surrendered for cancellation as contemplated by this Section 4.1, each certificate, agreement or other instrument (as applicable) which immediately prior to the Effective Time represented Shares shall be deemed at all times to represent only the right to receive upon such surrender a cash payment in lieu of such certificate as contemplated in this Section 4.1.
- (4) Any certificate, agreement or other instrument that immediately prior to the Effective Time represented outstanding Shares not duly surrendered with all other documents required by this Section 4.1 on or before the sixth anniversary of the Effective Date shall cease to represent a claim by or interest of any former holder thereof of any kind or nature against or in the Company or the Purchaser. On such date, all consideration to which such former holder was entitled under this Plan of Arrangement shall be deemed to have been surrendered to the Purchaser or the Company, as applicable, together with all entitlements to dividends, distributions and interest thereon held for such former holder.
- (5) As soon as reasonably practicable following the Effective Time, the Company shall deliver, or shall cause to be delivered, to each holder of Incentive Securities (other than Rollover Options), through the Company's payroll systems (or such other means as the Company may elect or as otherwise directed by the Purchaser including with respect to the timing and manner of such delivery), the cash payment, if any, which such holder of Incentive Securities has the right to receive under this Plan of Arrangement for such Incentive Security, less any amounts withheld pursuant to Section 4.4 hereof.
- (6) Any payment made by way of cheque by the Depository or the Company, as applicable, pursuant to this Plan of Arrangement that has not been deposited or has been returned to the Depository or the Company, as applicable, or that otherwise remains unclaimed, in each case, on or before the sixth anniversary of the Effective Time, and any right or claim to payment hereunder that remains outstanding on the sixth anniversary of the Effective Time shall cease to represent a right or claim of any kind or nature and the right of the holder to receive the applicable consideration for the Shares and Incentive Securities pursuant to this Plan of Arrangement shall terminate and be deemed to be surrendered and forfeited to the Purchaser or the Company, as applicable, for no consideration.

#### **Section 4.2 Lost Certificates**

In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Shares that were transferred pursuant to Section 2.3 shall have been lost, stolen or destroyed, the Depository shall issue and deliver (and the Purchaser shall cause the Depository

to issue and deliver) to the Person claiming such certificate to be lost, stolen or destroyed, in exchange for such lost, stolen or destroyed certificate, a cheque (or other form of immediately available funds) representing the aggregate consideration in respect thereof which such holder is entitled to receive pursuant to the Arrangement, deliverable in accordance with such holder's Letter of Transmittal. When authorizing such delivery in exchange for any lost, stolen or destroyed certificate, the Person to whom such consideration is to be delivered shall, as a condition precedent to the delivery of such consideration, give an affidavit (in form and substance acceptable to the Purchaser, acting reasonably) of the claimed loss, theft or destruction of such certificate and a bond or surety satisfactory to the Purchaser and the Depository (each acting reasonably) in such reasonable and customary sum as the Purchaser may direct, or otherwise indemnify the Purchaser, the Company and the Depository in a manner satisfactory to the Purchaser and the Depository, each acting reasonably, against any claim that may be made against the Purchaser, the Company and/or the Depository with respect to the certificate alleged to have been lost, stolen or destroyed.

#### **Section 4.3 Rounding of Cash**

If the aggregate cash amount which a Party is entitled to receive pursuant to this Plan of Arrangement would otherwise include a fraction of \$0.01, then the aggregate cash amount to which such Party shall be entitled to receive shall be rounded up to the nearest whole \$0.01.

#### **Section 4.4 Withholding Rights**

The Company, the Purchaser, the Depository and any other Person shall be entitled to deduct or withhold from any amount payable to any Person under this Plan of Arrangement (including, without limitation, any amounts payable pursuant to Section 3.1), such amounts as the Company, the Purchaser, the Depository or such other Person, as applicable, determines, acting reasonably, are required to be deducted or withheld with respect to such payment under the Tax Act or any provision of any other Law. To the extent that amounts are so deducted or withheld, such deducted or withheld amounts shall be treated for all purposes hereof as having been paid to the Person in respect of which such deduction or withholding was made, provided that such deducted or withheld amounts are actually remitted to the appropriate Governmental Entity.

