

**MERGER AGREEMENT AND PLAN OF REORGANIZATION**  
**among**  
**JACK'S FORK EXPLORATION, INC., ASTON BAY HOLDINGS LTD. AND**  
**BLUE RIDGE MINING INC.**

**August 20, 2018**

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## MERGER AGREEMENT

This Merger Agreement (this “**Agreement**”) is entered into on August 20, 2018 by and between Aston Bay Holdings Ltd., a British Columbia corporation (“**Aston Bay**”), Jack’s Fork Exploration, Inc., a Delaware corporation (the “**Company**”), and Blue Ridge Mining Inc., a Delaware corporation (“**Subco**”, as more specifically defined herein).

WHEREAS, the Parties (as hereinafter defined) intend that Subco be merged with and into the Company surviving the merger on the terms and subject to the conditions set forth herein;

WHEREAS, the board of directors of the Company has unanimously (a) determined that this Agreement and the transactions contemplated hereby, including the Merger (as hereinafter defined), are in the best interest of the Company and its stockholders, (b) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, and (c) resolved to recommend adoption of this Agreement by the stockholders of the Company in accordance with the DGCL (as hereinafter defined);

WHEREAS, following the execution of this Agreement, the Company shall seek to obtain the approval of its stockholders to the transactions contemplated hereby, including the Merger;

WHEREAS, the respective board of directors of Aston Bay and Subco have unanimously (a) determined that this Agreement and the transactions contemplated hereby, including the Merger, are in the best interest of Aston Bay, Subco and their respective shareholders, and (b) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merge;

WHEREAS, the Parties intend that, for U.S. federal income tax purposes, the Merger will qualify as a “reorganization” within the meaning of Section 368(a) of the Code, that each of Aston Bay, Subco and the Company are “parties to a reorganization” within the meaning of Section 368(b) of the Code, and that this Agreement shall constitute a “plan of reorganization” within the meaning of Treasury Regulation Section 1.368-2(g) as provided in Section 2.10; and

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties agree as follows:

### ARTICLE 1 DEFINITIONS

In this Agreement (including the preamble, recitals and each Schedule hereto), the following terms have the meanings ascribed thereto as follows:

“**Acquisition**” means the acquisition of all of the outstanding capital stock of the Company by Aston Bay effected through the Merger.

“**Affiliate**” has the meaning specified in Rule 405 under the US Securities Act.

“**Agreement**” means this Agreement and any instrument supplemental or ancillary hereto; and the expressions “Article”, “section”, and “subsection” followed by a number means and refers to the specified Article, section or subsection of this Agreement.

“**Ancillary Agreements**” means all agreements, certificates and other instruments delivered or given pursuant to this Agreement.

“**Applicable Delaware Law**” means the DGCL.

“**Applicable Securities Law**” means applicable securities legislation, securities regulation and securities rules, as amended, and the policies, notices, instruments and blanket orders having the force of law, in force from time to time.

“**Aston Bay**” means Aston Bay Holdings Ltd., a company incorporated under the laws of British Columbia.

“**Aston Bay Alternative Transaction Offer**” has the meaning given to the term in Section 7.5.

“**Aston Bay Assets**” means the property and assets of Aston Bay, of every kind and description and wheresoever situated.

“**Aston Bay Indemnitee(s)**” has the meaning given to the term in Section 9.2.

“**Aston Bay Shareholders**” means the holders of Aston Bay Shares.

“**Aston Bay Shares**” means the common shares in the capital of Aston Bay.

“**Aston Bay’s Closing Documents**” means the documents required to be delivered to the Company by Aston Bay pursuant to Section 10.3 hereof.

“**Aston Bay’s Financial Statements**” means the audited financial statements of Aston Bay for its financial years ended December 31, 2017 and 2016.

“**BCBCA**” means the *Business Corporations Act* (British Columbia).

“**Business Day**” means any day, other than a Saturday, Sunday or statutory holiday in Toronto, Ontario.

“**Certificate of Merger**” shall mean the certificate of merger, filed with the Secretary of State with the State of Delaware at the Effective Time, effecting the Merger.

“**Closing**” means the completion of the transactions contemplated herein.

“**Closing Date**” means the Business Day on which all conditions set forth in Article 9 (other than those conditions that by their nature are to be satisfied or waived at the Closing, but subject to the satisfaction or waiver of those conditions) are satisfied or

waived or such other Business Day as the Parties may agree to in writing.

“**Code**” means the United States Internal Revenue Code of 1986, as amended.

“**Company**” means Jack’s Fork Exploration, Inc., a corporation incorporated under the laws of the State of Delaware.

“**Company Alternative Transaction Offer**” has the meaning given to the term in Section 6.6.

“**Company Assets**” means the property and assets of the Company, of every kind and description and wheresoever situated.

“**Company Board Recommendation**” has the meaning given to the term in Section 4.1(1)(b).

“**Company Contracts**” has the meaning given to the term in Section 4.1(17)(a).

“**Company’s Exploration Data**” means the Exploration Data owned, used by or licensed to the Company for the carrying on of the Company’s business in the manner heretofore carried on or as now proposed to be carried on in the Company’s written business documents and set forth on Section 1 of the Disclosure Schedules.

“**Company Mineral Exploration Business**” means the mineral exploration business, operations, assets, liabilities, obligations and property of Company, including its predecessor entities.

“**Company Proxy Statement**” has the meaning given to the term in Section 4.1(19).

“**Company Shares**” means the shares of common stock of the Company.

“**Company Stockholders**” means holders of the Company Shares.

“**Company Stockholders Meeting**” means the special meeting of the Stockholders of the Company to be held to consider the adoption of this Agreement and the Merger.

“**Confidential Information**” means any information concerning the Company or Aston Bay (the “**Disclosing Party**”) or its business, properties and assets made available to the other Party or its representatives (the “**Receiving Party**”); provided that it does not include information which (i) is generally available to or known by the public other than as a result of improper disclosure by the Receiving Party or pursuant to a breach of Section 12.1 by the Receiving Party, or (ii) is obtained by the Receiving Party from a source other than the Disclosing Party, provided that (to the reasonable knowledge of the Receiving Party) such source was not bound by a duty of confidentiality to the Disclosing Party or another party with respect to such information.

“**Contract**” means, with respect to a Person, any contract, instrument, permit, concession, license, loan or credit agreement, note, bond, mortgage, indenture, lease or

other agreement, partnership or joint venture agreement or other legally binding agreement, arrangement or understanding, whether written or oral, to which the Person is a party or by which, to the knowledge of such Person, the Person or its property and assets is bound or affected.

“**DGCL**” means the Delaware General Corporation Law.

“**Disclosure Documents**” shall have the meaning set forth in Section 3.1(f).

“**Disclosure Schedules**” means the Disclosure Schedules delivered by the Company concurrently with the execution and delivery of this Agreement.

“**Effective Date**” means the effective date of the Merger, which shall be the date on which the Certificate of Merger is filed with the Secretary of State of the State of Delaware.

“**Effective Time**” means the time (Delaware time) set out in the Certificate of Merger for the Merger on the Effective Date or such other time as Aston Bay and the Company may agree.

“**Employee**” means an officer or employee of the Company or a Person providing services in the nature of an employee to the Company.

“**Employee Plans**” has the meaning given to the term in Section 4.1(9)(a)(d).

“**Environmental Laws**” means all applicable Laws aimed at abatement of pollution; protection of the environment; protection of wildlife, including endangered species; ensuring public safety from environmental hazards; management, storage or control of hazardous materials and substances; releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances as wastes into the environment, including ambient air, surface water and groundwater; and all other applicable Laws relating to the manufacturing, processing, distribution, use, treatment, storage, disposal, handling or transport of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes.

“**Exchange**” or “**TSX-V**” means the Toronto Venture Exchange Inc.

“**Exploration Data**” means mineral exploration data, including maps, laboratory reports, core samples and any other information.

“**Financial Statements**” means the unaudited financial statements of the Company for the fiscal years ended December 31, 2017 and December 31, 2016, each prepared in accordance with US GAAP.

“**Fundamental Reps**” has the meaning given to the term in Section 9.1(b).

“**Government Agency**” means and includes, without limitation, any national, federal government, province, state, municipality or other political subdivision of any of the

foregoing, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, including the Exchange.

**“Government Official”** means (a) any official, officer, employee, or representative of, or any person acting in an official capacity for or on behalf of, any Government Agency, (b) any salaried political party official, elected member of political office or candidate for political office, or (c) any company, business, enterprise or other entity owned or controlled by any person described in the foregoing clauses.

**“Hazardous Materials”** means chemicals, fluids, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products.

**“IFRS”** means International Financial Reporting Standards.

**“include”** or **“including”** shall be deemed to be followed by the words “without limitation”.

**“Laws”** means all laws, statutes, bylaws, rules, regulations, orders, decrees, ordinances, protocols, codes, guidelines, policies, notices, directions and judgments or other requirements of any Government Agency applicable to the Company or Aston Bay.

**“Lien”** means any mortgage, encumbrance, charge, pledge, hypothecation, security interest, assignment, lien (statutory or otherwise), charge, title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature or any other arrangement or condition, which, in substance, secures payment, or performance of an obligation.

**“Losses”** means losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; provided, however, that **“Losses”** shall not include punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

**“Materially Adverse”** when used in respect of a fact, circumstance, change, effect, occurrence, event or term means a fact, circumstance, change, effect, occurrence, event or term that (a) materially and adversely affects, or would reasonably be expected to materially and adversely affect, the business, assets, liabilities, condition (financial or otherwise) or capital of a Party, or (b) prevents, or would reasonably be expected to prevent, a Party from performing its obligations under this Agreement or consummating the transactions contemplated herein; provided, however, that it will not include: (i) any fact, circumstance, event, change, effect, occurrence, event or term relating to the global economy or securities markets in general; or (ii) any fact, circumstance, event, change, effect, occurrence or event affecting the industry in which a Party operates in general and which, in each case, does not have a materially disproportionate effect on such Party relative to comparable entities operating in the industry in which the Company conducts

its business.

**“Material Adverse Change”** or **“Material Adverse Effect”** with respect to Aston Bay or the Company, as the case may be, means any change (including a decision to implement such a change made by the board of directors or by senior management who believe that confirmation of the decision by the board of directors is probable), event, violation, inaccuracy, circumstance or effect that is materially adverse to the business, assets (including intangible assets), liabilities, capitalization, ownership, financial condition or results of operations of Aston Bay or the Company, as the case may be, on a consolidated basis.

**“Mergeco”** means the Company, which shall be the surviving corporation of the Merger of Subco with and into the Company pursuant to the Merger.

**“Merger”** means the merger of Subco with and into the Company pursuant to the provisions of the DGCL in the manner contemplated in and pursuant to the terms and conditions of this Agreement.

**“Merging Companies”** means the Company and Subco.

**“Party”** means each of the Company, Aston Bay and Subco and **“Parties”** means the Company, Aston Bay and Subco.

**“Permits”** shall mean all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from any Government Agency.

**“Person”** shall mean any natural person, corporation, partnership, limited partnership, limited liability, trust, or any other entity that is treated by applicable Law as having separate rights, obligations or liabilities.

**“Pre-Closing Tax Period”** means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

**“Requisite Company Vote”** has the meaning given to the term in Section 4.1(1)(a).

**“SEDAR”** means the System for Electronic Document Analysis and Retrieval.

**“Straddle Period”** means any taxable period that begins before and ends after the Closing Date.

**“Subco”** means Blue Ridge Mining Inc., a direct, wholly-owned subsidiary of Aston Bay incorporated under the DGCL on August 13, 2018 for the sole purpose of effecting the Merger in connection with the Acquisition.

**“Subco Shares”** means all of the outstanding shares of common stock of Subco.

“**Taxes**” means all taxes (including income tax, capital tax, payroll taxes, employer health tax, workers’ compensation payments, sales taxes, value-added taxes, goods and services tax, harmonized sales tax, property taxes and transfer taxes), duties, royalties, levies, imposts, assessments, deductions, charges or withholdings and other assessments or similar charges in the nature of a tax including Canada Pension Plan and provincial pension plan contributions and employment insurance and unemployment insurance premiums, and all liabilities with respect thereto including any penalty and interest payable with respect thereto.

“**Termination Date**” has the meaning given to the term in Section 11.1.

“**Treasury Regulations**” means the Treasury regulations promulgated under the Code, as such Treasury Regulations may be amended from time to time.

“**US GAAP**” means United States Generally Accepted Accounting Principles.

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

“**US Person**” has the meaning set forth in Section 2.10.

## **ARTICLE 2 TRANSACTION**

### **2.1 Agreement to Merge.**

Upon the terms and subject to the conditions contained in this Agreement, the Parties hereby agree that at the Effective Time (i) Subco shall merge with and into the Company and (ii) the separate corporate existence of Subco will cease and the Company shall survive the merger and continue its corporate existence under the DGCL as Mergeco.

### **2.2 Merger Events.**

Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, as a result of the Merger and without any action on the part of Aston Bay, the Company or Subco:

- (a) each Company Share (other than any Dissenting Shares) issued and outstanding immediately prior to the Effective Time (including the Company Shares issued under Section 2.13 hereof) shall be entitled to be exchanged by each holder thereof, for 0.57396868 fully paid and non-assessable Aston Bay Share;
- (b) each Subco Share issued and outstanding immediately prior to the Effective Time shall be exchanged for one (1) share of common stock of Mergeco; and
- (c) Mergeco shall be a wholly-owned subsidiary of Aston Bay.