#### **Section 4.5 No Liens**

Any exchange or transfer of securities pursuant to this Plan of Arrangement shall be free and clear of any Liens or other claims of third parties of any kind.

#### **Section 4.6 Paramountcy**

From and after the Effective Time: (a) this Plan of Arrangement shall take precedence and priority over any and all Shares and Incentive Securities issued or outstanding prior to the Effective Time, and (b) the rights and obligations of the Shareholders, the holders of Incentive Securities, the Company and its Subsidiaries, the Purchaser and its Affiliates, the Depository and any transfer agent or other depository therefor in relation to this Plan of Arrangement shall be solely as provided for in this Plan of Arrangement.

## ARTICLE 5 AMENDMENTS

### Section 5.1 Amendments to Plan of Arrangement

- (1) The Parties may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must be (a) set out in writing, (b) approved by the Parties, each acting reasonably, (c) filed with the Court and, if made following the Company Meeting, approved by the Court, and (d) communicated to the Company Securityholders if and as required by the Court.
- (2) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by either of the Parties at any time prior to the Company Meeting (provided that the other Party has consented thereto) with or without any other prior notice or communication, and if so proposed and accepted by the Persons voting at the Company Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.
- (3) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Company Meeting shall be effective only if (a) it is consented to in writing by each of the Parties (in each case, acting reasonably), and (b) if required by the Court, it is consented to by some or all of the Shareholders voting in the manner directed by the Court. Any amendment, modification or supplement to this Plan of Arrangement may be made following the granting of the Final Order without filing such amendment, modification or supplement with the Court or seeking Court approval, provided that (i) it concerns a matter which, in the reasonable opinion of the Parties, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the interest of any Company Securityholder or (ii) is an amendment contemplated in Section 5.1(4).
- (4) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by the Purchaser, without communication to the Company Securityholders, provided that it concerns a matter which, in the reasonable opinion of the Purchaser, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the economic interest of any former Company Securityholder.
- (5) This Plan of Arrangement may be withdrawn prior to the Effective Time in accordance with the terms of the Arrangement Agreement.

## ARTICLE 6 FURTHER ASSURANCES

### Section 6.1 Further Assurances

Notwithstanding that the transactions and events set out in this Plan of Arrangement shall occur and shall be deemed to occur in the order set out in this Plan of Arrangement without any further

act or formality, following the Effective Time, each of the Parties shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required or advisable by either of them in order to further document or evidence any of the transactions or events set out in this Plan of Arrangement.

**SCHEDULE "B"  
TO THE  
ARTICLES OF ARRANGEMENT  
PLAN OF ARRANGEMENT**

**PLAN OF ARRANGEMENT  
UNDER SECTION 193 OF THE  
BUSINESS CORPORATIONS ACT (ALBERTA)**

**ARTICLE 1  
INTERPRETATION**

**Section 1.1 Definitions**

Unless indicated otherwise, any capitalized term used herein but not defined shall have the meaning given to it in the Arrangement Agreement and the following terms shall have the respective meanings set out below (and grammatical variations of such terms shall have corresponding meanings):

“**ABCA**” means the *Business Corporations Act* (Alberta).

“**Arrangement**” means an arrangement of the Company under Section 193 of the ABCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations hereto made in accordance with the terms of the Arrangement Agreement or Section 5.1 or made at the direction of the Court in the Final Order with the prior written consent of the Company and the Purchaser, each acting reasonably.

“**Arrangement Agreement**” means the arrangement agreement made as of May 12, 2019 between the Purchaser and the Company (including the Schedules thereto) as it may be amended, modified or supplemented from time to time in accordance with its terms.

“**Arrangement Resolution**” means the special resolution approving this Plan of Arrangement to be considered at the Company Meeting by the Shareholders and Company Optionholders entitled to vote thereon pursuant to the Interim Order.