### **2.3 Share Certificates.**

- (a) Subject to compliance with Section 2.3(b), at the Effective Date:
- (i) the original stock certificate of Subco registered in the name of Aston Bay shall be cancelled and Aston Bay shall be issued a stock certificate for the number of shares of the common stock of Mergeco to be issued to Aston Bay as provided in Section 2.2(b) hereof;
  - (ii) subject to the treatment of Dissenting Shares (as defined below) in Section 2.11 hereof, certificates or other evidence representing the Company Shares shall be canceled and shall cease to represent any claim upon or interest in the Company other than the right of the holder to receive, pursuant to the terms hereof, Aston Bay Shares in accordance with Section 2.2(a) hereof; and
  - (iii) upon the delivery and surrender by the holder thereof to Aston Bay of certificates representing Company Shares which have been exchanged for Aston Bay Shares in accordance with the provisions of Section 2.2(a) hereof and compliance with Section 2.3(b), Aston Bay or Computershare Investor Services Inc. shall on the Effective Date, or as soon as practicable thereafter following the date of receipt by Aston Bay of the certificates referred to above, deliver to each such holder certificates representing the number of Aston Bay Shares to which such holder is entitled or other evidence of ownership.
- (b) As promptly as practicable following the date of this Agreement, the Company shall mail to each Company Stockholder a letter of transmittal, in form and substance reasonably acceptable to Aston Bay and its transfer agent, Computershare Investor Services Inc., and instructions for use in effecting the surrender of the certificates representing Company Shares pursuant to Section 2.3(a)(iii) (the “**Letter of Transmittal**”). In order for any Company Stockholder to obtain certificates or evidence of ownership of the Aston Bay Shares it is entitled to receive at the Effective Time, such Company Stockholder must: (i) return the duly completed and validly executed Letter of Transmittal as well as other customary documents that Computershare Investor Services Inc. may reasonably require in connection therewith; (ii) deliver and surrender any certificates representing Company Shares held by such Company Stockholder; (iii) deliver the duly completed and validly executed certificates required by Aston Bay pursuant to Section 2.10; and (iv) deliver, complete or execute any other documents, instruments or certificates reasonably required by Aston Bay.

## 2.4 Subco.

Subco will, at the time of the Closing, have a minimum of one (1) and a maximum of ten (10) directors, and the following will be the directors and officers of Subco immediately preceding the Closing and the Effective Time of the Merger:

### **Directors**

Thomas Ullrich

**Officers**

<u>Name</u>	<u>Title</u>
Thomas Ullrich	Chief Executive Officer, President and Secretary

**2.5 Merged Corporation.**

Unless otherwise determined in accordance with applicable Law by Mergeco or its stockholders, the following provisions will apply as of the Effective Time:

- (a) **Number of Directors.** The board of directors of Mergeco shall consist of a minimum of one (1) and a maximum of ten (10) directors.
- (b) **Officers and Directors.** As of the Effective Time, the directors and officers of Subco, in each case, immediately prior to the Effective Time shall, from and after the Effective Time, be the directors and officers, respectively, of Mergeco until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Certificate of Incorporation and Bylaws of Mergeco.
- (c) **Fiscal Year.** The fiscal year end of Mergeco shall be March 31 in each year, unless and until changed by resolution of the board of directors of Mergeco.
- (d) **Name.** The name of Mergeco shall be “Blue Ridge Mining Inc.” or such other name as agreed to by the Parties and set forth in the Certificate of Merger.
- (e) **Registered Office.** The registered office of Mergeco shall be the registered office of Subco.
- (f) **Authorized Capital.** The authorized capital of Mergeco shall be the authorized capital of Subco as provided in its Certificate of Incorporation.
- (g) **Certificate of Incorporation and Bylaws.** The Certificate of Incorporation and the Bylaws of Subco shall be the Certificate of Incorporation and Bylaws of Mergeco with any amendments thereto as may be necessary to give effect to this Agreement, including that the name of Subco set forth therein shall be changed to the name of the Company, until thereafter changed or amended as provided therein or by applicable Law.
- (h) **Business and Powers.** There shall be no restriction on the business that Mergeco may carry on or on the powers that Mergeco may exercise.

**2.6 Fractional Shares.**

No fractional Aston Bay Shares will be issued or delivered pursuant to the Merger. Any fractional share representing 0.50 or higher of an Aston Bay Share will be rounded up to the next whole number and any fractional share representing 0.49 or lower of an Aston Bay Share will be rounded down to the next whole number. In calculating such fractional interests, all securities of Aston Bay registered in the name of, or beneficially held, by a securityholder or their nominee shall be aggregated.

## **2.7 Effect of Merger.**

At the Effective Time:

- (a) Subco shall merge with and into the Company under the DGCL with the Company continuing as the surviving company subsequent to the Merger in accordance with the terms and conditions prescribed in this Agreement;
- (b) all of the property, assets, rights and privileges of each of Subco and the Company shall become the property, assets, rights and privileges of Mergeco, and all of the liabilities and obligations of each of Subco and the Company shall become the liabilities and obligations of Mergeco;
- (c) the Certificate of Incorporation and the Bylaws of Subco are deemed to be the Certificate of Incorporation and the Bylaws of Mergeco; and
- (d) the officers and directors of Mergeco shall be those individuals described in Section 2.5(b) hereof.

## **2.8 Filing of Certificate of Merger.**

Following the approval of the stockholders of the Merging Companies to the Merger and subject to the satisfaction or waiver of all of the conditions precedent set forth herein, at the Closing, the Company and Subco shall file the Certificate of Merger and such other documents as required under the Applicable Delaware Law to effect the Merger pursuant to Applicable Delaware Law. The Merger shall become effective at the Effective Time.

## **2.9 U.S. Tax Treatment**

For U.S. federal income tax purposes, this Agreement is intended to constitute, and the Parties hereby adopt this Agreement as, a “plan of reorganization” within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a). Each Party agrees that, for U.S. federal income tax purposes: (a) it shall treat the Merger as a tax-free reorganization within the meaning of Section 368(a) of the Code; (b) that it shall report the Merger as a “reorganization” within the meaning of Section 368(a) of the Code and it shall not take any tax reporting position inconsistent with such treatment for U.S. federal, state and other relevant tax purposes; (c) the Company, Aston Bay and Subco are “parties to a reorganization” within the meaning of Section 368(b) of the Code; (d) it shall retain such records and file such information as is required to be retained and filed pursuant to Treasury Regulation Section 1.368(a)-3 in connection with the Merger; and (e) it shall otherwise use its best efforts to cause the Merger to qualify as a “reorganization” within the meaning of Section 368(a) of the Code.

## 2.10 Accredited Status of U.S. Holders

Each Company Stockholder who is resident in the United States or otherwise a “**U.S. Person**”, as defined in Regulation S under the US Securities Act, is in the United States, or consents to the Merger from within the United States, will, as a condition of receiving Aston Bay Shares upon completion of the Merger, be required to deliver a certificate in a form satisfactory to Aston Bay as to their status as an “accredited investor,” as defined in Rule 501(a) of Regulation D promulgated under the US Securities Act, together with any supporting information as reasonably requested by the Company or Aston Bay in order to confirm their status and the availability of an exemption from the registration requirements of the US Securities Act and applicable state securities laws for the issuance of such Aston Bay Shares to such holder.

## 2.11 Dissenting Shares

- (a) For purposes of this Agreement, “**Dissenting Shares**” means Company Shares held as of the Effective Time by a Company Stockholder who has not voted such Company Shares in favor of the adoption of this Agreement and the Merger and with respect to which appraisal shall have been duly and properly demanded and perfected in accordance with Section 262 of the DGCL and not effectively withdrawn or forfeited prior to the Effective Time. Dissenting Shares shall not be converted into or represent the right to receive Aston Bay Shares but instead shall be entitled to only such rights as are granted by Section 262 of the DGCL; provided, however, that if, after the Effective Time, such Company Stockholder’s right to appraisal shall have ceased in accordance with the DGCL, if such Company Stockholder has so forfeited or withdrawn his, her or its right to appraisal of Dissenting Shares or if a court of competent jurisdiction shall determine that such Company Stockholder is not entitled to the relief provided by Section 262 of the DGCL, then, (i) as of the occurrence of such event, such holder’s Dissenting Shares shall cease to be Dissenting Shares and shall be converted into and represent the right to receive the Aston Bay Shares, issuable in respect of such Company Shares pursuant to Sections 2.2 and 2.3(a)(iii) without interest thereon, and (ii) Aston Bay shall deliver or cause to be delivered to such Company Stockholder, subject to compliance with Section 2.3(b), certificates representing the Aston Bay Shares, to which such holder is entitled pursuant to Sections 2.2(a) 2.3(a)(iii).
- (b) The Company shall give Aston Bay prompt notice of any written demands for appraisal of any Company Shares, withdrawals of such demands, and any other notices or instruments that relate to such demands received by the Company prior to the Effective Time pursuant to the DGCL, and Aston Bay shall have the opportunity and right to direct all negotiations and proceedings with respect to such demands. The Company shall not, except with the prior written consent of Aston Bay, make any payment with respect to any demands for appraisal of Company Shares or offer to settle or settle any such demands unless required by the Delaware Court of Chancery.

## **2.12 Adjustments**

Without limiting the other provisions of this Agreement, if at any time during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of the Company shall occur, including by reason of any reclassification, recapitalization, stock split, or combination, exchange or readjustment of shares, or any stock dividend or distribution paid in stock, the number of Aston Bay Shares each Company Stockholder is entitled to receive pursuant to Section 2.2(a) shall be appropriately adjusted to reflect such change.

## **2.13 Lost Certificates**

If any certificates representing Company Shares shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Company Stockholder claiming such certificate to be lost, stolen or destroyed with an appropriate personal indemnity but without the requirement of a bond, Aston Bay shall, subject to compliance with Section 2.3(b), issue, in exchange for such lost, stolen or destroyed certificate, the number of Aston Bay Shares such Company Stockholder would be entitled to receive in respect of its Company Shares represented by such lost, stolen or destroyed certificate.

# **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF ASTON BAY**

## **3.1 Representations and Warranties of Aston Bay.**

Aston Bay represents and warrants to and in favor of the Company as follows, and acknowledges that the Company is relying upon such representations and warranties in connection with the completion of the transactions contemplated herein:

- (a) Each of Aston Bay and Subco is a corporation incorporated and validly existing under the laws of the jurisdiction of its incorporation. In each case, each such entity has all requisite corporate power and authority and is duly qualified and holds all material permits, licenses, registrations, permits, qualifications, consents and authorizations necessary or required to carry on its business as now conducted and, in the case of Aston Bay, to own, lease or operate the Aston Bay Assets, as applicable, and neither Aston Bay nor, to the knowledge of Aston Bay, any other Person, has taken any steps or proceedings, voluntary or otherwise, requiring or authorizing the dissolution or winding up of Aston Bay or Subco, and Aston Bay and Subco have all requisite corporate power and authority to enter into this Agreement and any Ancillary Agreement and to carry out their obligations hereunder and thereunder.
- (b) The authorized capital of Aston Bay consists of an unlimited number of Aston Bay Shares, of which 117,570,861 Aston Bay Shares are issued and outstanding as fully paid and non-assessable shares in the capital of Aston Bay as of August 14, 2018.
- (c) Other than Subco, Aston Bay Ventures Ltd., and Aston Bay South Inc., Aston

Bay has no direct or indirect subsidiaries nor any investment in any Person or any agreement, option or commitment to acquire any such investment. All of the issued and outstanding securities of Subco, Aston Bay Ventures Ltd., and Aston Bay South Inc. are held by Aston Bay. Subco has no liabilities.

- (d) Aston Bay is a “reporting issuer” as that term is defined under Applicable Securities Laws in Ontario, British Columbia, and Alberta, and is not in default of the requirements of the Applicable Securities Laws in such jurisdictions.
- (e) Aston Bay is in compliance in all material respects with all of the policies and rules of the Exchange.
- (f) Aston Bay has filed all forms, reports, documents and information required to be filed by it, whether pursuant to Applicable Securities Laws or otherwise, with the applicable securities commissions (the “**Disclosure Documents**”) and Aston Bay does not have any confidential filings with any securities authorities. As of the time the Disclosure Documents were filed with the applicable securities regulators and on SEDAR (or, if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing): (i) each of the Disclosure Documents complied in all material respects with the requirements of the Applicable Securities Laws in the jurisdictions they were filed; and (ii) none of the Disclosure Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.
- (g) Aston Bay has been conducting its business in compliance in all material respects with all applicable Laws and regulations of each jurisdiction in which it carries on business and has not received a notice of non-compliance, and, to the knowledge of Aston Bay, there are no facts that would give rise to a notice of non-compliance with any such Laws and regulations.
- (h) No consent, approval, order or authorization of, or registration, declaration or filing with, any third party or Governmental Agency is required by or with respect to Aston Bay in connection with the execution and delivery of this Agreement by Aston Bay, the performance of its obligations hereunder or the consummation by Aston Bay of the transactions contemplated hereby other than: (i) the approval of the listing of the Aston Bay Shares by the Exchange; and (ii) any other consents, notice, approvals, orders, authorizations, registrations, declarations or filings which, if not obtained or made, would not, individually or in the aggregate, have a Material Adverse Effect on Aston Bay or prevent or materially impair Aston Bay’s ability to perform its obligations hereunder.
- (i) Each of the execution and delivery of this Agreement, the performance by each of Aston Bay and Subco of its obligations hereunder and the consummation of the transactions contemplated in this Agreement, including the Merger and the issue of the Aston Bay Shares upon the Merger, do not and will not conflict with or

result in a breach or violation of any of the terms or provisions of, or constitute a default under, (whether after notice or lapse of time or both), (i) any statute, rule or regulation applicable to Aston Bay or Subco, including Applicable Securities Laws; (ii) the constating documents, bylaws or resolutions of Aston Bay or Subco; (iii) any mortgage, note, indenture, contract, agreement, joint venture, partnership, instrument, lease or other document to which Aston Bay or Subco is a party or by which it is bound; or (iv) any judgment, decree or order binding Aston Bay or Subco or their respective assets.