“**Business Day**” means any day of the year, other than a Saturday, a Sunday or a day on which major banks are closed for business in Calgary, Alberta or Toronto, Ontario or, for purposes of the definition of Marketing Period and the date on which the Effective Date occurs, New York, New York.

“**Certificate of Arrangement**” means the proof of filing to be issued by the Registrar pursuant to subsection 193(12) of the ABCA in respect of the Articles of Arrangement.

“**Company**” means WestJet Airlines Ltd.

“**Company Meeting**” means the special meeting of Shareholders and Company Optionholders, including any adjournment or postponement of such special meeting in accordance with the terms of this Agreement, to be called and held in accordance with the Interim Order to consider the Arrangement Resolution.

**"Company Optionholder"** means a holder of Company Options.

**"Company Options"** means the outstanding options to purchase Shares issued pursuant to the Stock Option Plan.

**"Company Securityholders"** means, collectively, the Shareholders and the Company Optionholders.

**"Consideration"** means \$31.00 in cash per Share.

**"Court"** means the Court of Queen's Bench of Alberta, or other court as applicable.

**"Depositary"** means AST Trust Company of Canada or such other Person as the Company and the Purchaser mutually agree on.

**"Dissent Rights"** has the meaning given to it in Section 3.1.

**"Dissenting Holder"** means a registered Shareholder as of the record date of the Company Meeting who (a) has validly exercised its Dissent Rights in strict compliance with the Dissent Right provisions of this Plan of Arrangement, (b) has not withdrawn or been deemed to have withdrawn such exercise of Dissent Rights, and (c) is ultimately entitled to be paid the fair value for his, her or its Shares, but only in respect of Shares in respect of which Dissent Rights are validly exercised by such registered Shareholder.

**"Effective Date"** means the date shown on the Certificate of Arrangement giving effect to the Arrangement.

**"Effective Time"** means 1:01 a.m., Calgary time, on the Effective Date, or such other time as the Parties agree to in writing before the Effective Date.

**"Final Order"** means the final order of the Court pursuant to section 193 of the ABCA in a form acceptable to the Company and the Purchaser, each acting reasonably, approving the Arrangement, as such order may be amended, modified, supplemented or varied by the Court (with the consent of the Company and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn, abandoned or denied, as affirmed or as amended (provided that any such amendment is acceptable to the Company and the Purchaser, each acting reasonably) on appeal.

**"Interim Order"** means the interim order of the Court pursuant to section 193 of the ABCA in a form acceptable to the Company and the Purchaser, each acting reasonably, providing for, among other things, the calling and holding of the Company Meeting, as such order may be amended, modified, supplemented or varied by the Court with the consent of the Company and the Purchaser, each acting reasonably.

**"Letter of Transmittal"** means the letter of transmittal sent to holders of Shares for use in connection with the Arrangement.

**“Lien”** means mortgages, charges, pledges, hypothecs, assignments by way of security, conditional sales or other title retention arrangements, security created under the *Bank Act* (Canada), liens, encumbrances, security interests or other interests in property howsoever created or arising, whether fixed or floating, perfected or not, which secure payment or performance of an obligation and, including, in any event, the rights of lessors under capital or financing leases and any other lease financing.

**“Midco”** means Kestrel Midco Inc.

**“Midco Option Plan”** means the stock option plan of Midco to be established by the board of directors of Midco on or prior to the Effective Date.

**“Midco Options”** means options to purchase Midco Shares granted pursuant to the Midco Option Plan.

**“Midco Shares”** means non-voting common shares in the capital of Midco.

**“Midco Transfer Agreement”** means the agreement to be entered into between Midco and the Purchaser pursuant to which Midco will transfer to the Purchaser the Rollover Shares acquired by Midco.

**“Parties”** means, collectively, the Company and the Purchaser, and **“Party”** means any one of them.

**“Person”** includes any individual, partnership, limited partnership, association, body corporate, organization, joint venture, trust, estate, trustee, executor, administrator, legal representative, Governmental Entity, syndicate or other entity, whether or not having legal status.