- (j) This Agreement has been duly authorized and executed by Aston Bay and Subco and constitutes a valid and binding obligation of each of them and shall be enforceable against each of them in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting the rights of creditors generally and except as limited by the application of equitable principals when equitable remedies are sought, and by the fact that rights to indemnity, contribution and waiver, and the ability to sever unenforceable terms, may be limited by applicable Law.
- (k) Aston Bay's Financial Statements have, in each case, been prepared in accordance with IFRS consistently applied throughout the periods referred to therein and present fairly, in all material respects, the financial position (including the assets and liabilities, whether absolute, contingent or otherwise as required by IFRS) of Aston Bay as at such dates and the results of its operations and its cash flows for the periods then ended and contain and reflect adequate provisions or allowance for all reasonably anticipated liabilities, expenses and losses of Aston Bay in accordance with IFRS and there has been no change in accounting policies or practices of Aston Bay since January 1, 2016.
- (l) Aston Bay is a taxable Canadian corporation for Canadian tax purposes and all Taxes due and payable or required to be collected or withheld and remitted, by Aston Bay and Subco have been paid, collected or withheld and remitted as applicable. All tax returns, declarations, remittances and filings required to be filed by Aston Bay and Subco have been filed with all appropriate Government Agencies and all such returns, declarations, remittances and filings are complete and accurate and no material fact or facts have been omitted therefrom which would make any of them misleading. Neither Aston Bay nor Subco has received notice of any examination of any tax return of Aston Bay or Subco, and to the knowledge of Aston Bay and Subco, no such examination is currently in progress by any Government Agency and there are no issues or disputes outstanding with any Government Agency respecting any Taxes that have been paid, or may be payable, by Aston Bay or Subco. There are no agreements, waivers or other arrangements with any taxation authority providing for an extension of time for any assessment or reassessment of Taxes with respect to Aston Bay or Subco. There are no circumstances existing as of the date hereof that could result in the application of one or more of Sections 17, 78 or 80 to 80.04 of the *Income Tax Act* (Canada) or any analogous provision of any Law of any province or territory

of Canada to Aston Bay or Subco. Neither Aston Bay nor Subco (i) is a party to, bound by, or obligated under any Tax allocation, indemnity, or sharing contract or arrangement, and (ii) is liable for the Taxes of any other Person as a transferee or successor, by contract or otherwise, including under section 191.3 of the *Income Tax Act* (Canada).

- (m) The value of consideration paid or received by each of Aston Bay and Subco in respect of the acquisition, sale or transfer of any property or the provision of any services to or from any person with whom it does not deal at “arm’s length” (as defined for purposes of the *Income Tax Act* (Canada)) has been equal to the fair market value of such property acquired, sold or transferred or services provided. Aston Bay has made or obtained records or documents that meet the requirements of paragraphs 247(4)(a) to (c) of the Tax Act for all transactions where subsection 247(3) of the *Income Tax Act* (Canada) could apply.
- (n) Each of Aston Bay and Subco has established on its books and records reserves that are adequate for the payment of all Taxes not yet due and payable and there are no liens for Taxes on the Aston Bay Assets and its subsidiary, and there are no audits pending of the tax returns of Aston Bay or Subco (whether federal, state, provincial, local or foreign) and there are no claims which have been asserted relating to any such tax returns.
- (o) Aston Bay’s auditors who audited Aston Bay’s Financial Statements (as applicable) are independent public accountants.
- (p) No holder of outstanding Aston Bay Shares is entitled to any pre-emptive or any similar rights to subscribe for any Aston Bay Shares or other securities of Aston Bay and no rights to acquire, or instruments convertible into or exchangeable for, any securities in the capital of Aston Bay or Subco are outstanding.
- (q) No legal or governmental actions, suits, judgments, investigations or proceedings are pending to which Aston Bay or its subsidiary, or to the knowledge of Aston Bay, the directors, officers or employees of Aston Bay or its subsidiary are a party or to which the Aston Bay Assets are subject and, to the knowledge of Aston Bay, no such proceedings have been threatened against or are pending with respect to Aston Bay or its subsidiary, or with respect to the Aston Bay Assets and neither Aston Bay or its subsidiary is subject to any judgment, order, writ, injunction, decree or award of any Government Agency.
- (r) Aston Bay is not in violation of its constating documents or in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any contract to which it is a party or by which it or its property may be bound.
- (s) No order, ruling or determination having the effect of suspending the sale or ceasing the trading in any securities of Aston Bay (including the Aston Bay Shares) has been issued by any regulatory authority and is continuing in effect

and no proceedings for that purpose have been instituted or, to the knowledge of Aston Bay, are pending, contemplated or threatened by any regulatory authority.

- (t) There is no Person acting at the request or on behalf of Aston Bay that is entitled to any brokerage or finder's fee or other compensation in connection with the transactions contemplated by this Agreement.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

##### **4.1 Representations and Warranties of the Company.**

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, the Company represents and warrants to and in favor of Aston Bay and Subco as follows, and acknowledges that Aston Bay and Subco are relying upon such representations and warranties in connection with the completion of the transactions contemplated herein:

- (1) *Organization, Standing, Corporate Power, Authority and Non-Contravention.*
  - (a) The Company is a corporation incorporated and validly existing under the laws of the State of Delaware and has all requisite corporate power and corporate authority and is duly qualified and holds all material permits, licenses, registrations, permits, qualifications, consents and authorizations necessary or required to carry on its business as now conducted in each of the jurisdictions it carries on business and to own, lease or operate the Company Assets and neither the Company nor, to the knowledge of the Company, any other Person, has taken any steps or proceedings, voluntary or otherwise, requiring or authorizing the dissolution or winding up of the Company. The Company has all requisite corporate power and corporate authority to enter into and perform its obligations under this Agreement and the Ancillary Agreements to which it is a party and, subject to, in the case of the consummation of the Merger, adoption of this Agreement by the affirmative vote or consent of Company Stockholders representing a majority of the outstanding Company Shares (the “**Requisite Company Vote**”), to consummate the transactions contemplated hereby and thereby. The Requisite Company Vote is the only vote or consent of the holders of any class or series of the Company's capital stock required to approve and adopt this Agreement and the Ancillary Agreements, approve the Merger and consummate the Merger and the other transactions contemplated hereby and thereby.
  - (b) The Company's board of directors, by resolutions duly adopted by unanimous vote of all directors of the Company and, as of the date hereof, not subsequently rescinded or modified in any way, has, as of the date hereof (i) determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to, and in the best interests of, the Company Stockholders, (ii) approved and declared advisable the “agreement of merger” (as such term is used in Section 251 of the DGCL) contained in this Agreement and the transactions contemplated

by this Agreement, including the Merger, in accordance with the DGCL and the Company's bylaws, (iii) directed that the "agreement of merger" contained in this Agreement be submitted to the Company Stockholders for adoption, and (iv) resolved to recommend that the Company Stockholders adopt the "agreement of merger" set forth in this Agreement (collectively, the "**Company Board Recommendation**") and directed that such matter be submitted for consideration of the Company Stockholders at the Company Stockholders Meeting.

- (c) The authorized capital of the Company consists of 250,000,000 shares of common stock and 50,000,000 shares of preferred stock, of which 20,907,064 Company Shares are issued and outstanding. Section 4.1(1)(c) of the Disclosure Schedules sets forth, as of the date hereof, the name of each Person that is a registered owner of any Company Shares and the number of Company Shares owned by such Person. All issued and outstanding Company Shares are (i) duly authorized, validly issued, fully paid and non-assessable and (ii) free of any encumbrances created by the Company in respect thereof. All issued and outstanding Company Shares were issued in compliance with applicable Law.
- (d) No Person has any written or oral agreement, option or warrant or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming such for the purchase or acquisition of any securities of the Company.
- (e) The Company has no subsidiaries, nor any interest in any body corporate, partnership, joint ventures or other entity or Person and the Company is not a party to any agreement, option or commitment to acquire any shares or securities of any body corporate, partnership, trust, joint venture or other entity or Person (other than as contemplated by this Agreement).
- (f) The Company has been conducting its business in compliance in all material respects with all applicable Laws and regulations of each jurisdiction in which it carries on business and has not received a notice of material non-compliance, and, to the knowledge of the Company, there are no facts that would give rise to a notice of material non-compliance with any such Laws and regulations.
- (g) No consent, approval, order or authorization of, or registration, declaration or filing with, any third party or governmental entity is required by or with respect to the Company in connection with the execution and delivery of this Agreement by the Company, the performance of its obligations hereunder or the consummation by the Company of the transactions contemplated hereby other than: (i) the approval of the Merger by the Company Stockholders and the approval of the Merger under Applicable Delaware Law and the Company's bylaws; and (ii) any other consents, notice, approvals, orders, authorizations, registrations, declarations or filings which, if not obtained or made, would not, individually or in the aggregate, have a Material Adverse Effect on the Company or prevent or materially impair the Company's ability to perform its obligations hereunder.
- (h) Each of the execution and delivery of this Agreement and the Ancillary

Agreements, the performance by the Company of its obligations hereunder and thereunder and the consummation of the transactions contemplated in this Agreement and in each Ancillary Agreement, including the Merger, do not and will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, (whether after notice or lapse of time or both), (i) any statute, rule or regulation applicable to the Company, including Applicable Securities Laws; (ii) the constating documents, bylaws or resolutions of the Company which are in effect at the date hereof; (iii) any mortgage, note, indenture, contract, agreement, joint venture, partnership, instrument, lease or other document to which the Company is a party or by which it is bound; or (iv) any judgment, decree or order binding the Company or the Company Assets.

- (i) This Agreement has been duly authorized and executed by the Company and constitutes a valid and binding obligation of the Company and shall be enforceable against the Company in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting the rights of creditors generally and except as limited by the application of equitable principles when equitable remedies are sought, and by the fact that rights to indemnity, contribution and waiver, and the ability to sever unenforceable terms, may be limited by applicable Law.

(2) *Exploration Data.*

- (a) The Company's Exploration Data comprises the Exploration Data necessary for the conduct of the business of the Company in the United States as it has been conducted in the previous 12 months, and all licenses to which the Company is a party relating to the Company's Exploration Data are in good standing, binding and enforceable in accordance with their respective terms and no material default exists on the part of the Company.
- (b) The Company has the exclusive right to use, sell, license, sub-license and prepare derivative works for and dispose of and has the rights to bring actions for the infringement or misappropriation of the Company's Exploration Data and the Company has not licensed, conveyed, assigned or encumbered any of the Company's Exploration Data.
- (c) No Company Stockholder nor any Person who is related to or not dealing at arm's length with a Company Stockholder owns or has any rights to the use of the Company's Exploration Data.
- (d) The Company's Exploration Data is free and clear of all encumbrances, hypothecs, mortgages, charges, security, covenants, conditions, options to purchase and other adverse claims brought by third parties.
- (e) The Company has taken commercially reasonable precautions and made commercially reasonable efforts (including measures to protect secrecy and

confidentiality, where appropriate) to protect the Company's Exploration Data.

- (f) To the best of the Company's knowledge, there has been no public disclosure, sale or offer for sale of any invention, described in a patent application (in preparation or filed and in good standing) and forming a part of the Company's Exploration Data, by a third party that would prevent the Company from obtaining or sustaining valid patent rights to such invention.
  - (g) The execution and delivery of this Agreement or any Ancillary Agreement contemplated hereby will not breach, violate or conflict with any instrument or agreement governing any of the Company's Exploration Data, will not cause the forfeiture or termination of any of the Company's Exploration Data or in any way exclude the right of the Company to use, sell, license or dispose of or to bring any action for the infringement of any of the Company's Exploration Data (or any portion thereof).
  - (h) To the best of the Company's knowledge, there are no pending or threatened claims or litigation contesting the validity, ownership or right to use, sell, license or dispose of any of the Company's Exploration Data, nor has the Company received any notice asserting that any of the Company's Exploration Data or the proposed use, sale, license or disposition thereof by the Company conflicts or will conflict with valid rights of any party, nor is there any basis for such assertion.
  - (i) To the Company's knowledge, no employee of the Company is in violation of any term of any non-disclosure, proprietary rights or similar agreement between the employee and any former employer.
  - (j) There are no royalties, honoraria, fees or other payments payable by the Company to any Person by reason of, or in respect of, the ownership, use, license, sale or disposition of any of the Company's Exploration Data and there are no restrictions on the ability of the Company or any successor to or assignee from the Company to use and exploit all rights in the Company's Exploration Data.
- (3) *Financial Statements.* The Financial Statements:
- (a) are based on the books and records of the Company and present fairly, in all material respects, the financial position of the Company as at the dates thereof and the results of its operations and the changes in stockholders' equity and cash flows of the Company for the periods specified in the Financial Statements;
  - (b) do not contain any untrue statement of a material fact or omit to state a material fact required to be stated under applicable accounting principles or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the periods specified in the Financial Statements; and
  - (c) have been prepared in accordance with US GAAP applied on a consistent basis throughout the periods involved.