**“Plan of Arrangement”** means this plan of arrangement, subject to any amendments or variations made in accordance with the Arrangement Agreement or Section 5.1 or made at the direction of the Court in the Final Order with the prior written consent of the Company and the Purchaser, each acting reasonably.

**“Purchaser”** means Kestrel Bidco Inc., a corporation incorporated under the laws of the Province of Alberta.

**“Rollover Agreement”** means each exchange and subscription agreement between a Rollover Securityholder and Midco, pursuant to which each Rollover Securityholder agrees to (a) transfer Shares to Midco in consideration for Midco Shares pursuant to the Plan of Arrangement, (b) exchange Company Options for Midco Options, in a manner that complies with the requirements for an exchange of options under subsection 7(1.4) of the Tax Act, pursuant to the Plan of Arrangement, and (c) subscribe for additional Midco Shares for cash on the Effective Date.

**“Rollover Options”** means Company Options held by a Rollover Securityholder that are to be exchanged for Midco Options pursuant to a Rollover Agreement in accordance with the Plan of Arrangement.

**“Rollover Securityholder”** means a holder of Shares or Company Options that is a party to a Rollover Agreement with Midco as of the Effective Time.

**“Rollover Shares”** means Shares held by a Rollover Securityholder that are to be exchanged for Midco Shares pursuant to a Rollover Agreement in accordance with the Plan of Arrangement.

**“Shareholders”** means the registered holders of the Shares.

**“Shares”** means, collectively, the Common Voting Shares and the Variable Voting Shares.

**“Stock Option Plan”** means the 2009 stock option plan of the Company dated as of May 5, 2009.

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

## **Section 1.2 Certain Rules of Interpretation**

In this Plan of Arrangement, unless otherwise specified:

- (1) **Headings, etc.** The division of this Plan of Arrangement into Articles and Sections and the insertion of headings are for convenient reference only and do not affect the construction or interpretation of this Plan of Arrangement.
- (2) **Currency.** All references to “dollars” or to “\$” are references to Canadian dollars, unless specified otherwise. In the event that any amounts are required to be converted from a foreign currency to Canadian dollars or vice versa, such amounts shall be converted using the most recent closing exchange rate of The Bank of Canada available before the relevant calculation date.
- (3) **Gender and Number.** Any reference to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (4) **Certain Phrases, etc.** The words (a) “including”, “includes” and “include” mean “including (or includes or include) without limitation”, (b) “or” is not exclusive, (c) “day” means “calendar day”, (d) “hereof”, “herein”, “hereunder” and words of similar import, shall refer to this Plan of Arrangement as a whole and not to any particular provision of this Plan of Arrangement, (e) “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”, (f) “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends and such phrase shall not mean simply “if”, and (g) unless stated otherwise, “Article” or “Section” followed by a number or letter mean and refer to the specified Article or Section of this Plan of Arrangement.
- (5) **Statutes and Rules.** Any reference to a statute or to a rule of a self-regulatory organization, including any stock exchange, refers to such statute or rule and all rules, resolutions and regulations, administrative policy statements, instruments, blanket orders, notices, directions and rulings issued or adopted under it, as it or they may have been or may from time to time be amended or re-enacted, unless stated otherwise.

- (6) **Date for Any Action.** If the date on which any action is required to be taken hereunder is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day. Any reference to a number of days shall refer to calendar days unless Business Days are specified.
- (7) **Time.** Time shall be of the essence in every matter or action contemplated hereunder. All times expressed herein are local time in Calgary, Alberta unless otherwise stipulated herein.

## **ARTICLE 2 THE ARRANGEMENT**

### **Section 2.1 Arrangement Agreement**

This Plan of Arrangement is made pursuant to the Arrangement Agreement.

### **Section 2.2 Binding Effect**

This Plan of Arrangement and the Arrangement shall become effective at the Effective Time, and shall be binding on the Purchaser, the Company, all Shareholders (including Dissenting Holders), all holders of Incentive Securities, the registrar and transfer agent of the Company, the Depository and all other Persons at and after the Effective Time, without any further act or formality required on the part of any Person.