- (4) *Undisclosed Liabilities.* Other than as disclosed in the Financial Statements, the Company does not have any liabilities or obligations of any nature, whether known or unknown, absolute, accrued, contingent or otherwise and whether due or to become due, that, individually or in the aggregate, are Materially Adverse to the Company.
- (5) *Absence of Certain Changes or Events.* Except as set forth on Section 4.1(5) of the Disclosure Schedules, since December 31, 2017, the Company has conducted its business only in the ordinary course and:
- (a) there has not been any event, change, effect or development (including any decision to implement such a change made by the board of directors of the Company in respect of which senior management believes that confirmation of the board of directors is probable), which, individually or in the aggregate, is Materially Adverse to the Company;
  - (b) there has not been any declaration, setting aside or payment of any dividend or other distribution (whether in cash, stock or property) with respect to any of the shares of capital stock of the Company or any issuance, sale or other disposition of any of the Company's capital stock;
  - (c) no liability or obligation of any nature (whether absolute, accrued, contingent or otherwise) that is Materially Adverse to the Company has been incurred;
  - (d) there has not been any split, combination or reclassification of any shares of capital stock of the Company;
  - (e) there has not been any amendment of the constating documents, bylaws or other organizational documents of the Company;
  - (f) there has not been any material change in any method of accounting or accounting practices of the Company, except as required by US GAPP;
  - (g) there has not been any incurrence, assumption or guarantee of any indebtedness for borrowed money; and
  - (h) there has not been any transfer, assignment or sale of any of the assets shown or reflected on the balance sheet as of December 31, 2017.
- (6) *Taxes.* As of the date of this Agreement the Company has duly and in a timely manner filed all Tax returns and reports required by Law to have been filed by it, has duly reported all income and other amounts required to be reported and has paid all Taxes to the extent that such Taxes have been assessed by the relevant taxation authority. All Tax returns are or will be true, complete and correct in all material respects. To the extent required, the Company has duly and in a timely manner paid, deducted, withheld, collected and remitted all Taxes required to be paid, deducted, withheld, collected and remitted by it and has made full provision, in accordance with US GAAP, for (including properly accruing and reflecting on its books and records) all Taxes that are not yet due, that relate to periods (or portions thereof) ending prior to the date of this Agreement. No

extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of the Company. The Financial Statements contain adequate provision for all Taxes, assessments and levies imposed on the Company, or its property or rights arising out of operations on or before the date of the latest balance sheet set forth in the Financial Statements in accordance with US GAAP, regardless of whether such amounts are payable before or after the Closing Date. No deficiency in payment of any Taxes for any period has been asserted by any Government Agency and remains unsettled at the date hereof. There are no actions, suits, examinations, proceedings, investigations, audits or claims now pending or threatened or, to the knowledge of the Company, contemplated against the Company in respect of any Taxes and there are no matters under discussion with any Government Agency relating to any Taxes. The Company is not and has never elected to be an S-corporation under the Code.

- (7) *Pre-Emptive Rights.* No holder of outstanding securities of the Company will be entitled to any pre-emptive or any similar rights to subscribe for securities of the Company at any time prior to or concurrent with the closing of the Merger.
- (8) *Change in Law.* The Company is not aware of any pending change to any applicable Law that would reasonably be expected to have an effect that would be Materially Adverse to the Company.
- (9) *Employment Matters.*
  - (a) The Company has not had, and does not currently have any collective bargaining agreements with respect to its Employees and, to the knowledge of the Company, no accreditation request or other representation question is pending with respect to its Employees. There is no labor strike, dispute or stoppage pending or, to the knowledge of the Company after due inquiry, threatened against the Company, and the Company has not experienced any labor strike, dispute, slowdown or stoppage or other labor difficulty involving its Employees.
  - (b) The Company is not subject to any litigation (actual or, to the knowledge of the Company, threatened) relating to employment or termination of employment of its Employees, other than those claims or litigation that are not, individually or in the aggregate, Materially Adverse to the Company.
  - (c) The Company has operated in accordance with all applicable Laws with respect to employment and labor, including employment and labor standards, occupational health and safety, employment equity, pay equity, workers' compensation, human rights and labor relations, except where failure to do so would not reasonably be expected to have an effect that would be Materially Adverse of the Company, and there are no current, pending or, to the knowledge of the Company, threatened proceedings before any Government Agency with respect thereto.
  - (d) Other than employee plans established or entered into in the ordinary course of business by the Company, the Company does not have any agreements, plans or practices relating to the payment of any management, consulting, service or other

fees or any bonuses, pensions, share of profits or retirement allowance, insurance, health or other employee benefits or any plan for retirement, stock purchase, profit sharing, stock option, deferred compensation, severance or termination pay, insurance, medical, hospital, dental, vision care, drug, sick leave, disability, salary continuation, legal benefits, unemployment benefits, vacation, incentive or otherwise contributed to, or required to be contributed to, by the Company for the benefit of any current or former director, officer, employee or consultant of the Company (each an “**Employee Plans**”). The Company has made available to Aston Bay the opportunity to review true and complete copies of documents, contracts and arrangements relating to the Employee Plans. The Employee Plans have been established, operated in the ordinary course and administered in all material respects in accordance with their terms and applicable Laws.

- (e) No current or former employee, officer or director or the Company is entitled to a severance, termination or other similar payment as a result of the Merger.
  - (f) No Person is entitled: (i) to a payment under a Contract with the Company as a result of the Merger; or (ii) to terminate a Contract with the Company, as a result of the Merger.
  - (g) Each individual who is classified by the Company as an independent contractor has been properly classified for purposes of participation and benefit accrual under each Employee Plan.
- (10) *Bankruptcy, Insolvency.* No bankruptcy, insolvency or receivership proceedings have been instituted by the Company or, to the knowledge of the Company, are pending against the Company.
- (11) *Books and Records.* The corporate minute books of the Company contain minutes of all meetings and resolutions of the directors and stockholders held, and full access thereto has been provided to Aston Bay and its counsel.
- (12) *Non-Arm’s Length Transactions.* Other than employment agreements, consulting agreements or other agreements pursuant to which Employees may receive compensation between the Company and its Employees, and other than as disclosed in the Financial Statements, there are no Contracts or other transactions currently in place between the Company and (i) any officer or director of the Company; (ii) any holder of the Company Shares or other securities of the Company; or (iii) any associate or affiliate of the foregoing.
- (13) *Litigation.* There is no suit, action or proceeding pending or, to the knowledge of the Company, threatened against the Company and there is no judgment, decree, injunction, rule or order of any Government Agency or arbitrator outstanding against the Company.
- (14) *Compliance with Laws; Permits.* The Company has complied and is now complying with all Laws applicable to it or its business, properties of the Company Assets. All Permits required for the Company to conduct its business have been obtained by it and are valid and in full force and effect. The fees and charges with respect to such Permits as of the

date hereof have been paid in full. Section 4.1(14) of the Disclosure Schedules lists all current Permits issued to the Company, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice of lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 4.1(14) of the Disclosure Schedules.

- (15) *Environmental Matters.* The Company is currently and has been in compliance with all Environmental Laws and has not received from any Person any notice or claim regarding any Environmental Law or written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Effective Time. The Company has obtained and is in material compliance with all Permits required under any Environmental Law (each of which is disclosed in in Section 4.1(15) of the Disclosure Schedules. There has been no release of Hazardous Materials in contravention of Environmental Law with respect to the business or assets of the Company or any real property currently or formerly owned, operated or leased by the Company, and the Company has not received any notices that any real property currently or formerly owned, operated or leased by the Company in connection with the business of the Company (including soils, groundwater, surface water, buildings and other structures located on any such real property) has been contaminated with any Hazardous Materials which could reasonably be expected to result in any claims regarding a breach of Environmental Law against, or a violation of Environmental Law or term of any Permit required under any Environmental Law by, the Company. The Company is not aware of or reasonably anticipates, as of the Closing Date, any condition, event or circumstance concerning the release or regulation of Hazardous Materials that might, after the Closing Date, prevent, impede or materially increase the costs associated with the ownership, lease, operation, performance or use of the business or assets of the Company as currently carried out. The Company has provided or otherwise made available to Aston Bay Parent and listed in Section 4.1(15) of the Disclosure Schedules: (i) any and all environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, economic models and other similar documents with respect to the business or assets of the Company or any currently or formerly owned, operated or leased real property which are in the possession or control of the Company related to compliance with Environmental Laws or the release of Hazardous Materials; and (ii) any and all material documents concerning planned or anticipated capital expenditures required to reduce, offset, limit or otherwise control pollution and/or emissions, manage waste or otherwise ensure compliance with current or future Environmental Laws (including, without limitation, costs of remediation, pollution control equipment and operational changes). The Company has not retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.
- (16) *No Other Commissions.* There are no persons acting or purporting to act at the request or on behalf of the Company that are entitled to any brokerage or finder's fee or other compensation in connection with the transactions contemplated in connection with this Agreement.

(17) *Contracts.*

- (a) Section 4.1(17) of the Disclosure Schedules lists each Contract to which the Company is a party (the “**Company Contracts**”). Each Company Contract is valid and binding on the Company in accordance with its terms and is in full force and effect. None of the Company or, to the Company’s knowledge, any other party thereto is in breach of or default (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any Company Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Company Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Company Contract (including all modifications, amendments and supplements therefore and waivers thereunder) have been made available to Aston Bay.
- (b) The Company does not have any debt instrument or any agreement, Contract or commitment to create, assume or issue any debt instrument.
- (c) The Company is not a party to or bound or affected by any commitment, agreement or document which would prohibit or restrict the Company from entering into this Agreement or any Ancillary Agreement to which it is a party or completing the Merger.

(18) *Title to Company Assets; Liens.* The Company has good and valid title to, or a valid leasehold interest in, all Company Assets. There are no encumbrances or liens (registered or, to the knowledge of the Company, unregistered) against any of the Company Assets. The Company does not own any real property and any real property or buildings held under lease by the Company is held by it under valid and subsisting lease enforceable against the respective lessors thereof with the exclusive right to occupy and use such leased premises, subject to such exceptions as are not material, individually or in the aggregate, to the Company.

(19) *Anti-Bribery Laws.* To the knowledge of the Company, no director, officer, employee, consultant, representative or agent of the foregoing, has (i) violated any anti-bribery or anti-corruption Laws applicable to the Company, including but not limited to the U.S. *Foreign Corrupt Practices Act* and Canada’s *Corruption of Foreign Public Officials Act*, or (ii) offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, that goes beyond what is reasonable and customary and/or of modest value: (A) to any Government Official, whether directly or through any other person, for the purpose of influencing any act or decision of a Government Official in his or her official capacity; inducing a Government Official to do or omit to do any act in violation of his or her lawful duties; securing any improper advantage; inducing a Government Official to influence or affect any act or decision of any Government Agency; or assisting any representative of the Company in obtaining or retaining business for or with, or directing business to, any person; or (B) to any person in a manner which would constitute or have

the purpose or effect of public or commercial bribery, or the acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage. To the knowledge of the Company, no director, officer, employee, consultant, representative or agent of foregoing, has (i) conducted or initiated any review, audit, or internal investigation that concluded the Company, or any director, officer, employee, consultant, representative or agent of the foregoing violated such laws or committed any material wrongdoing, or (ii) made a voluntary, directed, or involuntary disclosure to any Government Agency responsible for enforcing anti-bribery or anti-corruption laws, in each case with respect to any alleged act or omission arising under or relating to non-compliance with any such laws, or received any notice, request, or citation from any person alleging non-compliance with any such laws.