### **Section 2.3 Arrangement**

Commencing at the Effective Time, each of the following events shall occur sequentially in the order set out below without any further authorization, act or formality, in each case, unless stated otherwise, effective as at five minute intervals starting at the Effective Time (provided that none of the following shall occur unless all of the following occur):

- (1) notwithstanding the terms of the DSU Plan, the KEP Plan, the ESU Plan or the TI Plan or any applicable award agreements in relation thereto, simultaneously:
  - (a) the DSU Plan shall be terminated and each DSU outstanding immediately prior to the Effective Time shall, without any further action or formality on behalf of the holder thereof and the Company, be deemed to be surrendered to the Company in exchange for, subject to Section 4.4, an amount equal to the Consideration, payable in cash to the holder in accordance with Section 4.1(5), in full satisfaction of the Company's obligations under such surrendered DSU;
  - (b) the KEP and TI Plan shall be terminated and each RSU granted under the KEP Plan or the TI Plan and outstanding immediately prior to the Effective Time (whether then vested or unvested) shall, without any further action or formality on behalf of the holder thereof and the Company, be deemed to be surrendered to the Company in exchange for, subject to Section 4.4, an amount equal to the Consideration, payable in cash to the holder in accordance with Section 4.1(5), in full satisfaction of the Company's obligations under such surrendered RSU;

- (c) the ESU Plan shall be terminated and each RSU or PSU granted under the ESU Plan and outstanding immediately prior to the Effective Time (whether then vested or unvested) shall, without any further action or formality on behalf of the holder thereof and the Company, be deemed to be surrendered to the Company in exchange for, subject to Section 4.4, an amount equal to, (i) in the case of each RSU, the Consideration multiplied by the number of Shares covered by such RSU, and (ii) in the case of each PSU, the Consideration multiplied by the number of Shares covered by such PSU assuming 100% performance vesting, multiplied by a factor, being the ratio of (x) the period of time from the grant date of the PSU to the Effective Date, to (y) the term of the PSU, in each case payable in cash to the holder in accordance with Section 4.1(5), in full satisfaction of the Company's obligations under such surrendered RSU or PSU (as applicable);

whereupon all DSUs, RSUs and PSUs shall be, and shall be deemed to be, cancelled by the Company, all obligations in respect of the DSUs, RSUs and PSUs shall be deemed to be fully satisfied and the holders thereof shall cease to have any rights in respect thereof other than the right to receive the consideration contemplated under this Plan of Arrangement;

- (2) notwithstanding the terms of the Stock Option Plan or any applicable award agreements in relation thereto, the Stock Option Plan shall be cancelled and each Company Option (other than Rollover Options) whether vested or unvested, that has not, prior to the Effective Time, been exercised or surrendered in accordance with its terms shall, without any further action or formality on behalf of the holder thereof and the Company and without any payment by such Company Optionholder, be deemed to be transferred to the Company as follows:
- (a) in respect of each Company Option outstanding at the Effective Time (other than Rollover Options) whether vested or unvested, that has an exercise price that is less than the Consideration, the applicable Company Option shall be deemed to be surrendered to the Company in exchange for, subject to Section 4.4, an amount equal to the amount by which the Consideration exceeds the exercise price thereof, payable in cash to the Company Optionholder in accordance with Section 4.1(5) in full satisfaction of the Company's obligations under such surrendered Company Option; and
- (b) in respect of each Company Option outstanding at the Effective Time whether vested or unvested, that has an exercise price that is equal to or greater than the Consideration, the applicable Company Option shall be deemed to be surrendered to the Company in exchange for, subject to Section 4.4, an amount equal to \$0.05, payable in cash to the Company Optionholder in accordance with Section 4.1(5) in full satisfaction of the Company's obligations under such surrendered Company Option;

whereupon all Company Options (other than Rollover Options) shall be, and shall be deemed to be, cancelled by the Company, all obligations in respect of the Company Options (other than Rollover Options) shall be deemed to be fully satisfied, and the

holders thereof shall cease to have any rights in respect thereof other than the right to receive the consideration contemplated under this Plan of Arrangement.