- (20) *Insurance.* The Company does not have any insurance policies in effect as of the date hereof and the Company is not required to have any such policies under applicable requirements of Law.
- (21) *Proxy Statement.* None of the information included or incorporated by reference in any letter to the Company Stockholders, notice of meeting, proxy statement and forms of proxy (collectively, the “**Company Proxy Statement**”), in connection with the Merger, will, at the date it is first mailed to the Company’s Stockholders or at the time of the Company Stockholders Meeting or at the time of any amendment or supplement thereof, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The Company Proxy Statement will comply as to form in all material respects with the requirements of the DGCL and the Company’s bylaws.
- (22) *Investment.* To the knowledge of the Company, each Company Stockholder:
- (a) understands that the Aston Bay Shares have not been, or will not be, registered under the US Securities Act, or under any state securities laws, and no registration statement or prospectus in respect thereof will be prepared or filed under the US Securities Act or Applicable Securities Laws, and that the Aston Bay Shares are being offered and sold in reliance upon federal, provincial and state exemptions for transactions not involving any public offering, thus the Aston Bay Shares are “restricted securities,” as such term is defined in Rule 144 under the US Securities Act, and will be subject to restrictions on resale under such laws and as set forth in the restrictive legends set forth below;
  - (b) understands and acknowledges that upon the original issuance thereof, and until such time as the same is no longer required under the applicable requirements of the US Securities Act or Applicable Securities Laws, the certificates representing the Aston Bay Shares, and all securities issued in exchange therefor or in substitution thereof, will bear a legend in substantially the following form:

**THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES**

**ACT OF 1933, AS AMENDED (THE “US SECURITIES ACT”), OR ANY STATE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE CORPORATION, (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S (“REGULATION S”) UNDER THE US SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE LOCAL SECURITIES LAWS AND REGULATIONS, (C) IN COMPLIANCE WITH THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS UNDER THE US SECURITIES ACT PROVIDED BY (1) RULE 144 THEREUNDER, IF AVAILABLE, OR (2) RULE 144A THEREUNDER, IF AVAILABLE, AND IN EACH CASE IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS, OR (D) IN ANOTHER TRANSACTION THAT DOES NOT REQUIRE REGISTRATION UNDER THE U.S. SECURITIES ACT OR ANY APPLICABLE STATE SECURITIES LAWS, PROVIDED THAT IN THE CASE OF TRANSFERS PURSUANT TO (C)(1) OR (D) ABOVE, A LEGAL OPINION OF COUNSEL OF RECOGNIZED STANDING OR OTHER EVIDENCE, IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE CORPORATION, TO THAT EFFECT MUST FIRST BE PROVIDED TO THE CORPORATION. THESE SECURITIES MAY NOT CONSTITUTE “GOOD DELIVERY” IN SETTLEMENT OF TRANSACTIONS ON CANADIAN STOCK EXCHANGES.**

- (c) consents to Aston Bay making a notation on its respective records or giving instructions to any transfer agent of the Aston Bay Shares in order to implement the restrictions on transfer set forth and described herein;
- (d) understands that Aston Bay does not have an obligation or present intention of filing a registration statement under the US Securities Act or Applicable Securities Laws in respect of the Aston Bay Shares;
- (e) is acquiring the Aston Bay Shares solely for his, her or its own account and not on behalf of any other person for investment purposes only and not with a view to the resale, distribution or other disposition thereof in violation of Applicable Securities Laws;
- (f) represents and warrants that alone, or with the assistance of his, her or its professional advisors, he, she or it has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of his, her or its investment in the Aston Bay Shares and is able, without impairing his, her or its financial condition, to hold such securities for an indefinite period of time and to bear the economic risks, and withstand a complete loss, of such investment; and
- (g) represents and warrants that he, she or it has had access to such additional information, if any, concerning as he, she or it has considered necessary in connection with his, her or its investment decision to acquire the Aston Bay

Shares.

## **ARTICLE 5 TAX MATTERS**

### **5.1 Tax Returns.**

- (a) The Company shall prepare and timely file, or cause to be prepared and timely filed, all Tax returns required to be filed by it that are due on or before the Closing Date (taking into account any extensions), and shall timely pay all Taxes that are due and payable on or before the Closing Date (taking into account any extensions), and shall timely pay all Taxes that are due and payable on or before the Closing Date. Any such Tax returns shall be prepared in a manner consistent with past practice (unless otherwise required by Law).
  
- (b) Aston Bay shall prepare and timely file, or cause to be prepared and timely filed, all Tax returns required to be filed by the Company after the Closing Date with respect to a Pre-Closing Tax Period and for any Straddle Period. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and, if it is an income or other material Tax return, shall be submitted by Aston Bay to a representative of the Company, as designated by the Company, together with schedules, statements and, to the extent requested by the Company's representative, supporting documentation at least 45 days prior to the due date (including extensions) of such Tax return. If the Company's Representative objects to any item on any such Tax return that relates to a Pre-Closing Tax Period, it shall, within 10 days after delivery of such Tax return, notify Aston Bay in writing that it so objects, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection shall be duly delivered, Aston Bay and the Company's representative shall negotiate in good faith and use their reasonable best efforts to resolve such items. If Aston Bay and the Company's representative are unable to reach such agreement within 10 days after receipt by Aston Bay of such notice, the disputed items shall be resolved by the independent accountant and any determination by such independent accountant shall be final. Any independent accountant shall resolve any disputed items within 20 days of having the item referred to it pursuant to such procedures as it may require. If the independent accountant is unable to resolve any disputed items before the due date for such Tax return, the Tax return shall be filed as prepared by Aston Bay and then amended to reflect the independent accountant's resolution. The costs, fees and expenses of the independent accountant shall be borne equally by Aston Bay and the Company's representative. The preparation and filing of any Tax return of the Company that does not relate to a Pre-Closing Tax Period or Straddle Period shall be exclusively within the control of Aston Bay. Aston Bay shall be entitled to deduct from the Escrow Shares (i) Taxes due with respect to any such Tax return that relate to Pre-Closing Tax Periods and (ii) Taxes due with respect to any such Tax Return that relate to Straddle Periods that are attributable under Section 5.3 to the portion of such Straddle Period ending on the Closing Date.

## **5.2 Straddle Period.**

If it is necessary to determine the allocation of Taxes attributable to a Straddle Period, the amount of any Taxes based on income, payroll, payments or receipts of the Company for the Pre-Closing Tax Period shall be determined on an interim closing of the books of the Company as of the close of business on the Closing Date.

## **5.3 Cooperation and Exchange of Information.**

The Company's representative, the Company and Aston Bay shall provide each other with such cooperation and information as either of them reasonably may request of the others in filing any Tax return pursuant to this Article 5 or in connection with any audit or other proceeding in respect of Taxes of the Company. Such cooperation and information shall include providing copies of relevant Tax returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities. Each of the Company's representative, the Company and Aston Bay shall retain all Tax returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax returns and other documents relate, without regard to extensions except to the extent notified by any of the other parties in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date, the Company representative, the Company or Aston Bay (as the case may be) shall provide the other parties with reasonable written notice and offer the other parties the opportunity to take custody of such materials.

# **ARTICLE 6 COVENANTS OF THE COMPANY**

The Company hereby covenants and agrees with Aston Bay as follows until the earlier of the Effective Date or the termination of this Agreement in accordance with its terms:

## **6.1 Necessary Consents.**

The Company shall use its commercially reasonable efforts to obtain from the Company's directors, stockholders and all federal, state or other governmental or administrative bodies such approvals or consents as are required to complete the transactions contemplated herein, including the Requisite Company Vote and the Company Board Recommendation.

## **6.2 Requisite Company Vote.**

- (a) Subject to the terms set forth in this Agreement, the Company shall take all action necessary to duly call, give notice of, convene and hold the Company Stockholders Meeting as soon as reasonably practicable after the date of this Agreement, and, in connection therewith, the Company shall mail the Company Proxy Statement to the holders of Company Shares in advance of such meeting.

The Company Proxy Statement shall include the Company Board Recommendation. The Company shall use reasonable best efforts to (i) solicit from the holders of Company Shares proxies in favor of the adoption of this Agreement and approval of the Merger and (ii) take all other actions necessary or advisable to secure the vote or consent of the holders of Company Shares required by Applicable Delaware Law or the Company's bylaws to obtain such approval. The Company shall keep Aston Bay and Subco updated with respect to proxy solicitation results as requested by Aston Bay and Subco. Once the Company Stockholders Meeting has been called and noticed, the Company shall not postpone or adjourn the Company Stockholders Meeting without the consent of Aston Bay (other than (i) in order to obtain a quorum of the Company Stockholders or (ii) as reasonably determined by the Company to comply with applicable Law). At the Company Stockholders Meeting, Aston Bay and its Affiliates shall vote all Company Shares owned by them in favor of adoption of this Agreement and approval of the Merger. Notwithstanding anything contained herein to the contrary, the Company shall not be required to hold the Company Stockholders Meeting if this Agreement is terminated before the meeting is held.

- (b) In connection with the Company Stockholders Meeting, as soon as reasonably practicable following the date of this Agreement the Company shall prepare the Company Proxy Statement. Aston Bay, Subco and the Company will cooperate and consult with each other in the preparation of the Company Proxy Statement. Without limiting the generality of the foregoing, each of Aston Bay and Subco will furnish the Company the information relating to it required by Applicable Delaware Law or the Company's bylaws to be set forth in the Company Proxy Statement. The Company shall not mail the Company Proxy Statement, or any amendment or supplement thereto, to the Company Stockholders without providing Aston Bay a reasonable opportunity to review and comment thereon (which comments shall be reasonably considered by the Company). Each of Aston Bay, Subco and the Company agree to correct any information provided by it for use in the Company Proxy Statement which shall have become false or misleading and the Company shall promptly prepare and mail to the Company Stockholders an amendment or supplement setting forth such correction.

### **6.3 Ordinary Course.**

The Company will operate its business in a prudent and business-like manner in the ordinary course and in a manner consistent with past practice.

### **6.4 Non-Solicitation.**

The Company hereby covenants and agrees from the date hereof until the earlier of the Effective Date or the Termination Date not to, directly or indirectly, solicit, initiate, knowingly encourage, cooperate with or facilitate (including by way of furnishing any non-public information or entering into any form of agreement, arrangement or understanding) the submission, initiation or continuation of any oral or written inquiries or proposals or expressions of interest regarding, constituting or that may reasonably be expected to lead to any activity,

arrangement or transaction or propose any activities or solicitations in opposition to or in competition with the Acquisition, and without limiting the generality of the foregoing, not to induce or attempt to induce any other person to initiate any stockholder proposal or “takeover bid,” exempt or otherwise, within the meaning of the *Securities Act* (Ontario), for securities or assets of the Company, nor to undertake any transaction or negotiate any transaction which would be or potentially could be in conflict with the Acquisition, including, without limitation, allowing access to any third party (other than its representatives) to conduct due diligence, nor to permit any of its officers or directors to authorize such access, except as required by statutory obligations. In the event the Company or any of its Affiliates, including any of their officers or directors, receives any form of offer or inquiry in respect of the foregoing, the Company shall forthwith (in any event within one Business Day following receipt) notify Aston Bay of such offer or inquiry and provide Aston Bay with such details as it may request.

## **6.5 Restrictive Covenants.**

The Company hereby covenants and agrees until the earlier of the Effective Date or the Termination Date not to, without Aston Bay’s prior written consent (such consent not to be unreasonably withheld, conditioned or delayed):

- (a) issue any debt, equity or other securities;
- (b) borrow money or incur any indebtedness for money borrowed;
- (c) make loans, advances or other payments to directors, officers, employees or consultants of the Company, other than payments made in the ordinary course of business (including payment of salaries or consultant fees at current rates);
- (d) declare or pay any dividends or distribute any of the Company’s properties or Company Assets to Company Stockholders;
- (e) alter or amend the Company’s certificate of incorporation or bylaws, except as required to give effect to the matters contemplated herein;
- (f) except as otherwise permitted or contemplated herein, enter into any transaction or material contract which is not in the ordinary course of business or engage in any business enterprise or activity materially different from that carried on by the Company and/or its Affiliates as of the date hereof; or
- (g) make capital expenditures.

## **6.6 Company Alternative Transaction Offer.**

Notwithstanding any other provision of this Agreement, if at any time the Company receives a *bona fide* offer, whether written or oral (a “**Company Alternative Transaction Offer**”) from a third party to acquire all or substantially all of the assets or shares of the Company or to enter into an arrangement or agreement which would materially interfere with the transactions contemplated herein which the Company wishes to pursue at the instruction of its board of directors or a committee thereof, including without in any way limiting the generality of

the foregoing, any such arrangement or agreement resulting from an unsolicited offer or proposal from a third party, then the Company may: (a) furnish information with respect to the Company to the person making such Company Alternative Transaction Offer and its representatives and allow such person and its representatives access to the Company's facilities and properties and engage in discussions and negotiations with the person making such Company Alternative Transaction Offer and its representatives; and (b) enter into an agreement with respect to a Company Alternative Transaction Offer; provided that the Company has delivered written notice to Aston Bay of the intention of the Company to enter into an agreement with respect to such Company Alternative Transaction Offer and the Company terminates this Agreement pursuant to Section 11.1 and has previously paid or, concurrently with such termination pays, a cash payment to Aston Bay in an amount equal to Aston Bay's reasonable out-of-pocket expenses incurred in respect of negotiating this Agreement and the related documents and in preparing for the closing of the Merger.

#### **6.7 Resignations.**

At least five (5) Business Days prior to the Closing Date, the Company shall deliver to Aston Bay written resignations, effective as of the Closing Date, of the officers and directors of the Company requested by Aston Bay.

#### **6.8 All Other Action.**

The Company shall cooperate fully with Aston Bay and will use all reasonable commercial efforts to assist Aston Bay in its efforts to complete the Acquisition, unless such cooperation and efforts would subject the Company to cost or liability or would be in breach of applicable statutory or regulatory requirements.

### **ARTICLE 7 COVENANTS OF ASTON BAY**

Aston Bay hereby covenants and agrees with the Company as follows until the earlier of the Effective Date or the termination of this Agreement in accordance with its terms:

#### **7.1 Necessary Consents.**

Aston Bay shall use its reasonable efforts to obtain from Aston Bay's directors, the Exchange and all federal, provincial, municipal or other governmental or administrative bodies such approvals or consents as are required to complete the transactions contemplated herein.

#### **7.2 Ordinary Course.**

Aston Bay will operate its business in a prudent and business-like manner in the ordinary course and in a manner consistent with past practice.

#### **7.3 Restrictive Covenants.**

Aston Bay hereby covenants and agrees until the earlier of the Effective Date and the Termination Date not to, without the Company's prior written consent:

- (a) make any capital expenditures, other than in the ordinary course of business of the Company;
- (b) declare or pay any dividends or distribute any Aston Bay Assets to shareholders or otherwise;
- (c) alter or amend Aston Bay's articles or bylaws in any manner which may adversely affect the success of the transactions contemplated herein, except as required to give effect to the matters contemplated herein; or
- (d) except as otherwise permitted or contemplated herein, enter into any transaction or material contract which is not in the ordinary course of business or engage in any business enterprise or activity different from that carried on by Aston Bay as of the date hereof.

#### **7.4 Subco.**

Subco shall be validly subsisting and in good standing under Applicable Delaware Law immediately prior to the Merger. Aston Bay covenants and agrees that Subco shall not carry on any business and shall not enter into any contracts, agreements, commitments, indentures or other instruments prior to the Closing Date other than as required to effect the Merger.

#### **7.5 Aston Bay Alternative Transaction Offer.**

Notwithstanding any other provision of this Agreement, if at any time following the date of this Agreement Aston Bay receives a bona fide offer, whether written or oral (a "**Aston Bay Alternative Transaction Offer**") from a third party to acquire all or substantially all of the assets or shares of Aston Bay or to enter into an arrangement or agreement which would materially interfere with the transactions contemplated herein which Aston Bay wishes to pursue at the instruction of its board of directors or a committee thereof, including without in any way limiting the generality of the foregoing, any such arrangement or agreement resulting from an unsolicited offer or proposal from a third party, then Aston Bay may: (a) furnish information with respect to Aston Bay to the person making such Aston Bay Alternative Transaction Offer and its representatives and allow such person and its representatives access to Aston Bay's facilities and properties and engage in discussions and negotiations with the person making such Aston Bay Alternative Transaction Offer and its representatives; and (b) enter into an agreement with respect to a Aston Bay Alternative Transaction Offer; provided that Aston Bay has delivered written notice to the Company of the intention of Aston Bay to enter into an agreement with respect to such Aston Bay Alternative Transaction Offer and Aston Bay terminates this Agreement pursuant to Section 11.1 and has previously paid or, concurrently with such termination pays, a cash payment to the Company in an amount equal to the Company's reasonable out-of-pocket expenses incurred in respect of negotiating this Agreement and the related documents and in preparing for the closing of the Merger.

#### **7.6 All Other Action.**

Aston Bay shall cooperate fully with the Company and will use all reasonable commercial efforts to assist the Company in its efforts to complete the Acquisition unless such

cooperation and efforts would subject Aston Bay to cost or liability or would be in breach of applicable statutory and regulatory requirements.

## **ARTICLE 8 CONDITIONS PRECEDENT**

### **8.1 Conditions for the Benefit of Aston Bay.**

The transactions contemplated herein are subject to the following conditions to be fulfilled or performed on or prior to the Closing Date, which conditions are for the exclusive benefit of Aston Bay and may be waived, in whole or in part, by Aston Bay in its sole discretion:

- (a) **Truth of Representations and Warranties.** The representations and warranties of the Company contained in this Agreement or in any Ancillary Agreement shall have been true and correct as of the date of this Agreement and shall be true and correct as of the Closing Date in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) with the same force and effect as if such representations and warranties had been made on and as of such Closing Date except as affected by transactions contemplated or permitted by this Agreement and an officer of the Company shall provide a certificate addressed to Aston Bay at Closing confirming the foregoing.
- (b) **Performance of Obligations.** The Company shall have performed, fulfilled or complied with, in all material respects, all of its obligations, covenants and agreements contained in this Agreement and in any Ancillary Agreement to be fulfilled or complied with by them at or prior to the Closing Date and an officer of the Company shall provide a certificate addressed to Aston Bay at Closing confirming the foregoing.
- (c) **Approvals and Consents.** All required approvals, consents and authorizations of third parties in respect of the transactions contemplated herein, including without limitation all necessary shareholder and regulatory approvals, shall have been obtained on terms acceptable to Aston Bay acting reasonably, including the approval of the Exchange and the Requisite Company Vote approving the Merger.
- (d) **No Material Adverse Change.** There shall have been no material adverse change in the business, results of operations, assets, liabilities, financial condition or affairs of the Company since the date of this Agreement
- (e) **Deliveries.** The Company shall deliver or cause to be delivered to Aston Bay the closing documents as set forth in Section 10.2 in forms satisfactory to Aston Bay, acting reasonably.
- (f) **Proceedings.** All proceedings to be taken in connection with the transactions contemplated in this Agreement and any Ancillary Agreement shall be satisfactory in form and substance to Aston Bay, acting reasonably, and Aston

Bay shall have received copies of all instruments and other evidence as it may reasonably request in order to establish the consummation or closing of such transactions and the taking of all necessary proceedings in connection therewith.

- (g) **No Legal Action or Prohibition of Law.** There shall be no action or proceeding pending or threatened by any Person (other than the Company) in any jurisdiction, or any applicable Laws proposed, enacted, promulgated or applied, to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement or which could reasonably be expected to result in a Material Adverse Effect on the Company.
- (h) **Capitalization.** Immediately prior to the Closing, the Company shall have no greater than 20,907,604 Company Shares issued and outstanding. There shall be no other issued and outstanding securities of the Company.
- (i) **Dissenting Shares.** Holders of no more than one percent (1%) of the issued and outstanding Company Shares as of immediately prior to the Effective Time, in the aggregate, shall have exercised, or remain entitled to exercise, statutory appraisal rights pursuant to Section 262 of the DGCL with respect to such Company Shares.
- (j) **Support Agreements.** The five largest Company Shareholders shall have entered into a voting and support agreement in the form attached hereto as Schedule 1 on or prior to the date hereof and shall not be in default of any term thereof.

## 8.2 Conditions for the Benefit of the Company.

The transactions contemplated herein are subject to the following conditions to be fulfilled or performed on or prior to the Closing Date, which conditions are for the exclusive benefit of the Company and may be waived, in whole or in part, by the Company in its sole discretion:

- (a) **Truth of Representations and Warranties.** The representations and warranties of Aston Bay contained in this Agreement or in any Ancillary Agreement shall have been true and correct as of the date of this Agreement and shall be true and correct as of the Closing Date in all material respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) with the same force and effect as if such representations and warranties had been made on and as of such Closing Date except as affected by transactions contemplated or permitted by this Agreement and an officer of Aston Bay shall provide a certificate to the Company at Closing confirming the foregoing.
- (b) **Performance of Obligations.** Aston Bay shall have performed, fulfilled or complied with, in all material respects, all of its obligations, covenants and agreements contained in this Agreement and in any Ancillary Agreement to be fulfilled or complied with by Aston Bay at or prior to the Closing Date and an

officer of Aston Bay shall provide a certificate to the Company at Closing confirming the foregoing.

- (c) **No Material Adverse Change.** There shall have been no material adverse change in the business, results of operations, assets, liabilities, financial condition or affairs of Aston Bay since the date of this Agreement other than a reduction of its cash position in order to pay professional fees or other expenses in connection with the Acquisition.
- (d) **Approvals and Consents.** All required approvals, consents and authorizations of third parties in respect of the transactions contemplated herein, including without limitation all necessary regulatory approvals, shall have been obtained on terms acceptable to the Company acting reasonably.
- (e) **Issuance of Shares.** The Aston Bay Shares to be issued as consideration for the Company Shares at the time of the Merger (i) shall be freely tradeable in Canada (subject to the usual restrictions under National Instrument 45-102 - Resale of Securities), (ii) are “restricted securities,” as such term is defined in Rule 144 under the US Securities Act, from a US securities law perspective and will be subject to restrictions on resale under such laws and as set forth in the restrictive legends set forth in Section 4.1(22)(b), (iii) shall be issued as fully paid and non-assessable Aston Bay Shares, free and clear of any and all encumbrances, Liens, charges, demands and restrictions on transfer whatsoever, and (iv) the Aston Bay Shares shall have been conditionally approved for listing on the Exchange, such listing to be conditional only on conditions standard for transactions such as the transactions contemplated herein.
- (f) **Deliveries.** Aston Bay shall deliver or cause to be delivered to the Company Aston Bay’s Closing Documents as set forth in Section 10.3 in forms satisfactory to the Company, acting reasonably.
- (g) **Proceedings.** All proceedings to be taken in connection with the transactions contemplated in this Agreement and any Ancillary Agreement shall be satisfactory in form and substance to the Company, acting reasonably, and the Company shall have received copies of all instruments and other evidence as it may reasonably request in order to establish the consummation or closing of such transactions and the taking of all necessary proceedings in connection therewith.
- (h) **No Legal Action or Prohibition of Law.** There shall be no action or proceeding pending or threatened by any Person (other than Aston Bay) in any jurisdiction, or any applicable Laws proposed, enacted, promulgated or applied, to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement or which could reasonably be expected to result in a Material Adverse Effect on Aston Bay. There shall not be any inquiry or investigation (whether formal or informal) in relation to Aston Bay or its directors or officers, commenced or threatened by any officer or official of the Exchange or any securities commission, or similar regulatory body having jurisdiction such that the outcome of such inquiry or

investigation could have a Material Adverse Effect on Aston Bay or the Aston Bay Shares.

- (i) **No Default.** Aston Bay shall not be in default of the requirements of the Exchange or any securities commission and no order shall have been issued preventing the Merger or the trading of any securities of Aston Bay.

## **ARTICLE 9 INDEMNIFICATION**

### **9.1 Survival of Representation and Warranties.**

The representations and warranties of the Company set forth in Sections 4.1(1), 4.1(2), 4.1(6), 4.1(7), 4.1(9), 4.1(15), 4.1(16) and 4.1(18) (collectively, the “**Fundamental Reps**”) shall continue in full force and effect after Closing, subject to any applicable statutes of limitation applicable thereto.

### **9.2 Indemnification of Aston Bay.**

The Company Stockholders shall, severally and not jointly (in accordance with their pro rata share of the Company Shares), indemnify and defend each of the Company, Aston Bay, and their respective Affiliates, directors, officers, employees, representatives, successors, transferees and assignees (each an “**Aston Bay Indemnitee**”) from and against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Aston Bay Indemnitees based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any of the Fundamental Reps contained in this Agreement (other than in respect to Section 4.1(6), it being understood that the sole remedy for any such inaccuracy in or breach thereof shall be pursuant to Section 5.1).

## **ARTICLE 10 CLOSING**

### **10.1 Time of Closing.**

The Closing of the transactions contemplated herein shall be completed at the offices of J.P. Galda & Co. located at Three Westlakes, 1055 Westlakes Drive, Suite 300, Berwyn, PA 19312 or such other place as agreed to by the Parties at 10:00 a.m. (EDT) on the Closing Date.

### **10.2 Company Closing Documents.**

On the day of Closing, the Company shall deliver to Aston Bay the following documents:

- (a) a certified copy of the Company Board Recommendation resolutions of the Company Stockholders constituting the Requisite Company Vote approving and authorizing the transactions herein contemplated, including the Merger;
- (b) a certified copy of the constating documents of the Company;

- (c) a certificate of the Secretary (or equivalent officer) of the Company certifying the names and signatures of the officers of the Company authorized to sign this Agreement, any Ancillary Documents and the other documents to be delivered hereunder or thereunder;
- (d) resignations of the directors and officers of the Company pursuant to Section 6.7;
- (e) a certificate, dated as of the Closing Date and signed by a duly authorized officer of the Company, that each of the conditions set forth in Section 8.1(a) and Section 8.1(b) have been satisfied;
- (f) a good standing certificate from the Secretary of State of the State of Delaware; and
- (g) such other documents or instruments as Aston Bay reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

### **10.3 Aston Bay's Closing Documents.**

On the day of Closing, Aston Bay shall deliver to the Company or the Escrow Agent, as applicable, the following documents:

- (a) certificates in the respective names of the holders or confirmation of electronic registration of Company Shares representing the Aston Bay Shares issuable to such holders pursuant to the Merger (such certificates or electronic registration to be registered and prepared in accordance with a written direction to be provided by the Company prior to Closing);
- (b) a cancelled certificate evidencing the Subco Shares registered in the name of Aston Bay;
- (c) a certified copy of the resolutions of the directors of Aston Bay and Subco, and of Aston Bay as the sole stockholder of Subco approving and authorizing the transactions herein contemplated;
- (d) a certified copy of the constating documents of Aston Bay and Subco;
- (e) a certificate, dated as of the Closing Date and signed by a duly authorized officer of Aston Bay, that each of the conditions set forth in Section 8.2(a) and Section 8.2(b) have been satisfied;
- (f) a certificate of the Secretary (or equivalent officer) of Aston Bay certifying the names and signatures of the officers of Aston Bay authorized to sign this Agreement, any Ancillary Documents and the other documents to be delivered hereunder or thereunder; and
- (g) such other documents or instruments as the Company reasonably requests and are

reasonably necessary to consummate the transactions contemplated by this Agreement.