- (3) each Share held by a Dissenting Holder described in Section 3.1 shall be transferred by the holder thereof to the Company in exchange for a debt claim against the Company for the amount determined in accordance with Section 3.1(a);
- (4) each Rollover Share shall be transferred by the holder thereof to Midco in exchange for such number of Midco Shares as set out in the applicable Rollover Agreement on the terms and conditions set out in the applicable Rollover Agreement.
- (5) simultaneous with the transactions set out in Section 2.3(4), each outstanding Share (other than a Share held by a Dissenting Holder described in Section 2.3(1) or a Rollover Share) shall be transferred to the Purchaser in exchange for, subject to Section 4.4, a cash payment to the holder equal to the Consideration;
- (6) each Rollover Option (whether then vested or unvested) shall be exchanged for such number of Midco Options as set out in the applicable Rollover Agreement on the terms and conditions set out in the applicable Rollover Agreement; and
- (7) each Rollover Share shall be transferred by Midco to the Purchaser in exchange for common shares of the Purchaser on the terms and conditions set out in the Midco Transfer Agreement.

### ARTICLE 3 RIGHTS OF DISSENT

#### Section 3.1 Rights of Dissent

Subject to Section 3.1(a), each registered Shareholder as of the record date for the Company Meeting may exercise dissent rights with respect to the Shares held by such holder as of such date (the “Dissent Rights”) in connection with the Arrangement pursuant to and in the manner set forth in Section 191 of the ABCA, as modified by the Interim Order and this Article 3; provided that, notwithstanding Section 191 of the ABCA, the written objection to the Arrangement Resolution must be received by the Company not later than 5:00 p.m. (Calgary time) two Business Days immediately preceding the date of the Company Meeting (as it may be adjourned or postponed from time to time). Dissenting Holders who validly exercise their Dissent Rights shall be deemed to have transferred the Shares held by them and in respect of which Dissent Rights have been validly exercised to the Company, without any further act or formality, as provided in Section 2.3(3), and if they:

- (a) ultimately are entitled to be paid fair value for such Shares, they shall: (i) in respect of such Shares be treated as not having participated in the transactions in Article 2 (other than Section 2.3(3)), (ii) be entitled to be paid, subject to Section 4.4, the fair value of such Shares by the Company, which fair value shall be determined as of the close of business on the day before the Arrangement Resolution was adopted at the Company Meeting, and (iii) not be entitled to any other payment or consideration, including any payment that would be payable

under the Arrangement had such holders not exercised their Dissent Rights in respect of such Shares; or

- (b) ultimately are not entitled, for any reason, to be paid fair value for such Shares, they shall in respect of such Shares be treated as having participated in the Arrangement on the same basis as a non-Dissenting Holder of Shares (and shall be entitled to receive the Consideration from the Purchaser in the same manner as such non-Dissenting Holders).

### **Section 3.2 Recognition of Dissenting Holders**

- (1) In no circumstances shall the Purchaser, the Company, the Depository or any other Person be required to recognize a Person exercising Dissent Rights: (a) unless, as of the deadline for exercising Dissent Rights (as set forth in Section 3.1), such Person is the registered holder of those Shares in respect of which such Dissent Rights are sought to be exercised, (b) if such Person has voted or instructed a proxy holder to vote such Shares in favour of the Arrangement Resolution, or (c) unless such Person has strictly complied with the procedures for exercising Dissent Rights and does not withdraw such dissent prior to the Effective Time.
- (2) For greater certainty, in no case shall the Purchaser, the Company or any other Person be required to recognize Dissenting Holders as holders of the Shares in respect of which Dissent Rights have been validly exercised after the completion of the transfers under Section 2.3(3).
- (3) In addition to any other restrictions under Section 191 of the ABCA, none of the following shall be entitled to exercise Dissent Rights: (a) holders of Incentive Securities, (b) Shareholders who vote or have instructed a proxyholder to vote Shares in favour of the Arrangement Resolution, (c) any Person (including any beneficial owner of Shares) who is not a registered Shareholder, and (d) the Purchaser or its Affiliates.