## **ARTICLE 11 TERMINATION**

### **11.1 Termination.**

This Agreement shall terminate with the Parties having no obligations to each other, other than in respect of the expense provisions contained in Section 12.8, the confidentiality provisions contained in Section 12.1 and the requirement to make any cash payment pursuant to Section 6.6 or Section 7.5, if applicable, on the day (the “**Termination Date**”) on which the earliest of the following events occurs:

- (a) written mutual agreement of the Parties to terminate this Agreement;
- (b) upon provision of a notice pursuant to and in any of the circumstances provided for in Section 6.6 or Section 7.5;
- (c) any applicable regulatory or Government Agency having notified in writing either Aston Bay or the Company of its determination to not permit the Merger to proceed, in whole or in part, and the Parties have used commercially reasonable efforts to appeal or reverse such determination, or modify the Merger on a basis that is not prejudicial to either Party hereto in order to address such determination; or
- (d) the Closing of the Merger has not occurred on or before 5:00 p.m. (Toronto time) on October 31, 2018.

### **11.2 Effect of Termination.**

In the event of termination of this Agreement in accordance with this Article 11, this Agreement shall forthwith become void and there shall be no liability on the part of any Party except as set forth in this Article 11, Section 6.6, Section 7.5, Section 12.1 or Section 12.8. Each Party’s right of termination under this Article 11 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. Nothing in this Article 11 shall limit or affect any other rights or causes of action any Party may have with respect to the representations, warranties, covenants and indemnities in its favor contained in this Agreement.

## **ARTICLE 12 GENERAL**

### **12.1 Confidential Information.**

No disclosure or announcement, public or otherwise, in respect of this Agreement or the transactions contemplated herein will be made by Aston Bay or the Company or its representatives without the prior agreement of the other party as to timing, content and method,

hereto, provided that the obligations herein will not prevent any party from making, after consultation with the other party, such disclosure as its counsel advises is required by applicable law or the rules and policies of the Exchange.

Except as and only to the extent required by applicable law, a Receiving Party will not disclose or use, and it will cause its representatives not to disclose or use, any Confidential Information furnished, or to be furnished, by a Disclosing Party or its representatives to the Receiving Party or its representatives at any time or in any manner other than for purposes of evaluating and completing the transactions proposed in this Agreement.

If this Agreement is terminated, each Receiving Party will promptly return to the Disclosing Party or destroy any Confidential Information and any work product produced from such Confidential Information in its possession or in the possession of any of its representatives.

## **12.2 Counterparts.**

This Agreement may be executed in several counterparts (by original, facsimile or electronic signature), each of which when so executed shall be deemed to be an original and each of such counterparts, if executed by each of the Parties, shall constitute a valid and enforceable agreement among the Parties.

## **12.3 Severability.**

In the event that any provision or part of this Agreement is determined by any court or other judicial or administrative body to be illegal, null, void, invalid or unenforceable, that provision shall be severed to the extent that it is so declared and the other provisions of this Agreement shall continue in full force and effect.

## **12.4 Applicable Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the conflict of law principles therein.

## **12.5 Knowledge.**

Where any representation or warranty contained in this Agreement is expressly qualified by reference to the knowledge of Aston Bay or the Company, as applicable, it shall be deemed to refer to the actual knowledge after having made due inquiry of the executive officers of the particular company.

## **12.6 Successors and Assigns.**

This Agreement shall accrue to the benefit of and be binding upon each of the Parties hereto and their respective heirs, executors, administrators and assigns, provided that this Agreement shall not be assigned by any one of the Parties without the prior written consent of the other Parties.

## **12.7 Interpretation.**

The division of this Agreement into Articles, sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof. Schedules and other documents attached or referred to in this Agreement are an integral part of this Agreement. No adverse inference of construction should be implied against any Party responsible for the drafting of this Agreement or any Ancillary Agreement.

## **12.8 Expenses.**

Aston Bay shall be responsible for its and the Company's (beyond the Company's existing cash resources) costs and charges incurred with respect to the transactions contemplated herein including, without limitation, all costs and charges incurred prior to the date hereof and all legal and accounting fees and disbursements relating to preparing this Agreement or any Ancillary Agreement or otherwise relating to the transactions contemplated herein.

## **12.9 Further Assurances.**

Each of the Parties hereto will, without further consideration, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such other documents, instruments of transfer, conveyance, assignment and assurances and secure all necessary consents and authorizations as may be reasonably requested by another party and take such further action as the other may reasonably require to give effect to any matter provided for herein.

## **12.10 Entire Agreement.**

This Agreement and the schedules referred to herein constitute the entire agreement among the Parties hereto and supersede all prior communications, agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof. None of the Parties hereto shall be bound or charged with any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings not specifically set forth in this Agreement or in the schedules, documents and instruments to be delivered on the Closing Date pursuant to this Agreement. The Parties hereto further acknowledge and agree that, in entering into this Agreement and in delivering the schedules, documents and instruments to be delivered on the Closing Date, they have not in any way relied, and will not in any way rely, upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, express or implied, not specifically set forth in this Agreement or in such schedules, documents or instruments.

## **12.11 Notices.**

Any notice required or permitted to be given hereunder shall be in writing and shall be effectively given if (i) delivered personally, (ii) sent prepaid courier service or mail, or (iii) sent by e-mail or other similar means of electronic communication addressed as follows:

in the case of notice to Aston Bay or Subco:

Aston Bay Holdings Ltd.

80 Richmond Street West, Suite 303  
Toronto, Ontario  
M5H 2A4  
Attention: Thomas Ulrich  
E-mail: thomas.ullrich@astonbayholdings.com

with copies to:

Troutman Sanders LLP  
401 9<sup>th</sup> Street, NW  
Suite 1000  
Washington, D.C. 20004  
Attention: Thomas M. Rose  
E-mail: thomas.rose@troutman.com

Bennett Jones LLP  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, Ontario M5X 1A4  
Attention: Linda Misetich  
E-mail: misetichdannl@bennettjones.com

in the case of notice to the Company:

Jack's Fork Exploration, Inc.  
c/o J.P. Galda & Co.  
1055 Westlakes Drive, Suite 300  
Berwyn, PA 19312  
Attention: Don Taylor  
Email: dtaylor@jfexplore.com

with copies to:

J.P. Galda & Co.  
1055 Westlakes Drive, Suite 300  
Berwyn, PA 19312  
Attention: J.P. Galda  
Email: jpgalda@jpgaldaco.com

Any notice, designation, communication, request, demand or other document given or sent or delivered as aforesaid shall:

- (a) if delivered as aforesaid, be deemed to have been given, sent, delivered and received on the date of delivery;
- (b) if sent by mail as aforesaid, be deemed to have been given, sent, delivered and received on the fourth Business Day following the date of mailing, unless at any time between the date of mailing and the fourth Business Day thereafter there is a

discontinuance or interruption of regular postal service, whether due to strike or lockout or work slowdown, affecting postal service at the point of dispatch or delivery or any intermediate point, in which case the same shall be deemed to have been given, sent, delivered and received in the ordinary course of the mail, allowing for such discontinuance or interruption of regular postal service, and

- (c) if sent by email or other means of electronic communication, be deemed to have been given, sent, delivered and received on the Business Day of the sending if sent during normal business hours (otherwise on the following Business Day).

#### **12.12 Waiver.**

Any Party hereto which is entitled to the benefits of this Agreement may, and has the right to, waive any term or condition hereof at any time on or prior to the Closing Date, provided however that such waiver shall be evidenced by written instrument duly executed on behalf of such Party.

#### **12.13 Amendments.**

No modification or amendment to this Agreement may be made unless agreed to by the Parties hereto in writing.

#### **12.14 Remedies Cumulative.**

The rights and remedies of the Parties under this Agreement are cumulative and in addition to and not in substitution for any rights or remedies provided by law. Any single or partial exercise by any Party hereto of any right or remedy for default or breach of any term, covenant or condition of this Agreement does not waive, alter, affect or prejudice any other right or remedy to which such Party may be lawfully entitled for the same default or breach.

#### **12.15 Currency.**

Unless otherwise indicated, all dollar amounts referred to in this Agreement are in the lawful money of Canada.

#### **12.16 Number and Gender.**

In this Agreement, unless there is something in the subject matter or context inconsistent therewith:

- (a) words in the singular number include the plural and such words shall be construed as if the plural had been used;
- (b) words in the plural include the singular and such words shall be construed as if the singular had been used; and
- (c) words importing the use of any gender shall include all genders where the context or the Party referred to so requires, and the rest of the sentence shall be construed

as if the necessary grammatical and terminological changes had been made.

**12.17 Time of Essence.**

Time shall be of the essence hereof.

IN WITNESS WHEREOF this agreement has been executed by the Parties hereto as of the date first above written.

**ASTON BAY HOLDINGS LTD.**

*/s/ Thomas Ullrich* \_\_\_\_\_

Name: Thomas Ullrich

Title: Chief Executive Officer

**JACK'S FORK EXPLORATION, INC.**

*/s/ Donald R. Taylor* \_\_\_\_\_

Name: Donald R. Taylor

Title: President

**BLUE RIDGE MINING INC.**

*/s/ Thomas Ullrich* \_\_\_\_\_

Name: Thomas Ullrich

Title: President

**Schedule 1 – Voting and Support Agreement**

## Voting and Support Agreement

This Voting and Support Agreement (this “**Agreement**”), dated as of \_\_\_\_\_, 2018, is entered into by and between the undersigned stockholder (“**Stockholder**”) of Jack’s Fork Exploration, Inc., a Delaware corporation (the “**Company**”), and Aston Bay Holdings Ltd., a British Columbia corporation (“**Parent**”), and Blue Ridge Mining Inc. , a Delaware corporation (“**Merger Sub**”). Parent, Subco and the Stockholder are each sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

WHEREAS, concurrently with or following the execution of this Agreement, the Company, Parent, and Merge Sub, have entered, or will enter, into a Merger Agreement and Plan of Reorganization (as the same may be amended from time to time, the “**Merger Agreement**”), providing for, among other things, the merger (the “**Merger**”) of Merger Sub and the Company pursuant to the terms and conditions of the Merger Agreement;

WHEREAS, in order to induce Parent and Merger Sub to enter into the Merger Agreement, Stockholder is willing to make certain representations, warranties, covenants, and agreements as set forth in this Agreement with respect to the shares of common stock, par value \$0.01 per share, of the Company (“**Company Shares**”) Beneficially Owned (as defined below) by Stockholder and set forth below Stockholder’s signature on the signature page hereto (the “**Original Shares**” and, together with any additional shares of Company Shares pursuant to Section 6 hereof, the “**Shares**”); and

WHEREAS, as a condition to its willingness to enter into the Merger Agreement, Parent and Subco have required that Stockholder, and Stockholder has agreed to, execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, and agreements set forth below and for other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree as follows:

1. **Definitions.** For purposes of this Agreement, capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement. When used in this Agreement, the following terms in all of their tenses, cases, and correlative forms shall have the meanings assigned to them in this Section 1.
  - a. “**Beneficially Own**” or “**Beneficial Ownership**” has the meaning assigned to such term in Rule 13d-3 under the U.S. Securities and Exchange Act of 1934, as amended, and a person’s beneficial ownership of securities shall be calculated in accordance with the provisions of such rule (in each case, irrespective of whether or not such rule is actually applicable in such circumstance). For the avoidance of doubt, “Beneficially Own” and “Beneficial Ownership” shall also include record ownership of securities.
  - b. “**Beneficial Owner**” shall mean the person who Beneficially Owns the referenced securities.

2. **Representations of Stockholder.** Stockholder represents and warrants to Parent and Merger Sub that:
- a. **Ownership of Shares.** Stockholder: (i) is the Beneficial Owner of all of the Original Shares free and clear of all Liens, other than those created by this Agreement; and (ii) has the sole voting power over all of the Original Shares. Except pursuant to this Agreement, there are no options, warrants, or other rights, agreements, arrangements, or commitments of any character to which Stockholder is a party relating to the pledge, disposition, or voting of any of the Original Shares and there are no voting trusts or voting agreements with respect to the Original Shares.
  - b. **Disclosure of All Shares Owned.** Stockholder does not Beneficially Own any Company Shares other than the Original Shares.
  - c. **Power and Authority; Binding Agreement.** Stockholder has full power and authority and legal capacity to enter into, execute, and deliver this Agreement and to perform fully Stockholder's obligations hereunder (including the proxy described in Section 3(b) below)). This Agreement has been duly and validly executed and delivered by Stockholder and constitutes the legal, valid, and binding obligation of Stockholder, enforceable against Stockholder in accordance with its terms.
  - d. **No Conflict.** None of the execution and delivery of this Agreement by Stockholder, the consummation by Stockholder of the transactions contemplated hereby, or compliance by Stockholder with any of the provisions hereof will conflict with or result in a breach, or constitute a default (with or without notice of lapse of time or both) under any provision of, any trust agreement, loan or credit agreement, note, bond, mortgage, indenture, lease, or other agreement, instrument or law applicable to Stockholder or to Stockholder's property or assets.
  - e. **No Consents.** No consent, approval, order, or authorization of, or registration, declaration, or filing with, any Governmental Agency or any other person on the part of Stockholder is required in connection with the valid execution and delivery of this Agreement. No consent of Stockholder's spouse is necessary under any "community property" or other laws in order for Stockholder to enter into and perform its obligations under this Agreement.
  - f. **No Litigation.** There is no action, suit, investigation, or proceeding (whether judicial, arbitral, administrative, or other) (each an "**Action**") pending against, or, to the knowledge of Stockholder, threatened against or affecting, Stockholder that could reasonably be expected to materially impair or materially adversely affect the ability of Stockholder to perform Stockholder's obligations hereunder or to consummate the transactions contemplated by this Agreement on a timely basis.