## **ARTICLE 4**

### **EXCHANGE OF CERTIFICATES AND PAYMENTS**

#### **Section 4.1 Payment of Consideration**

- (1) Following receipt of the Final Order and prior to the Effective Date, in accordance with Section 2.9 of the Arrangement Agreement, the Purchaser shall deposit, or shall cause to be deposited, for the benefit of the Shareholders, cash with the Depository in the aggregate amount equal to the payments in respect of the Shares required by this Plan of Arrangement, with the amount per Share in respect of which Dissent Rights have been exercised being deemed to be the Consideration for this purpose.
- (2) The consideration contemplated by Section 4.1(1) shall be held by the Depository as agent and nominee for such Shareholders in accordance with the provisions of Article 4 hereof. Upon surrender to the Depository for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Shares that were transferred pursuant to Section 2.3(3) and Section 2.3(5) together with a duly completed

and executed Letter of Transmittal and such additional documents and instruments as the Depository may reasonably require, the holder of such surrendered certificate shall be entitled to receive, and the Depository shall deliver (and the Purchaser shall cause the Depository to deliver), to such holder, a cheque (or other form of immediately available funds) representing the cash which such holder has the right to receive pursuant to this Plan of Arrangement in respect of such Shares, without interest and less any amounts withheld pursuant to Section 4.4, and any certificate so surrendered shall forthwith be cancelled.

- (3) After the Effective Time and until surrendered for cancellation as contemplated by this Section 4.1, each certificate, agreement or other instrument (as applicable) which immediately prior to the Effective Time represented Shares shall be deemed at all times to represent only the right to receive upon such surrender a cash payment in lieu of such certificate as contemplated in this Section 4.1.
- (4) Any certificate, agreement or other instrument that immediately prior to the Effective Time represented outstanding Shares not duly surrendered with all other documents required by this Section 4.1 on or before the sixth anniversary of the Effective Date shall cease to represent a claim by or interest of any former holder thereof of any kind or nature against or in the Company or the Purchaser. On such date, all consideration to which such former holder was entitled under this Plan of Arrangement shall be deemed to have been surrendered to the Purchaser or the Company, as applicable, together with all entitlements to dividends, distributions and interest thereon held for such former holder.
- (5) As soon as reasonably practicable following the Effective Time, the Company shall deliver, or shall cause to be delivered, to each holder of Incentive Securities (other than Rollover Options), through the Company's payroll systems (or such other means as the Company may elect or as otherwise directed by the Purchaser including with respect to the timing and manner of such delivery), the cash payment, if any, which such holder of Incentive Securities has the right to receive under this Plan of Arrangement for such Incentive Security, less any amounts withheld pursuant to Section 4.4 hereof.
- (6) Any payment made by way of cheque by the Depository or the Company, as applicable, pursuant to this Plan of Arrangement that has not been deposited or has been returned to the Depository or the Company, as applicable, or that otherwise remains unclaimed, in each case, on or before the sixth anniversary of the Effective Time, and any right or claim to payment hereunder that remains outstanding on the sixth anniversary of the Effective Time shall cease to represent a right or claim of any kind or nature and the right of the holder to receive the applicable consideration for the Shares and Incentive Securities pursuant to this Plan of Arrangement shall terminate and be deemed to be surrendered and forfeited to the Purchaser or the Company, as applicable, for no consideration.

#### **Section 4.2 Lost Certificates**

In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Shares that were transferred pursuant to Section 2.3 shall have been lost, stolen or destroyed, the Depository shall issue and deliver (and the Purchaser shall cause the Depository

to issue and deliver) to the Person claiming such certificate to be lost, stolen or destroyed, in exchange for such lost, stolen or destroyed certificate, a cheque (or other form of immediately available funds) representing the aggregate consideration in respect thereof which such holder is entitled to receive pursuant to the Arrangement, deliverable in accordance with such holder's Letter of Transmittal. When authorizing such delivery in exchange for any lost, stolen or destroyed certificate, the Person to whom such consideration is to be delivered shall, as a condition precedent to the delivery of such consideration, give an affidavit (in form and substance acceptable to the Purchaser, acting reasonably) of the claimed loss, theft or destruction of such certificate and a bond or surety satisfactory to the Purchaser and the Depositary (each acting reasonably) in such reasonable and customary sum as the Purchaser may direct, or otherwise indemnify the Purchaser, the Company and the Depositary in a manner satisfactory to the Purchaser and the Depositary, each acting reasonably, against any claim that may be made against the Purchaser, the Company and/or the Depositary with respect to the certificate alleged to have been lost, stolen or destroyed.

#### **Section 4.3 Rounding of Cash**

If the aggregate cash amount which a Party is entitled to receive pursuant to this Plan of Arrangement would otherwise include a fraction of \$0.01, then the aggregate cash amount to which such Party shall be entitled to receive shall be rounded up to the nearest whole \$0.01.

#### **Section 4.4 Withholding Rights**

The Company, the Purchaser, the Depositary and any other Person shall be entitled to deduct or withhold from any amount payable to any Person under this Plan of Arrangement (including, without limitation, any amounts payable pursuant to Section 3.1), such amounts as the Company, the Purchaser, the Depositary or such other Person, as applicable, determines, acting reasonably, are required to be deducted or withheld with respect to such payment under the Tax Act or any provision of any other Law. To the extent that amounts are so deducted or withheld, such deducted or withheld amounts shall be treated for all purposes hereof as having been paid to the Person in respect of which such deduction or withholding was made, provided that such deducted or withheld amounts are actually remitted to the appropriate Governmental Entity.

#### **Section 4.5 No Liens**

Any exchange or transfer of securities pursuant to this Plan of Arrangement shall be free and clear of any Liens or other claims of third parties of any kind.

#### **Section 4.6 Paramountcy**

From and after the Effective Time: (a) this Plan of Arrangement shall take precedence and priority over any and all Shares and Incentive Securities issued or outstanding prior to the Effective Time, and (b) the rights and obligations of the Shareholders, the holders of Incentive Securities, the Company and its Subsidiaries, the Purchaser and its Affiliates, the Depositary and any transfer agent or other depositary therefor in relation to this Plan of Arrangement shall be solely as provided for in this Plan of Arrangement.

## **ARTICLE 5 AMENDMENTS**

### **Section 5.1 Amendments to Plan of Arrangement**

- (1) The Parties may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must be (a) set out in writing, (b) approved by the Parties, each acting reasonably, (c) filed with the Court and, if made following the Company Meeting, approved by the Court, and (d) communicated to the Company Securityholders if and as required by the Court.
- (2) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by either of the Parties at any time prior to the Company Meeting (provided that the other Party has consented thereto) with or without any other prior notice or communication, and if so proposed and accepted by the Persons voting at the Company Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.
- (3) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Company Meeting shall be effective only if (a) it is consented to in writing by each of the Parties (in each case, acting reasonably), and (b) if required by the Court, it is consented to by some or all of the Shareholders voting in the manner directed by the Court. Any amendment, modification or supplement to this Plan of Arrangement may be made following the granting of the Final Order without filing such amendment, modification or supplement with the Court or seeking Court approval, provided that (i) it concerns a matter which, in the reasonable opinion of the Parties, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the interest of any Company Securityholder or (ii) is an amendment contemplated in Section 5.1(4).
- (4) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by the Purchaser, without communication to the Company Securityholders, provided that it concerns a matter which, in the reasonable opinion of the Purchaser, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the economic interest of any former Company Securityholder.
- (5) This Plan of Arrangement may be withdrawn prior to the Effective Time in accordance with the terms of the Arrangement Agreement.

## **ARTICLE 6 FURTHER ASSURANCES**

### **Section 6.1 Further Assurances**

Notwithstanding that the transactions and events set out in this Plan of Arrangement shall occur and shall be deemed to occur in the order set out in this Plan of Arrangement without any further

act or formality, following the Effective Time, each of the Parties shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required or advisable by either of them in order to further document or evidence any of the transactions or events set out in this Plan of Arrangement.