3. **Agreement to Vote Shares; Irrevocable Proxy.**

- a. **Agreement to Vote and Approve.** Stockholder agrees during the term of this Agreement, at any annual or special meeting of the Company called with respect to the following matters, and at every adjournment or postponement thereof, and on every action or approval by written consent or consents of the Company stockholders with respect to any of the following matters, to vote or cause the holder of record to vote the Shares: (i) in favor of (1) the Merger Agreement and the Merger and the other transactions contemplated by the Merger Agreement, and (2) any proposal to adjourn or postpone such meeting of stockholders of the Company to a later date if there are not sufficient votes to approve the Merger; and (ii) against (1) any Company Alternative Transaction Offer, or any of the transactions contemplated thereby, (2) any action, proposal, transaction, or agreement which could reasonably be expected to result in a breach of any covenant, representation or warranty, or any other obligation or agreement of the Company under the Merger Agreement or of Stockholder under this Agreement, and (3) any action, proposal, transaction, or agreement that could reasonably be expected to impede, interfere with, delay, discourage, adversely affect, or inhibit the timely consummation of the Merger or the fulfillment of Parent's, the Company's, or Merger Sub's conditions under the Merger Agreement or change in any manner the voting rights of any class of shares of the Company (including any amendments to the Company's constating documents).
  - b. **Irrevocable Proxy.** Stockholder hereby appoints Parent, Merger Sub and any designees of Parent and Merger, and each of them individually, until the Expiration Time (as hereinafter defined) (at which time this proxy shall automatically be revoked), its proxies and attorneys-in-fact, with full power of substitution and resubstitution, to vote or act by written consent during the term of this Agreement with respect to the Shares in accordance with Section 3(a). This proxy and power of attorney is given to secure the performance of the duties of Stockholder under this Agreement. Stockholder shall take such further action or execute such other instruments as may be necessary to effectuate the intent of this proxy. This proxy and power of attorney granted by Stockholder shall be irrevocable during the term of this Agreement, shall be deemed to be coupled with an interest sufficient in law to support an irrevocable proxy, and shall revoke any and all prior proxies granted by Stockholder with respect to the Shares. The power of attorney granted by Stockholder herein is a durable power of attorney and shall survive the bankruptcy, death, or incapacity of Stockholder. The proxy and power of attorney granted hereunder shall terminate upon the termination of this Agreement.
4. **No Voting Trusts or Other Arrangement.** Stockholder agrees that during the term of this Agreement Stockholder will not, and will not permit any entity under Stockholder's control to, deposit any of the Shares in a voting trust, grant any proxies with respect to the Shares, or subject any of the Shares to any arrangement with respect to the voting of the Shares other than agreements entered into with Parent and Merger Sub.

5. **Transfer and Encumbrance.** Stockholder agrees that during the term of this Agreement, Stockholder will not, directly or indirectly, transfer, sell, offer, exchange, assign, pledge, convey any legal or Beneficial Ownership interest in or otherwise dispose of (by merger (including by conversion into securities or other consideration), by tendering into any tender or exchange offer, by testamentary disposition, by operation of law, or otherwise), or encumber (“**Transfer**”) any of the Shares or enter into any contract, option, or other agreement with respect to, or consent to, a Transfer of, any of the Shares or Stockholder’s voting or economic interest therein. Any attempted Transfer of Shares or any interest therein in violation of this Section 5 shall be null and void. This Section 5 shall not prohibit a Transfer of the Shares by Stockholder to any member of Stockholder’s immediate family, or to a trust for the benefit of Stockholder or any member of Stockholder’s immediate family, or upon the death of Stockholder; provided, that a Transfer referred to in this sentence shall be permitted only if, as a precondition to such Transfer, the transferee agrees in a writing, reasonably satisfactory in form and substance to Parent and Merger Sub, to be bound by all of the terms of this Agreement.
6. **Additional Shares.** Stockholder agrees that all Company Shares that Stockholder purchases, acquires the right to vote, or otherwise acquires Beneficial Ownership of, after the execution of this Agreement and prior to the Expiration Time shall be subject to the terms and conditions of this Agreement and shall constitute Shares for all purposes of this Agreement. In the event of any stock split, stock dividend, merger, reorganization, recapitalization, reclassification, combination, exchange of shares, or the like of the capital stock of the Company affecting the Shares, the terms of this Agreement shall apply to the resulting securities and such resulting securities shall be deemed to be “Shares” for all purposes of this Agreement.
7. **Waiver of Appraisal and Dissenters’ Rights and Certain Other Actions.**
  - a. **Waiver of Appraisal and Dissenters’ Rights.** To the extent permitted by Law, Stockholder hereby irrevocably and unconditionally waives, and agrees not to assert or perfect, any rights of appraisal or rights to dissent in connection with the Merger that Stockholder may have by virtue of ownership of the Shares.
  - b. **Waiver of Certain Other Actions.** Stockholder hereby agrees not to commence or participate in, and to take all actions necessary to opt out of any class in any class action with respect to, any Action, derivative or otherwise, against Parent and/or Merger Sub, the Company, or any of their respective successors: (a) challenging the validity of, or seeking to enjoin or delay the operation of, any provision of this Agreement or the Merger Agreement (including any claim seeking to enjoin or delay the Closing); or (b) to the fullest extent permitted under Law, alleging a breach of any duty of the Board of Directors of the Company, Parent or Merger Sub in connection with the Merger Agreement, this Agreement, or the transactions contemplated thereby or hereby.
8. **Termination.** This Agreement shall terminate upon the earliest to occur of (the “**Expiration Time**”): (a) the Effective Time; (b) the date on which the Merger Agreement

is terminated in accordance with its terms; and (c) the termination of this Agreement by mutual written consent of the Parties. Nothing in this Section 8 shall relieve or otherwise limit the liability of any Party for any intentional breach of this Agreement prior to such termination.

9. **No Solicitation.** Subject to Section 10, Stockholder shall not, and shall use its reasonable best efforts to cause its Affiliates not to: (a) directly or indirectly solicit, seek, initiate, knowingly encourage, or knowingly facilitate any inquiries regarding, or the making of, any submission or announcement of a proposal or offer that constitutes, or could reasonably be expected to lead to, any Company Alternative Transaction Offer; (b) directly or indirectly engage in, continue, or otherwise participate in any discussions or negotiations regarding, or furnish or afford access to any other person any information in connection with or for the purpose of encouraging or facilitating, any proposal or offer that constitutes, or could reasonably be expected to lead to, any Company Alternative Acquisition Offer; (c) enter into any agreement, agreement in principle, letter of intent, memorandum of understanding, or similar arrangement with respect to a Company Alternative Acquisition Offer; (d) solicit proxies with respect to a Company Alternative Transaction Offer (other than the Merger and the Merger Agreement) or otherwise encourage or assist any person in taking or planning any action that could reasonably be expected to compete with, restrain, or otherwise serve to interfere with or inhibit the timely consummation of the Merger in accordance with the terms of the Merger Agreement; or (e) initiate a stockholders' vote or action by written consent of the Company's stockholders with respect to a Company Alternative Transaction Offer. Notwithstanding the foregoing, Stockholder may (and may permit its Affiliates to ) participate in discussions and negotiations with any person making a Company Alternative Transaction Offer with respect to such Company Alternative Transaction Offer if: (i) the Company is engaging in discussions or negotiations with such person in accordance with Section 6.6 of the Merger Agreement; and (ii) Stockholder's negotiations and discussions are in conjunction with and ancillary to the Company's discussions and negotiations.
10. **No Agreement as Director or Officer.** Stockholder makes no agreement or understanding in this Agreement in Stockholder's capacity as a director or officer of the Company or any of its subsidiaries (if Stockholder holds such office), and nothing in this Agreement: (a) will limit or affect any actions or omissions taken by Stockholder in stockholder's capacity as such a director or officer, including in exercising rights under the Merger Agreement, and no such actions or omissions shall be deemed a breach of this Agreement; or (b) will be construed to prohibit, limit, or restrict Stockholder from exercising Stockholder's fiduciary duties as an officer or director to the Company or its stockholders.
11. **Further Assurances.** Stockholder agrees, from time to time, at the reasonable request of Parent or Merger Sub and without further consideration, to execute and deliver such additional documents and take all such further action as may be reasonable required to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement.

12. **Stop Transfer Instructions.** At all times commencing with the execution and delivery of this Agreement and continuing until the Expiration Time, in furtherance of this Agreement, Stockholder hereby authorizes the Company or its counsel to notify the Company's transfer agent that there is a stop transfer order with respect to all of the Shares (and that this Agreement places limits on the voting and transfer of the Shares), subject to the provisions hereof and provided that any such stop transfer order and notice will immediately be withdrawn and terminated by the Company following the Expiration Time.

13. **Specific Performance.** Each Party hereto acknowledges that it will be impossible to measure in money the damage to the other Party if a Party hereto fails to comply with any of the obligations imposed by this Agreement, that every such obligation is material and that, in the event of any such failure, the other Party will not have an adequate remedy at Law or damages. Accordingly, each Party hereto agrees that injunctive relief or other equitable remedy, in addition to remedies at Law or damages, is the appropriate remedy for any such failure and will not oppose the seeking of such relief on the basis that the other Party has an adequate remedy at Law. Each Party hereto agrees that it will not seek, and agrees to waive any requirement for, the securing or posting of a bond in connection with the other Party's seeking or obtaining such equitable relief.

14. **Entire Agreement.** This Agreement supersedes all prior agreements, written or oral, between the Parties hereto with respect to the subject matter hereof and contains the entire agreement between the Parties with respect to the subject matter hereof. This Agreement may not be amended or supplemented, and no provisions hereof may be modified or waived, except by an instrument in writing signed by both of the Parties hereto. No waiver of any provisions hereof by either Party shall be deemed a waiver of any other provisions hereof by such Party, nor shall any such waiver be deemed a continuing waiver of any provision hereof by such Party.

15. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 15):

If to Parent or Merger Sub:

Aston Bay Holdings Ltd.

80 Richmond Street West, Suite 303  
Toronto, Ontario  
M5H 2A4  
Attention: Thomas Ulrich  
Email: thomas.ullrich@astonbayholdings.com

with a copy to:

Troutman Sanders LLP  
401 9th Street NW, Suite 1000,  
Washington, DC 20004  
Attention: Thomas M. Rose  
Email: thomas.rose@troutman.com

If to Stockholder, to the address, email address, or facsimile number set forth for Stockholder on the signature page hereof.

with a copy to:

J.P. Galda & Co.  
1055 Westlakes Drive, Suite 300  
Berwyn, PA 19312  
Attention: J.P. Galda  
Email: jpgalda@jpgaldaco.com

## 16. **Miscellaneous.**

- a. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Delaware.
- b. **Submission to Jurisdiction.** Each of the Parties hereto irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other Party hereto or its successors or assigns shall be brought and determined exclusively in the Chancery Court in Delaware, or in the event (but only in the event) that such court does not have subject matter jurisdiction over such action or proceeding, in the Federal District Court for the District of Delaware. Each of the Parties hereto agrees that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 15 or in such other manner as may be permitted by applicable Laws, will be valid and sufficient service thereof. Each of the Parties hereto hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction

of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court or tribunal other than the aforesaid courts. Each of the Parties hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim, or otherwise, in any action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder: (i) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve process in accordance with this Section 16(b); (ii) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment, or otherwise); and (iii) to the fullest extent permitted by the applicable Law, any claim that (x) the suit, action, or proceeding in such court is brought in an inconvenient forum, (y) the venue of such suit, action, or proceeding is improper, or (z) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

- c. **Waiver of Jury Trial.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT: (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION; (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY; AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 16(c).
- d. **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

- e. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.
- f. **Section Headings.** All section headings herein are for convenience of reference only and are not part of this Agreement, and no construction or reference shall be derived therefrom.
- g. **Assignment.** No Party to this Agreement may assign any of its rights or obligations under this Agreement without the prior written consent of the other Parties hereto, except that Parent and Merger Sub may assign, in its respective sole discretion, all or any of its rights, interests and obligations hereunder to any of its Affiliates. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective permitted successors and assigns. Any assignment contrary to the provisions of this Section 16(g) shall be null and void.
- h. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any person other than the Parties and their respective successors and permitted assigns any legal or equitable right, benefit, or remedy of any nature under or by reason of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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

ASTON BAY HOLDINGS LTD.

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

BLUE RIDGE MINING INC.

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

[STOCKHOLDER]

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

Number of Shares of Company Shares Beneficially  
Owned as of the date of this Agreement: \_\_\_\_\_

[Number of Options Beneficially Owned as of the date  
of this Agreement: \_\_\_\_\_]

Street Address:

City/State/Zip Code:

Fax:

Email: